

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA**

MISC. LAND APPLICATION NO. 52 OF 2021

(Arising from the Land Case Application No. 53 of 2021 of the District Land and Housing Tribunal at Bukoba & Application No. 22 of 2020 in Bwanjai Ward Tribunal)

JUSTIN FREDRICK ----- APPLICANT

VERSUS

ABDULKHERI ABDUL ----- RESPONDENT

RULING

Date of the last Order: 04/10/2021

Date of Ruling: 15/10/2021

Hon. A.E. Mwipopo, J.

Justin Fredrick, the Applicant herein instituted Civil Case No. 22 of 2020 in the Bwanjai Ward Tribunal claiming that the Respondent namely Abdulkheri Abdul has encroached into his land. The Ward Tribunal after hearing the evidence from both parties pronounced judgment in favour of the Applicant. The Respondent was not satisfied with the decision of Ward Tribunal and he filed an appeal before the District Land and Housing Tribunal for Kagera at Bukoba. The Appellate Tribunal delivered its judgment on 12th March, 2021 in favour of the Respondent for the

reason that the Applicant had no locus standi to institute case in the Ward Tribunal. The Applicant was aggrieved with the decision of the Appellate Tribunal and filed the present application for extension of time on 7th June, 2021. The Application was made by Chamber summons which is supported by the Applicant's affidavit.

The Applicant being a lay person has no much to say but prayed for the court to consider the reason for the delay as they are found in his Affidavit and his Affidavit in reply to Counter Affidavit.

In response, Mr. Benghez, who is the Advocate representing the Respondent, submitted that the Applicant has attached a copy of Medical Receipts in his application which shows that he was admitted in hospital and was discharged on 30/04/2021. But, the time to file appeal lapsed on 12/5/2021 which means after he came out from hospital he had ample time to file his application within time but he filed it on 07/06/2021. The Applicant said nothing as to where he was from 12/05/2021 to 07/06/2021. The Applicant was supposed to account for each day of the delay as it was held in the case of **Ramadhani J. Kihwani V. TAZARA, Civil Application No. 401/18 of 2018, CAT at Dar Es Salaam, (Unreported).**

The Counsel further submitted that Applicant's Affidavit contains extraneous matters in paragraph 8, 9 and 10 hence the same is supposed to be expunged. To support the position, the counsel cited the case of **Football Association of**

Tanzania (FAT) V. JEKA Rent on Travel Services Ltd, Civil Revision No. 18 of 1999, CAT at Dar Es Salaam, (Unreported).

From the submissions, the only issue for determination is whether the Applicant has provided sufficient reason for the Court to use its discretionary powers to grant the application for Extension of time.

The Land Disputes Courts Act, CAP. 216 R.E. 2019, provides in section 38(1) that the Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired. Thus, this Court has discretion to grant an application for extension of time for a good and sufficient cause. The word "sufficient or good cause" has been interpreted in several decisions of the Court to be a relative one dependent upon party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion [see. **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania]. The good cause must be determined by reference to all the circumstances of each particular case.

The Court of Appeal observed in **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including

whether or not the application has been brought promptly. The absence of any explanation for delay lack of diligence on the part of the applicant.”

The Court of Appeal had similar position in the case of **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, at Tanga, (Unreported), where it held that:

".....an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judicially, and overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant.”

In the application at hand, the Applicant has two grounds for application for extension of time to file appeal in the High Court against the decision of District Land and Housing Tribunal. The first ground is that the Appellate Tribunal delayed to supply him with copies of judgment which was supplied to him on 19th April, 2021 after it was signed by the Chairman of the Tribunal on 12th April, 2021. Then he started to prepare his appeal before he fell sick on 24th April, 2021 up to 04th June, 2021 when he felt better. The second ground is the presence of illegalities in the judgment of the District Land and Housing Tribunal of Kagera Region at Bukoba.

Perusing the record available, the judgment of the District Land and Housing Tribunal was delivered on 12th March, 2021 in the presence of both parties. The Applicant applied for copy of judgment on 15th March, 2021 and his letter was received by the Tribunal on the same date. The Chairman certified the copy of the judgment on 12th April, 2021, which means that the said judgment was ready to be collected by parties. However, there is nothing which shows that the Applicant was supplied with the copy of judgment on 19th April, 2021 as he alleged.

Under section 38.-(1) of the Land Disputes Courts Act, Cap. 216 R.E. 2019, any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court. Since the decision of the District Land and Housing Tribunal was delivered on 12th March, 2021, sixty days expired on 11th May, 2021. The Applicant stated in the affidavit that from 24th April, 2021 to 04th June, 2021 he was sick. However, looking at the attached discharge form of ELCT/Kigarama Dispensary it shows that the Applicant was admitted on 24th April, 2021 and was discharged with medication on 30th April, 2021. The form shows that the Applicant visited the hospital on 06th and 15th May, 2021 and 04th June, 2021. During all this visitation the doctor's comment was that he was doing better. But, in his affidavit the Applicant stated that he felt better on

04th June, 2021. This means that there is contradiction between the Hospital Discharge Form and his evidence in the affidavit.

