

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT TABORA**

MISC. LAND APPLICATION NO. 6 OF 2019

*(Arising from Judgment of High Court at Tabora in Land Appeal No.
14/2017, Land Appeal No. 42/2017 of the District Land and Housing
Tribunal for Tabora and Original Land Application No. 40/2017
Mtendeni Ward Tribunal)*

RAJABU SAID -----APPLICANT

VERSUS

MAGRETH TARANGE RUDOVIC -----RESPONDENT

RULING

05/07&23/07/2021

BAHATI, J

This is a ruling on the application for extension of time within which the applicant can apply for leave to appeal to the Court of Appeal of Tanzania. The application is made under Section 11(1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019].

The applicant intends to challenge the decision of this Court delivered on 23rd June 2018 by Hon. Mallaba, J the decision which dismissed the applicant's appeal.

The application is supported by an affidavit sworn by Mr.Kanani A. Chombala learned counsel for the applicant, the reason for the delay as deployed in the affidavit is that on 4th September 2018 the

applicant applied for Certified copies of judgment, decree and proceedings and on 11th September he filed a notice of appeal which was effected by payment vide exchequer receipt No. 20646639 but on 13th September 2018 the applicant felt sick and he was admitted to Kitete Referral Hospital where he was hospitalized for a stroke and on December, 2018 he was transferred to traditional medicine where he is still getting treatment to date.

Also, in his affidavit, Mr. Chombala claimed there is a serious irregularity in the proceedings which touches the fundamental issue of Jurisdiction and cannot remain uncured by the Court of Appeal. He listed the irregularities as follows: -

- i. The whole proceeding is null for failure to ascertain matter of Court's jurisdiction as the trial tribunal entertained the dispute between the parties without ascertaining the monetary value of the suit land.*
- ii. The whole proceeding is null for failure to ascertain matter of Court's jurisdiction as the trial tribunal entertained the dispute between the parties without ascertaining the territorial jurisdiction of the Tribunal.*
- iii. That, the trial tribunal, District land and Housing Tribunal, and the High Court all failed to ascertain the issue of locus standi of the seller of Land and the Locus Standi of the parties to the suit.*

Mr. Chombala concluded by stating that, the issue of jurisdiction of the Court or Tribunal is very serious to be ascertained and it can be raised even at the appeal stage and as the irregularity in the Court's record touches the issue of jurisdiction it attracts the attention of the Court of Appeal as the High Court or District Land and Housing Tribunal did not address itself to that important aspect of the process of Justice Administration thus, he prayed the prayer be granted.

At the hearing, Mr. Chombala prayed to tender original documents evidencing the applicant's admission to the hospital. To reinforce his argument on point of irregularity wanted consideration of this court basing on the decisions in ***Philimon Nzinze vs Patric Mikindyo Misc. Land Appeal No. 3 of 2015*** where the court extensively discussed the issue of jurisdiction, also ***TANAPA vs Joseph Magombi Civil App No. 471/18 of 2016*** and ***Tanzania Electric Supply Co. Ltd vs Isaac Minja Civil Application No. 102 of 2016***.

As to the issue of locus standi, Mr. Chomballa submitted that the seller of the disputed property was neither the owner nor the administrator of the estate so he had no locus standi.

On the other hand, the respondent Magreth Tarange who appeared in person prayed this court to adopt her affidavit and further that as to the issue of *locus standi* they did it legally, and on the issue of jurisdiction the trial tribunal assumed jurisdiction basing

on the consideration stated in the sale agreement so she argued that the Ward tribunal had jurisdiction.

As to the reason advanced for extension of time, the respondent stated that it is not true that the applicant paralyzed it is his brother Said Rajab who paralyzed.

In rejoinder, Mr. Chomballa reiterated that it is the applicant Rajab who was paralyzed and the exhibit is present. On the issue of jurisdiction, it is not written in the record of ward tribunal except what the record says is about one acre as it is reflected on the agreement.

