

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

MISCELLANEOUS LAND APPEAL NO. 108 OF 2020

(arising from Land Appeal No. 61 of 2019 High COURT OF Tanzania at Mwanza, before A. Z. Mgeyekwa, J)

EDWARD MASHINDANO

(The administrator of the estate

Of the LATE PILLY JUMA.....APPELLANT

VERSUS

HARUNA PHILIPO.....1ST RESPONDENT

IZACK MAYUNGA.....2ND RESPONDENT

ELIAS REUBEN MGWENO.....3RD RESPONDENT

BENARD NTANGIJA.....4TH RESPONDENT

FROLIDA JOVIN.....5TH RESPONDENT

RULING

Date of last order: 28/09/2021

Date of Ruling: 30/09/2021

F. K. MANYANDA, J.

This Court is been moved under section 14(1) of the Law of Limitation Act, [Cap. 89 R. E 2019] to extend the time within which the Applicant to file an application for review. The decision intended to be reviewed is from Land Appeal No. 61 of 2019 which was delivered on 12/09/2019 and this application was filed on 12/10/2020, but filing fee was paid via Exchequer

Receipt No. EC 100741832593 dated 13/11/2020. This means the application was filed late by about five (5) months.

The application is made by way of chamber summons supported by an affidavit sworn by Remigius Silas Mainde, the Counsel for the Applicant. It is countered by a joint affidavit sworn by the Respondents.

The Application, with leave of the Court, was argued by way of written submissions.

The submission for the Applicant was drawn and filed by Mr. Remigius Silas Mainde, learned Advocate and those for the Respondents were drawn by Mr. Paulo John Dotto, learned Advocate but filed by the Respondent themselves.

The Applicant's Counsel submitting in support of the application argued that the Applicant filed Land Application No. 25 of 2019 in the District Land and Housing Tribunal (DLHT) for Mwanza against the Respondents. The DLHT decided in favour of the Respondent, a decision which did not amuse him, hence he opted at appealing to this Court. He filed Land Appeal No. 61 of 2019 which was dismissed for been filed out of the prescribed time.

Five months later, the Applicant made up his mind and chose to file the current application seeking for extension of time in order to file a review of the judgment of this Court in Land Appeal No. 61 of 2019.

The Counsel for the Applicant stated the reasons for extension of time as been illegality of the impugned judgment and technical delay. He stated the illegality in paragraph 4 of the affidavit that the presiding judge raised an issue *suo mottu* that the appeal was filed out of time. It was the views of the counsel that the presiding judge ought to have summoned the parties and address her. It was the contention of the Counsel that the act by the Court of raising the issue of the appeal as been time barred and resolving the same was done without been addressed by the parties. It offended the cardinal principles of natural justice which require that no person is to be judged unheard. This is the illegality on the face of the record which the Counsel argues that it comprises "of good cause" for this Court to exercise its discretion to extend the time. In addition the Counsel argued that the delay is technical which is excusable.

The Respondents opposed the application arguing that it has failed to establish good cause. The Counsel stated the principles of law for extension of time as established by case laws as been:-

- (a) Length of the delay.
- (b) The reason for the delay, was the delay caused or contributed by the dilatory conduct of the application.
- (c) Whether there is an arguable case, such as whether there is a point of law or the illegality or otherwise of the decision sought to be challenged and or.
- (d) The degree of prejudice to the opposite party if the application is granted.

After listing the principles, the Counsel went on listing the tests for granting a review, which, in my considered opinion, since this Court is dealing with the issue of extension of time, should not be dragged into the danger of determining the review itself.

From the submissions above, it is not disputed that Land Appeal Number 61 of 2019 was filed by the Applicant out of time. It is also not in dispute that the said appeal was dismissed by this Court for been brought out of time.

The Counsel for the applicant averred in the affidavit that there is illegality on the face of the record that the applicant was denied opportunity to be heard.

