

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND APPLICATION NO. 67 OF 2020

(Arising from the district land and housing tribunal for Karagwe at Karagwe in Land Application No. 60 of 2016)

ALLY CHAMANI.....APPLICANT

VERSUS

DIONIZI KARWAN & 2 OTHERS.....RESPONDENTS

RULING

Date of Ruling: 28/09/2021

Mwenda J,

This is an application for extension of time to register an appeal in this court to contest the decision of the District Land and Housing Tribunal for Karagwe at karagwe in Application No. 60 of 2016 delivered on 06th April 2018.

When this application came for hearing on 02nd September 2021 parties appeared in person and the respondent prayed before this court to argue the application by the way of written submission. The applicant did not protest the prayer and this court granted this prayer, the scheduling order was fixed where the parties complied thereto.

In his written submission the applicant began by praying before this court to adopt the contents of his chamber summons and affidavit as part of his written submissions.

To begin with, the applicant submitted that, the trial tribunal delivered its ruling on 06.04.2018 and thus the period to appeal ought to have expired on 21.05.2018. According to him on 24.04.2018 he presented the letter to the trial tribunal seeking to be supplied with necessary documents for appeal purposes and the same were received on 25.06.2018. He said on 2nd July 2018 he filed Misc. Land Application No. 40 of 2018 which was struck out for being incompetent on 12th October 2020 with the leave to refile within 14 days. He complied with the said order and on 20th October 2020 he filed this application.

He also submitted that the letter for applying for necessary document for appeal purposes were presented within 45 days of the prescribed appeal period but he received the said document out of time. He made reference to section **19(2) and (3) of the Law of Limitation Act [CAP 89 R.E 2019]** and stated that the period spent while awaiting to be supplied the relevant document have to be excluded in calculating the time limitation.

In support of his argument, the applicant cited the case of **Ponsian Baitatafe vs Khalid Hussein & others Civil Appeal No. 28 of 2016** High Court of Tanzania Bukoba Registry, **Alex Senkoro & others vs Eliambuya Iyimo Civil Appeal No. 16 of 2017** Court of Appeal of Tanzania Dar es salaam registry and **Valerie Mcgivern vs Salim Farkrudin Balal Court Civil Appeal No. 386 of 2019** Court of Appeal of Tanzania Dar es salaam registry.

In the circumstance of this matter the applicant's appeal was in time and there was no need for him to file this application for extension of time for leave to appeal. He added that, this application has good cause for delay to file the appeal within the prescribed period of 45 days from the date of delivery of the said ruling on the following reasons; first, the delay of getting necessary documents for the intended appeal, secondly the struck out of Misc. Land Application No. 40 of 2018 by this court, and thirdly the issue of illegality.

On the issue of illegality found in the trial court proceedings and ruling, the applicant cited the case of **Tanzania Harbours Authority Versus Mohamed R. Mohamed (2003) T.L.R 76** where the court held, inter alia that, time can be extended if there is an illegality to be rectified. According to him this position was also supported in the case of **Engineering and Marketing Ltd and others Versus Citibank Tanzania Ltd, Consolidated Civil Reference No. 6, 7, and 8 of 2006**, the Court of Appeal of Tanzania Dar es Salaam registry, at page 8 of the typed judgment, he also stated that the said illegalities are also disclosed under paragraph 8 of his affidavit which are:- (a) Whether Karagwe District Land and Housing Tribunal Application No. 60 of 2016 was res judicata to Karagwe District Court Civil Case No. 3 of 2003. (b) Whether the 3rd respondent has a legal entity to be sued or sue; (c) Whether the remedy of res judicata is to strike out or dismiss the suit.

Apart from those illegality mentioned in the affidavit, in his written submission he added the issue of assessors as another illegality in that the tribunal went wrong without considering section 23 & 24 of the Land Dispute Court Act [CAP 126 R.E 2019]

In reply to the applicant's written submission, the respondent submitted that he is protesting the application as it is trite law that for the court to grant extension of time the fundamental ground or factor to be proved by the applicant is sufficient cause for the delay. According to him what amount to sufficient cause is not an objective matter but a subjective one depending on circumstances of each case.

