

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

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND CASE APPLICATION No. 52 OF 2020

*(Arising from the District Land and Housing Tribunal for Korogwe at Korogwe in
Land Appeal No. 6 of 2018 & Originating from Misima Ward Tribunal of Handeni
District in Land Case No.24 of 2018)*

ATHUMANI NJAMA MCHELO ----- APPLICANT

Versus

MTABANI NJAMA MCHELO ----- RESPONDENT

RULING

04.08.2021 & 04.08.2021

F.H. Mtulya, J.:

Mr. Athumani Njama Mchelo (the Applicant) Approached this court on 7th September 2020 to seek enlargement of time to prefer an appeal out of time in this court to dispute a decision of the **District Land and Housing Tribunal for Korogwe at Korogwe** (the Tribunal) in **Land Appeal No. 6 of 2018** (the Appeal) originating from **Misima Ward Tribunal** (the Ward Tribunal) in Land Case No. 24 of 2018 (the case).

In his 6th and 7th paragraph of the Affidavit, the Applicant displayed two reasons in favour of the application, namely: first,

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JUDGMENT**

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In his 6th and 7th paragraph of the Affidavit, the Applicant displayed two reasons in favour of the application, namely: first,

failure to obtain copies of decree and judgment within time and second, illegality of the lower tribunals' decisions. When the application was scheduled for hearing today morning, the Applicant appeared in person whereas the Respondent invited legal services of Mr. Mujuni Gabagambi, learned counsel. In his brief submission, the Applicant complained on illegality with regard to *locus standi* on part of the Respondent and uncertainty of size of the disputed land, but the Tribunal declined to reply the matter and decided other matters on its own volition.

With copies of decree and judgment, the Applicant submitted that he was not issued with the copies for the purposes of appeal until on 7th September 2020 and the same day he came to this court to file **Land Application No. 52 of 2020**. This submission was protested by the Respondent's learned counsel Mr. Gabagambi who submitted that the Applicant has not accounted for every day of delay as per decision in **Malambo Busiga v. Rahel Mchele**, Misc. Criminal Cause No. 28 of 2020 and **FINCA (T) Limited & Another v. Boniface Mwachikisa**, Civil Application No. 589/12 of 2018, where the court stated that applicants for extension of time must account for everyday of delay. With regard to receipt of the copies of decree and judgment, Mr. Gabagambi submitted that there is no

requirement of the law to attach copies of decree and judgment in appeals which originated from Ward Tribunals hence the applicant has no good cause to be granted enlargement of time.

I have read decisions cited by the learned counsel and precedents of the Court of Appeal in **VIP Engineering & Marketing Limited & Two others v. Citi Bank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 & 8 of 2006 and **TanESCO v. Mafungo Leonard Majura & 15 Others**, Civil application No. 94 of 2016 and found the following text:

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

In the present application, the Applicant claimed the point of illegality in *locus standi* and uncertainty of size of the land in dispute. I have perused the record at glance and found out that the two issues complained of are at display. I understand the applicant has failed to sufficiently account for everyday delay in lodging the present application. However, the fact that there is complaint of illegality in the decisions intended to be impugned, that alone constitutes sufficient reason to move this court to grant extension of time so that the alleged illegality can be addressed and determined in this court.

In the event, I must conclude that, under the circumstances of this application, the Applicant has illustrated good causes that would entitle him of the time sought. The Applicant is consequently granted fourteen (14) days leave to prefer an appeal in this court without any further delay from today, 4th August 2021 in accordance to the law regulating appeals originated in Ward Tribunals. I award no costs in this application for obvious reasons. The dispute has not been determined to the finally to identify the wrong party to bear costs and in any case the parties are brothers from one family and there are possibilities to sit and settle the matter out of the court by involving clan and family members.

Ordered accordingly.



F. H. Mtulya

Judge

04.08.2021

This Ruling is delivered in Chambers under the seal of this court in the presence of the parties, Mr. Athuman Njama Mchelo and Mr. Mtabani Njama Mchelo and in the presence of Mr. Mujuni Gabagambi, learned counsel for the Appellant.





F.H. Mtulya

Judge

04.08.2021