As indicated above, the applicant is seeking an extension of time to lodge leave to appeal to the Court of Appeal of Tanzania under Section 11(1) of the Appellate Jurisdiction Act, Cap. 141 which reads:-

"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate Court exercising extended powers, the subordinate Court concerned may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate Court concerned for making an application for leave to appeal or for a certificate that the case is a fit case for appeal notwithstanding that the time for giving the notice or making the application has already expired."

Basing on the above-cited provision of law, it is right that the Court has a wide discretionary power to extend the time for giving notice of intention to appeal. It is a settled law that extension of time may only be granted where it has been sufficiently established by an applicant that the delay was with sufficient cause.

In the case of ***Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christians Association of Tanzania Civil Application No. 2 of 2010*** several factors for consideration in the extension of time was enumerated by the Court that: -

1. *The applicant must account for all the periods of delay;*
2. *The delay should not be inordinate;*
3. *The applicant must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take, and*
4. *If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; as the illegality or the decision sought to be challenged*

In disposing of the application at hand, I will consider and apply the above factors to see whether the applicant has sufficient reasons to warrant a grant of extension of time.

The first factor requires the applicant to account for each day of delay, as per Mr. Chomballa's affidavit the High Court judgment was delivered on 23rd August, 2018, and on 11th September, 2018,

the applicant filed a Notice of Appeal. If you count on the days from the date judgment of the High Court was delivered and the date Notice of appeal was filed you will find that the 14 days' time to file a notice of appeal had elapsed.

The reason advanced by the applicant that he was sick on 13/9/2019 does not by anyway support the delay and no one will easily be swayed to that argument.

If I were to consider hospital documents that were submitted to this Court still it won't amount to sufficient reason because on the first day of hearing the Mr. Chombala prayed to submit original copies of the applicant's Hospital records because he did not attach them in the pleadings, the Court admitted the documents but upon close examination, it found that the advocate cuckolded this Court, nothing was original. This makes me believe the respondent's submission that it is not the applicant who paralyzed but his relative Said Rajab.

As to the issue of irregularity on the jurisdiction, this matter has its roots in the Ward tribunal, Mr. Chomballa claims that the trial tribunal assumed jurisdiction without ascertaining the monetary value of the suit land.

It has been the cherished practice in our Courts that if illegality in the judgment intended to be challenged as one of the grounds that would entitle an applicant extension of time even where no good cause is shown the Court must grant an extension of time even

where the delay is inordinate. (See *Kalunga and Company Advocates vs National Bank of Commerce [2006] TLR 235*).

In *Lyamuya Construction's* case (supra) the Court emphasized before granting an extension of time basing on illegality such illegality must be apparent on the face of the record.

In the case at hand, both parties agree that there was an existing sale agreement which the applicant claims that the seller in the agreement had no *locus standi* while the respondent stated that the trial tribunal exercised its monetary jurisdiction basing on the consideration of sale as it is in the sale agreement, the consideration which was within the jurisdiction of the tribunal. Meanwhile the applicant never objected that assertion. I therefore subscribe to the respondent's argument that since the dispute emanated from sale agreement the trial tribunal was correct to act on the matter basing on consideration of sale.

As to the issue of *locus standi*, I think the learned counsel has misconstrued the meaning of *locus standi*. *Locus standi* is the right or capacity to bring an action or appear before the court of law. The principle of *locus standi* is intended to limit rights and responsibilities to parties in a suit. It is to those who their legal rights have been affected or suffered specific legal injuries in order to bring an action in Court of law to protect their interest. As to the matter at hand a person who the applicant has named as a seller does not fall within the definition since he was not a party to the case.

On that account therefore, I find that the applicant has not demonstrated sufficient reasons for delay nor has failed to reveal any illegality apparent on the face of record. For that reason, I accordingly struck out the application. No order for cost.



A. BAHATI

JUDGE

23/07/2021

Ruling delivered under my hand and seal of the court in the chamber, this 23th day July, 2021 in the presence of both parties.



A. A. BAHATI

JUDGE

23/07/2021

Right of appeal fully explained.



A. A. BAHATI

JUDGE

23/07/2021

