

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT TANGA**

MISC. LAND APPLICATION NO. 21 OF 2020

(Arising from Korogwe District Land and Housing Tribunal
Land Appeal No. 14 of 2019 Original Msasa Ward Tribunal Case No. 06 of 2018)

ASIA JUMA NKONDO APPLICANT

VERSUS

JARAFI JUMA NKONDO RESPONDENT

RULING

MKASIMONGWA, J.

This is an application for extension of time in which to appeal against the decision of Korogwe District Land and Housing Tribunal in Land Appeal No. 14 of 2019 dated 28/11/2019. The Application is brought by Asia Juma Nkondo (Applicant) against Jafari Juma Nkondo (Respondent) and it is by way of Chamber Summons filed under Section 38 (1) of the Land Disputes Court Act [Cap 216 R.E 2002] supported by Affidavit sworn by Asia Juma Nkondo.

The Application is objected by the Respondent and to that effect, the later filed a Counter Affidavit. When the matter came for hearing, Mr. Yona

Lucas (Advocate) appeared on behalf of the Applicant whereas the Respondent appeared in person.

When Mr. Yona Lucas was invited by the Court to argue his case, he in the first place adopted all, the averments in the affidavit filed in support of the Application to be part of his submission. He stated that reason as to why this application should be granted is as shown under Paragraph 9 of the affidavit, that is the proceedings and decision of the trial tribunal are fatal and completely without legal force to stand, to be precise, they are tainted with illegalities as the applicant herein had no *locus standi* to sue on the disputed land which belongs to the estate of the late Juma Nassoro Nkondo to which Nassoro Yahaya Nkondo is an administrator.

In amplifying the ground, Mr. Yona stated that, the Applicant was never an administrator of the estate of the late Juma Nassoro Nkondo, to which the piece of land a subject of this dispute belongs. She but complained over the land, against the Respondent who colluded with Nassoro Yahaya Nkondo, the Administrator of the estate, from which collusion, the Administrator recognized the Respondent as the lawful owner of the disputed land which fact is not true. As the Applicant was not an Administrator of the estate of the late Juma Nassoro Nkondo and since the

land in dispute belongs to the estate, she (Applicant) had no *locus* to sue in the matter. That being the case, the District land and Housing Tribunal erred in law when it ruled out that the Respondent is the lawful owner of the disputed land. In that premise of the matter, Mr. Yona invited the Court that it finds irregularities in the proceedings and decision of the District Land and Housing Tribunal as well as those of the trial Ward Tribunal. Armed with the decision in the case of **Lawrence Kivumbi v. Attorney General and Three Others**, Misc Civil Application No. 09 of 2019, HCT at Tanga and with a view to cementing his submission, Mr. Yona submitted that, an allegation of illegality of the contested decision constitutes a sufficient cause to warrant extension of time. He prayed the Court therefore that it grants the application.

On the other hand the Respondent stated that following their father's death an administrator was duly appointed to administer the estate of the late father. He (the respondent) proved to the Administrator that the land now in dispute is not part of the deceased's estate for it is his own property since even when the father was alive. As such the administrator was right when he found the disputed piece of land to be not part of the deceased's

estate. The Respondent submitted that this matter is devoid of merit and the Court should so find.

In a short rejoinder, Mr. Yona contended that in actual sense this matter is not contested. This is clearly shown under Paragraph 4 of the Counter Affidavit when the Respondent admits to all what the Applicant averred in the Affidavit in support of the Application. He only contended that the application is time barred. Mr. Yona, therefore requested the Court that it considers the averments in the Affidavit and accordingly grant this Application.

I have considered the submission, along with the record. As it is shown above, this Application is brought under Section 38 (1) of the Land Disputes Courts Act. The Section reads as follows:-

"38 (1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order appeal to the High Court (Land Division)

Provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an

appeal either before or after such period of sixty days has expired.”

The law here does not state as to what amounts to a good and sufficient cause. What is clear is that what constitutes a good and sufficient cause as it was held in the case of **Regional Manager TANROADS Kagera v. Ruaha Concrete Company Ltd**: Civil Application No. 96 of 2002, CAT (Unreported) cannot be determined by any hard and sufficient rules. Determination of the same is by making reference to all circumstances of each particular case. It means therefore that applicant must exhibit to the Court material which will move it to exercise its judicial discretion in order to extend the time limited by rules. Again determination of what amounts to a sufficient cause attracts for consideration of various factors including whether or not the application has been brought promptly, abundance of any or valid explanation for delay, lack of diligence on the part of the Applicant, among others. **(See Yusuph Same and Hawa Dada v. Hadija Yusuph**: Civil Appeal No. 1 of 2002, CAT (unreported). In the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR. 189 an alleged illegality of the decision being challenged was held to constitute a sufficient cause.

This is regardless the fact that the Applicant has failed to sufficiently account for delay in lodging the Application. **(See Tanesco v. Mafungu Leornard Majura and 15 others:** Civil Application No. 94 of 2016, CAT – (Unreported). In the instance case, in convincing the Court for it to find a good and sufficient cause warranting grant of extension of time, the Applicant alleged illegality of both the proceedings and decision of the trial Tribunal as it is averred under Paragraph 9 of the Affidavit filed in support of the Application. There it is averred that:-

"That the proceedings and decision of the trial Tribunal are fatal and completely without legal force to stand, to be precise, tainted with illegalities, as the Applicant herein had no locus standi to sue on the disputed land which belongs to his deceased's father estate one JUMA NASSORO NKONDO in which one NASSORO YAHAYA NKONDO is the administrator of the estate the fact that also affects the jurisdiction of the 1st Appellate Tribunal"

Since there is an allegation on the illegality of the decision being challenged, going by the decision in the case of **Principal Secretary, Ministry of Defence** (Supra) the Court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged

illegality is established to take appropriate measures to put the matter and the record right.

In the event, I find the Applicant has established a good and sufficient cause. As such, this Application is granted and time within which to file appeal is extended. The Appeal shall be filed within the period of sixty days provided by the statute effective today. Keeping in mind the nature of this matter that it touches on an alleged deceased's probate and the fact that the parties are related, no order as to costs is made.

DATED at **TANGA** this 28th of April, 2021.




E. J. Mkasimongwa

JUDGE

28/04/2021