

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISCELLANEOUS LAND APPLICATION NO. 18 OF 2021

(Arising from Misc. Application No. 48 of 2018, originating from Appeal No. 27 of 2017 in the Same District Land and Housing Tribunal)

GAUDENCE DOMINIC AUFENI APPLICANT

VERSUS

NGUJINI VILLAGE COUNCIL RESPONDENT

RULING

MUTUNGI .J.

The applicant is seeking for extension of time to file reference against the decision of the District Land and Housing Tribunal of Same at Same in **Misc. Application No. 48 of 2018** dated 12th April, 2021. The application is made under **Order 8 (1) and (2) of the Advocates Remuneration Order, 2015**.

Initially the applicant filed a Bill of Cost claiming a total of TZS 2,014,000/= against the respondent arising from Land Appeal No. 27 of 2017 originating from the Ngujini Ward Tribunal (No. 1/2017). While composing the ruling the honourable tribunal

chairman Suo Mottu raised the issue that, the application was bad in law for not joining the Attorney General as a proper party as provided for under **section 6 (3) of the Government Proceedings Act, Cap 5 as amended by section 25 (a) of the Written Laws Miscellaneous Amendments) Act 2020, Act No. 1 of 2020**. Consequently, he dismissed the application without cost on that ground. Aggrieved by the decision, the applicant has filled this application seeking for extension of time so that he can challenge the tribunal's decision. When the application was called up for hearing, the applicant was represented by Mr. Chiduo Zayumba and the respondent represented by Mr. Edwin Bayona learned State Attorney.

Mr. Zayumba in support thereof submitted, the applicant is seeking for extension of time to file a reference out of time after the statutory period had expired. He added, the applicant's reason for the delay, he was waiting to be supplied with the requisite copies by the District Land and Housing Tribunal. The applicant had on the date the decision was delivered, written a letter requesting to be supplied with the decision, drawn order and proceedings. However, he was supplied with the same on 25th May 2020. By then the

statutory time within which to lodge the reference had already lapsed.

It was Mr. Zayumba's further argument that, another reason as seen at paragraph 9 of the applicant's sworn affidavit, is on the issue of non-joinder of the Attorney General in which the parties were not afforded a right to be heard. The same was raised *suo mottu*, and the chairman dismissed the bill of costs without determining the same on merits. He argued, this is an issue on illegality upon which numerous decisions by this court and the Apex Court of this land, have laid down the principle that, illegality is one of the ground for extension of time. In the upshot the learned advocate prayed, the extension so sought be granted.

In contesting the application Mr. Bayona learned Attorney argued, the copy of ruling was issued on the same date after delivery of the ruling i.e. on 12th April, 2021. For that the chairman had supplied the ruling to the parties within the prescribed time. It is thus crystal clear that failure to file reference timely was intentional and out of negligence.

Be as it may, a copy of ruling was not necessary to accompany the reference before the High Court, thus, the applicant was sloppy in his actions.

On the reason of illegality of the ruling to be challenged, Mr. Bayona argued, the same is premature hence he did not submit on it. He finally prayed this Court dismisses the application with costs for want of merit.

In his brief rejoinder, Mr. Zayumba maintained, since the alleged copy of the decision does not show if it was certified on 12th April, 2021, the applicant is entitled to a benefit of doubt. More so, the applicant requested for the drawn order, ruling and proceedings, though the drawn order was ready for collection by 25th of May, 2021 but the proceedings have not been supplied to date.

Mr. Zayumba added, the learned state counsel has not stated any law to show that a drawn order is not necessary to accompany the reference. The procedure is well known and there is a notice on this requirement on the Court's Notice Board. On the issue of illegality, he argued the same can be determined in an application for extension of time. In the end he still prayed the application be granted with costs.

Having considered both parties' submissions, affidavit and counter affidavit the main issue for determination is;

Whether the applicant has demonstrated sufficient cause to be granted extension of time to file reference out of time to this Court.

It is common knowledge in our jurisdiction that, an application for extension of time is entirely upon the discretion of the court to grant or otherwise. This discretionary power, however, is judicial in nature and must confine to the rules of reason and justice. On this I am guided by the authority in the case of **Benedict Mumello V Bank of Tanzania, E.A.I.R [2006] Vol. I**, where the Court of Appeal held: -

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause"

As pointed earlier, extension of time is a matter of discretion by the Court but the applicant must establish sufficient reasons for the Court to be persuaded to exercise such

discretion in his favour. (See **Shanti V Hindocha & Others [1973] E.A. 207**).

In the application at hand, Mr. Zayumba argued the reason for delay was caused by failure of the applicant to access on time the necessary documents which essentially are the copies of the decision, drawn order and proceedings. However, as rightly argued by Mr. Bayona, the application for reference does not require such copies. **Order 7 (1) and (2) of the Advocates Remuneration Order G.N No. 263 of 2015** provides: -

"7.-(1) Any party aggrieved by a decision of the Taxing officer, may file reference to a judge of the High Court.

(2) A reference under order (1), shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days from the date of the decision."

In the circumstances, since the only requirement envisaged as above is a chamber summons supported by an affidavit, neither the copy of the decision nor drawn order were

needed. In that regard the mentioned reason for delay is not justifiable to warrant extension of time.

On the other hand, the learned advocate also challenges the tribunal's decision on a point raised *suo mottu* that, the Attorney General be joined as a necessary party in the Bill of Cost filed while the record was silent on the same. In his settled opinion this was an illegality.

What then is the consequence in such a situation. In the case of **Principal Secretary, Ministry of Defence and National Service V Devram Valambhia (1992) TLR 182**, the Court of Appeal stated: -


"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter straight."

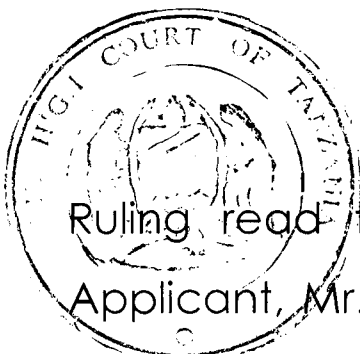
Borrowing leaf from the above authority, on the outset it does not need magic to find on the face of record the tribunal chairman decided on it and was the foundation of the

decision. There are all reasons for the applicant to allege illegality in the decision so delivered. In view thereof is a sufficient cause to warrant extension of time for this court to ascertain this point.

Accordingly from the foregoing analysis, the application is granted as prayed. The applicant is given 21 days from the date of this ruling to file the intended reference with no order as to costs.

It is so ordered



B. R. MUTUNGI
JUDGE
09/09/2021



Ruling read this day of 09/09/2021 in presence of the Applicant, Mr. Philip Daniel Mvungi the Respondent's V.E.O and Mr. Imani Mwandumbya (Mwanga District Council's Legal Officer) for the Respondent.


B. R. MUTUNGI
JUDGE
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RIGHT OF APPEAL IS EXPLAINED.


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