In law, illegality comprises "good cause" for extension of time. The counsel for the Respondent conceded about this principle and in fact listed some authorities it in his submissions.

There is a plethora of authorities on this position of the law to mention a few, the cases of **Principle Secretary, Ministry of Defence and National Service vs Devram Valambia** [1992] TLR 185 and **VIP Engineering and marketing Ltd and Two others vs Citibank (T) Ltd**, consolidated Civil References No. 06, 07 and 08 of 2006 (unreported) and **Bruno Wenceslaus Nyalifa vs the Permanent Secretary and**

Another, Civil Appeal No. 82 of 2017 (unreported). In the latter case, the Court of Appeal stated as follows:-

*".....in deciding to grant or refuse an application for extension of time as aptly stated in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Applicant No. 02 of 2010 (unreported), that:-*

- (a) The Applicant must account for all the period of delay.*
- (b) The delay must not be ordinate.*
- (c) The Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.*
- (d) If the Court feels that there are sufficient reasons such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged."*

As explained above, the Counsel for the Applicant through his affidavit averred that there is illegality on the face of the judgment that the parties were not invited to address the Court the issue raised *suo mottu*.

This Court has gone through both the affidavit, counter affidavit and the record generally including the impugned judgment and found that indeed the issue of the appeal been filed out of time was raised by the Respondents in their reply submissions to the appeal. The Applicant had opportunity to rejoin on that issue. The relevant part of the judgment in Land Appeal No. 61 of 2019 reads as follows:-

*"It is fortune that before I started to belabored (sic) over the submissions for both parties for determination, I noted that the core aspect that this appeal did not comply with the legal requirements on the filing. I find that on records, the matter was decided on 31/07/2019 before the DLHT for Mwanza and this appeal finds (sic) this Court on 23/10/2019 which equals 84 days from the date the decision was pronounced by the DLHT for Mwanza. **"The same observation was raised by the respondent in his reply among other things he raised a point stating that the appeal is filed out of time. He argued that the DLHT for Mwanza delivered its decision on 31/07/2019 but the appellant filed appeal after 83***

days from the date of judgment contrary to section 38 of the Courts (Land Disputes Settlement) Act, 2002. He prays (sic) for this Court to dismiss the appeal for being time barred.” (Emphasis added)

This Court has asked itself a question whether this piece of finding by the presiding judge was not communicated to the Applicant and answered the same in affirmative. I say so because the issue of appeal been time barred was not raised *suo mottu* by the Court, but was raised by the Respondent in their written reply to the submissions of the Applicant which was served to the Appellant. The Applicant therefore, had full opportunity to rejoin, if he so wished.

His failure to rejoin is taken to have accepted the raised issue. Therefore, his argument that he was not given opportunity to be heard is an afterthought.

This Court is of firm finding that there is no illegality on the face of the record on ground of violation of principles of natural justice.

Having found so, then there is no good cause established by the Applicant for his delay to file the appeal.

Equally the contention that the delay was a technical one which is tolerable does not support him. The reason is that the appeal itself was filed out of time. In order for that principle of law to work the struck out matter must have been filed in time.

Before I pen off, the Respondents complained that the Applicant filed his written submissions out of time and no filing fee was paid. This Court has inspected the written submissions and the same shows that it was filed on 05/08/2021 as ordered. There is no evidence to fault the Court record unless there was an affidavit from the Registry Officer to support them on allegations of back-dating the filing date. This is a serious allegation which need proof. Moreover, after perusal of the record this Court could not find any evidence proving payment of filing fees. It is this for this reason that this Court did not act on the submissions by the Appellant but acted on the facts averred in the affidavit of the Applicant, which was rightly filed.

In the result this Court finds that the Applicant has failed to establish good cause for this Court to exercise its discretionary powers to extend the time within which to file a review.

Consequently, I do hereby dismiss the application for want of merit.
Costs to be borne by the Applicant. Order accordingly.




F. K. MANYANDA
JUDGE
30/09/2021