

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA SUB- REGISTRY**

AT MUSOMA

MISC. LAND APPLICATION NO. 40 OF 2021

(Arising from Misc. Application No. 313 of 2020, originating from Land Application No. 166 of 2016 of the District Land and Housing Tribunal for Mara at Musoma and Land Revision No. 14 of 2020 of the High Court of Tanzania as Sub registry of the High Court at Musoma)

FINCA TANZANIA LIMITED..... 1ST APPLICANT

MUGABO AUCTION MART & COMPANY.....2ND APPLICANT

VERSUS

BWIRE BENARD KASEREKA..... RESPONDENT

RULING

15th September and 30th September 2021

F.H.MAHIMBALI, J

This is an application for extension of time to file an appeal out of time. Its dawn is from the decision of the District Land and Housing Tribunal for Mara at Musoma in Land Application no. 188 of 2017. This application was brought by way of chamber summons predicated under section 41(2) of the Land Disputes Courts Act, CAP 216 R.E. 2019 and section 19(1) and (2) and section 21(1) of the Law of Limitation Act, [Cap 89 R.E. 2019] and Order XLIII rule 2 of the Civil Procedure Code, [Cap 33, R.E 2019] supported by the affidavit of Tupege Anna Mwambosya.

Following the sequence of events, the reason deponed in the affidavit for application of extension of time is that the ruling of the tribunal is tainted with illegalities which attracts the attention of this honorable court, which if not addressed will cause injustice against the applicants without their fault.

On the other hand, the respondent objected to this application, he also deponed in his counter affidavit that there was no any illegality.

When this matter came up for hearing, the applicants enjoyed the legal services of Ms. Tupege Anna Mwambosya, learned advocate and the respondent appeared in person, unrepresented.

Submitting in favour of the application, Ms. Mwambosya stated that this application is against the ruling of Musoma DLHT dated 5/11/2020 and the reason for extension is illegality by the DLHT. She stated that originally the dispute was between the respondent and the applicants in Land application No. 106 of 2016, where the respondent questioned the legality of the auction done by the applicants that it was a nullity. This application was decided in favor of the respondent. As a result the auction was nullified.

The respondent filed another case Misc. Land Application No. 313 of 2020 in which he sought for an initial order. She further submitted

that they were not satisfied with the decision of the trial court as it ruled over the whole application which was not heard instead of ruling on the preliminary objection. The applicants were not amused with the decision and they applied for revision. The court ruled on 1/6/2021 that they were supposed to appeal instead of applying for revision. As the respondent is still indebted, they want to appeal out of time and if the DLHT's ruling stands, the applicants will suffer irreparable loss. She cemented her point by citing the case of **Felician Credo Simwela vs Qumala Masoud Batenzi and another** (High Court Sumbawanga) Mkeha, J which ruled that the only ground in extension of time is when the applicant has adduced sufficient reasons for delay.

She went further to submit that on 5th June 2021 she got the copy of judgment and prepared this application and filed on 14th June, 2021. She humbly prayed that this application be granted as she had used the days between 5th and 13th June, for preparing the appeal. As the delay was due to technical and the same was not inordinate and that they have a high chance of success in this appeal. She prayed that the application be granted with costs.

Responding, the respondent stated that he prays his counter affidavit be adopted as part of his appeal submission. He prayed that the

application be dismissed with costs as the reasons advanced are far from truth and there are no good grounds for grant of extension of time.

Re- joining the applicant reiterated her earlier submission that the application be granted. As the matter was filed on 14th June, 2021 and the same was admitted on the same date, she prayed that this application be allowed with costs as prayed.

One of the reasons deponed by the applicant is that there is an illegality. The law is settled that illegality in itself is a sufficient ground for extension of time. This was held in the case of Principal **Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR 182, where 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 and there cord straight."

Also, in the case of **MOHAMED SALUM NAHDI VS ELIZABETH JEREMIAH**, Civil Reference No. 14 of 2017 at page 7

"We say so because the law is fairly settled that in applications of this nature, once and issue of illegality in the decision is sought to be challenged is raised, that amounts to

good cause and the court, even if every day of delay is not accounted for, would grant extension sought so as to rectify the illegality on appeal...”

I have gone through the court's records and the submission of Miss. Mwambosya, and what I have gathered from her submission is that there was an illegality as in Misc. Land Application No. 313 of the trial court ruled over the whole application which was not heard instead of ruling over the preliminary objection. This means they were not heard in the application they lodged. Hence, it is a sufficient reason for extension of time.

Guided by the principles established in the above mentioned cases, It is my humbled view that I do not need to discuss the other reasons as this one of illegality is sufficient to dispose of the matter and grant the prayer of extension of time to appeal out of time.

All said and done, this application is granted with costs.

It is so ordered.

DATED at MUSOMA this 30th day of September, 2021.




F. H. Mahimbali

JUDGE

30/09/2021

Court: Ruling delivered this 30th September, 2021 in presence of the Respondent and Absent of the Applicant. B/C Miss. Neema P. Likuga – RMA.



F. H. Mahimbali

JUDGE

30/09/2021