The Counsel for the Respondent argued that the Applicant failed to account for the days delayed from 12/05/2021 to 07/06/2021. I agree with the Respondent that since the Hospital Discharge Form stated clearly the Applicant was discharged on 30th April, 2021 and on his visitation to the hospital on 06th May, 2021, 15th May, 2021 and 04th June, 2021 he was seen to be doing better, the Applicant was supposed to provide explanation for each day delayed from 12th May, 2021 to 7th June, 2021 when he filed the present application. The duty of the Applicant to account for each and every day delayed in the application for extension of time was stated in several decisions of the Court of Appeal including the case of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another, Civil Application No. 278/15 of 2016, the Court of Appeal of Tanzania, (unreported)**; and in the cited case of **Ramadhani J. Kihwani V. TAZARA (Supra)**. In the present application there is no such explanation. For that reason, I find that the first ground for delay which is Applicant's sickness has no merits.

On the Applicant's second ground of illegality, the point of illegality is sufficient ground for the Court to grant an application for extension of time. In the case of **VIP Engineering and Marketing Limited and Two Others V.**

Citibank Tanzania Limited, Consolidated Civil Reference No.6, 7 and 8 of 2006, Court of Appeal of Tanzania, (unreported) it was held that, I quote:-

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay."

The same position was reiterated in the case of **TanESCO V. Mufungo Leonard Majura and 15 Others**, Civil Application No 94 of 2016, Court of Appeal of Tanzania, (Unreported), where the Court of Appeal stated that:

"Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, there is a complaint of illegality in the decision intended to be impugned .. suffices to move the Court to grant extension of times so that, the alleged illegality can be addressed by the Court."

The respective illegality has to be sufficient in content and apparent on the face of record as it was held in **Stephen B.K. Mhauka vs. The District Executive Director Morogoro District Council and two Others**, Civil Application No. 68 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported). Further, the question of illegality does not need to be

discovered by a long drawn argument or process as it was held in the case **Ngao Godwin Losero vs. Julius Mwarabu, Civil Application No. 10 of 2015, Court of Appeal of Tanzania, at Arusha, (Unreported).**

The points of illegalities stated by the Applicant are found in paragraph 8 of his affidavit. There are 6 grounds of illegalities raised in the Applicant's affidavit as provided hereunder:-

- 1. That, the Hon. Chairman of the 1st Appellate Tribunal misdirected himself to quash and set aside the judgment and whole proceedings of Bwanjai Ward Tribunal basing on ground of lack of locus standi on his part, something that is not true.*
- 2. That the Hon. Chairman of the 1st Appellate Tribunal acted illegally to decide the land case appeal in favour of the Respondent without being composed properly by Tribunal Members and for also differing with the opinion of the Tribunal's Members without giving reasons to that effects.*
- 3. In holding that Applicant had no locus standi to institute a suit over the disputed parcel of land the learned Chairman apart from misconstruing the facts and evidence surrounding the case before him, also he misinterpreted the definition of what constitutes a locus standi.*
- 4. That there was no legal justification on the part of the Hon. Chairman of the 1st Appellate Tribunal to decide that Applicant was supposed to pay*

cost of the suit to the Respondent after quashing and setting aside the judgment and whole proceedings of Bwanjai Ward Tribunal.

- 5. That it was highly irregular and improper on the part of the Hon. Chairman of the 1st Appellate Tribunal to proceed with the said appeal ex parte and decided the same by quashing the decision and whole proceedings of the trial Tribunal basing on a mere ground that the Applicant failed to file a reply to the Respondent's written submission without considering what have been submitted in paragraph 1,2,3,4,5,6,7 and 8 of Applicant's reply to the petition of appeal.*
- 6. That the learned Chairman of 1st Appellate Tribunal misdirected himself to enter a decision in favour of the Respondent, without resolving and determining the real issues in contest.*

Looking at the above cited points of illegalities, it does not appear to be apparent on the record. It cannot be not be discovered without a long drawn argument. After all, the Applicant attached the copy of judgment only in the application and there is no copy of proceedings of the 1st Appellate Tribunal, judgment and proceedings of the trial Tribunal for the Court to ascertain if the alleged illegalities exist and if they are apparent in the record. Thus, I find that the said illegalities does not qualify to be important point of law which is apparent on the face of records. Thus, this ground also have no merits.

Therefore, I find the application has no merits and I hereby dismiss it with cost.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

A.E. Mwipopo

Judge

15.10.2021

Court: The Ruling was delivery today this 15.10.2021 in chamber under the seal of this court in the presence of the Applicant and the Respondent.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

A. E. Mwipopo

Judge

15.10.2021