The respondent submitted that, the Applicant did not meet the test of what sufficient cause ought to be. According to him the Applicant has categorically reproduced the schedule of events in this matter. He went further by submitting that on the applicant's affidavit it has been stated that on 6th April, 2018 the impugned ruling was delivered, then on 24th April, 2018 he wrote the letter applying for requisite documents for purpose of appeal and on 25th June, 2018 he received the said documents. Respondent said from this sequence, it is evident that it took him 18 days from the date of the impugned ruling to just write the letter applying for the requisite documents. Then after receiving the said documents on 25th June, 2018, it again took him about seven (7) days to file the said Appeal. According to him, the applicant has not

accounted for each day of delay as he was not vigilant to take necessary steps to institute his appeal.

The respondent went further by submitting that, despite of this delay, yet the Applicant's application earned a penalty of being struck out but it was struck out with leave to refile with 14 days, according to him the refiled application does not demonstrate sufficient cause for the delay.

The respondent also submitted that, the High court in the case of **Ponsian Baitatafe Versus Khalid Hussein & others, High Court of Tanzania, Civil Appeal No. 28 of 2016** cited by the applicant, it was held that the computation of time is not automatic as one has to seek leave for extension of time even when the reason for delay is late receiving of the requisite documents. He also submitted that, the Applicant cited the case of **Alex Senkoro & others Versus Eliambuya Lyimo, Civil Appeal No. 16 of 2017, Court of Appeal of Tanzania** Dar es salaam Registry at Page 11, 1st paragraph, which in effect held that the right for exclusion of time is automatic if the requisite document for the appeal were supplied late to the Appellant. To the respondent the applicant is bound by his own submissions and he is caught in his own web. He went further by submitting that, this is so because the first case of **Ponsian Baitatafe (supra)** was decided by the High Court while the subsequent case of **Alex Senkoro (supra)** was decided by the Court of Appeal which is the higher court on the judicial hierarchy so it's holding supersedes all decisions of other courts.

The respondent went further by submitting that, the Applicant should have filed the appeal instantly after receiving the requisite documents and not perpetuate the delay by preferring this frivolous application.

The respondent also submitted that, the applicant submitted much on the grounds of what would have been grounds of appeal, instead of concentrating on what are sufficient grounds for the delay. According to him all the cited cases are irrelevant and distinguishable.

The respondent concluded by submitting that, the Applicant has not demonstrated sufficient grounds or reasons for this court to exercise its powers to extend time to file an appeal out of time. Therefore, he prays for this application be dismissed with costs for want of merits.

Having gone through the submissions by both parties this court came up with only one issue for determination which is whether the applicant have advance sufficient reason or cause to be granted extension of time to appeal out of time.

Through his submissions the applicant had displayed three reason which led to his delay in filing an appeal in time. The said reasons are that the delay in getting necessary document for the intended appeal, striking out of Misc. Land Application No. 40 of 2018 by this court and the illegalities.....

It is trite practice of this court and the Court of appeal that a claim of illegality is the sufficient reason for the court to grant extension of time. This position

was stated in the case of **Attorney General v. Tanzania Ports Authority & Another, Civil Application No. 87 of 2016**, where Court of Appeal held inter alia that:

"It is a 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 rule to account for the delay".

Similar wording was recorded a year later in the case of **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed, Civil Appeal No. 262 of 2017**, the Court at page 11 & 12 of the typed decision stated that:

"We wish to point out that, the Court cannot normally justifiably close its eyes on glaring illegality in any particular case because it has a duty of ensuring proper application of the laws by the subordinates courts ...we think, the superior courts have the additional duty of ensuring proper application of the laws by the courts below... for the interest of justice, the Court has a duty to address a vivid illegality and

that cannot justifiably close its eyes thereof".

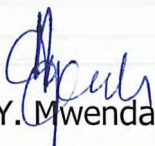
(Emphasis supplied).

In the present application, since the applicant claim there is illegality in the proceedings in Civil Case No. 3 of 2003 before Karagwe District Court and Application No. 60 of 2016 before the District Land and Housing Tribunal for Karagwe. Therefore, this court formed an opinion that the applicant have advance sufficient cause/reasons for extension of time. He is thus order to file his appeal within fourteen (14) days from the date of this ruling.

Each party shall bear its own costs.

It is so ordered.





A.Y. Mwenda
Judge

28.09.2021

Ruling delivered in chamber in the absence of the applicant Mr. Ally Chamani and in the presence of the respondents.




A.Y. Mwenda
Judge

28.09.2021