

**IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF MWANZA
AT MWANZA**

MISC. LAND APPLICATION No. 115 OF 2020

*(Arising from the decision of the District Land and Housing Tribunal
(Masao E. Chairman) on Land Appeal No. 77/2018, Originating from
Mkuyuni Ward Tribunal Land Dispute No. 13/2018)*

NEEMA MAKWAIYA APPLICANT

VERSUS

HASNA MUHENGU RESPONDENT

RULING

19/05/2021 & 21/06/2021

W. R. MASHAURI, J;

In this application, the applicant is seeking an order of the court to allow the applicant to file an appeal out of time. The application has made by way of chamber summons taken under section 14 (1) of the law of Limitation Act Cap 89 R: E 2002, Section 38(1) of the Land Disputes Courts Act No. 2 of 2002 and section 95 of the Civil Procedure Code Cap 33 R: E 2002. It is supported by an affidavit deposed by Abdallah Kessy Abdallah,

advocate for the applicant, and resisted by an affidavit in reply deposed by Hasna Muhenga the respondent.

When the application was called on for hearing before me on 12/04/2021 Mr. Nasimire Advocate Learned counsel, appeared for the respondent as to the absence of the applicant, He prayed this application to be disposed of by filing written submission, prayers sustained. Parties complied with the schedule of filing written submissions and the ruling was fixed on 9th June 2021.

The applicant in his submission prayed the court to adopts the facts adduced in the affidavit of Abdallah Kessy Abdallah and the same to form part of his submission hereunder. He submitted that on the 2nd day of November 2018 in the District Land and Housing Tribunal for Mwanza at Mwanza (hereinafter referred to as the DLHT) the applicant conceded to the preliminary objection raised by respondent in appeal No. 77/2018. The DLHT delivered a ruling and dismissed the appellant's appeal saying the appeal was improper before the tribunal and it was not heard on merit. He added that, the decision of the tribunal is tainted with illegalities and irregularities which if left to stand will set a bad precedent. The appeal was incompetent before the tribunal the same was not proper but chairperson of DLHT dismissed it. He cited the case of **YAHYA KHAMIS VS HAMIDA HAJI IDD & OTHERS** Civil Appeal No. 225/2018 on page 8.

And **JUTO ALLY Vs LUKAS KOMBA & ANOTHER** Civil Application No. 484/17 of 2019 page 13.

In reply, the respondent prayed his counter-affidavit to be adopted being part of this submission. Respondent submitted that, the dismissal of Land Appeal 77/2018 cannot be said illegal or irregular, the dismissal complained of was the natural consequence of the concession by the applicant in the preliminary objection. Moreover, the applicant alleges that there were illegalities and irregularities that arose out of the decision of the tribunal without explaining which kind of illegalities and irregularities that she contends. Respondent added that, the applicant filed her application on the 14th day of December 2020 almost two years down the road, in that regard the applicant did not take immediate action to apply for an extension of time to file her appeal, neither did she account for each delay a day. In his submission's respondent cited two cases. The case **Sabena Technics Dar Ltd Vs Michael J. Luwunzu** Civil Application No. 451/18 of 2020 (unreported) and **Ramadhani J. Kihwani Vs TAZARA** Civil Application No. 401/18 of 2018. Lastly, the respondent submitted that, the applicant failed to give justifiable grounds to support her application for grant of extension of time hence this honorable court dismiss this application with costs.

In rejoinder, the applicant submitted that, tribunal's chairman thereon was not supposed to dismiss the said appeal because it was not

competent before the tribunal and was not determined on merit. The applicant added that, illegalities and irregularities are shown in the last paragraph of the first page of the applicant submission. Applicant prays for the court to find it just and grant leave to file an appeal out of time.

I would like to thank the learned counsel of both parties for their submissions, the only issue is whether the reason of the applicant is sufficient for extending time?

The applicant adduces illegalities as the cause of his prayers. It is undisputed that, in our legal regime illegalities are sufficient cause for extending time. Now is common as stated by the Court in several of its decisions that, it is settled law that once a point of law involves the allegation of illegality in the proceedings or judgment of the lower court subject to the intended appeal, that by itself constitutes sufficient reason to grant the applicant extension of time. For this stance, see **VIP Engineering and Marketing Limited and Two Others vs. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported) and **The Principal Secretary Ministry of Defence and National Service vs. Devran Valambia**, [1992] TLR 185 to mention, but a few. Specifically, in **VIP Engineering and Marketing Limited and Two Others** (supra) the Court stated as follows:

"It is settled law that a claim of the illegality of the challenged decision constitutes sufficient reason for the

***extension of time** under Rule 8 of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay. "*

Mostly, the illegality must be apparent on the face of the record (see: **Ngao Godwin Losero Vs Julius Mwarabu**, Civil Application 10/2015, unreported)

It is on record that, the reasons for extending time is that: -

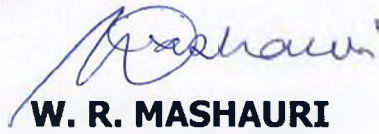
"The appeal was incompetent before the tribunal and to dismiss the same was not proper"

The applicant claimed the decision reached by the trial tribunal was illegal, as to the cited case of **Yahya Khamis (Supra)** the appeal is supposed to be strikeout. I think this kind of illegalities as claimed by application is arguable, it needs the court's consideration on such jurisdictional circumstances on whether the dismissal was proper or not as to its impact. It's my settled view that, the issue of jurisdiction is the creature of the statutes and not parties made the issue, and therefore, whenever it arose, shall be medicated as to statute or practice of the court, whichever the best.

In the final analysis, based on what I have stated above, I have no hesitation to state that the applicant has sufficiently demonstrated that good cause exists to warrant my exercise of discretion to grant the application. Accordingly, the application is hereby granted and I extend

the time within which the applicant has to lodge an appeal within fourteen days (14) days from the date of delivery of the ruling.

No order as to costs.



W. R. MASHAURI

JUDGE

21/06/2021