

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC LAND APPLICATION NO. 126 OF 2020

ELIANESI A. MWAKILEMBE APPLICANT

VERSUS

STAMIN K. MWAKIMILANORESPONDENT

RULING

Date of last order: 17. 08.2021

Date of Ruling: 17.09.2021

Ebrahim, J.:

The Applicant has initiated the instant application for extension of time under **section 41(2) RE 2019 of the Land Disputes Courts, Cap 216 RE 2019** so that he can lodge his appeal against the decision of the District Land and Housing Tribunal of Mbeya at Mbeya in Land Application No. 36 of 2018. The application is supported by an affidavit deposed by Elinesi A. Mwakilembe, the Applicant.

According to the averments in the Applicant's affidavit, he explained the reason for the delay being that he fell sick after the delivery of judgement on 27th August 2020 where he had to attend treatment at Ipinda Health Centre. He has now come to this court praying for extension of time claiming that Appeal No. 36 of 2018 at the District Land and Housing Tribunal is tainted with illegalities and irregularities that whether the trial tribunal was proper to determine the matter and give judgement in favour of the Respondent despite the contradiction of the assessors' opinion.

The Respondent in his counter affidavit vehemently opposed the contents of the affidavit that there was no contradiction on the assessors' opinion. He further put the Applicant to strict proof thereof.

When the case was called for hearing, the Applicant was represented by advocate Pamela Kalala, and the Respondent was represented by Osiah Adam.

Advocate Kalala submitted before the court that the reasons for extension of time is the illness of the Applicant which made it difficult to follow up the case. She referred the court to the medical chit attached

to the affidavit of 25.11.2020 praying for the same to form part of the application. She also pointed out the illegality on the decision of the DLHI on the basis that the Chairman did not attach the opinion of the assessors in his decision. To cement her argument, she cited the case of **Martha A. Mwakinyali and Another Vs Hamisi Mitogwa**, Miscellaneous Land Appeal No. 13 of 2013; and the case of **Principal Secretary, Ministry of Defence and National Service, V Devram Valambhia** [1992] TLR 182 that illegality is sufficient reason to extend time. She prayed for the application to be allowed.

Responding to the submission by the Counsel for the Applicant, advocate Adam argued that the illegality pointed out by the Counsel for the Applicant is whether there is contradiction contrary to what was submitted by the Counsel for the Applicant. He pointed out that the issue brought by the counsel for the Applicant is not illegality as per **section 24 of the Land Disputes Courts Act, Cap 216** the law wants the Chairman to take into account assessors opinion but he is not bound by it.

Counsel for the Respondent further challenged the attached document as a mere "taarifa ya afya" and there is no document to show that he attended hospital. He said the Applicant is also required to

account for each day of delay. To cement his argument, he cited the case of **Omar R. Ibrahim V Ndege Commercial Services Ltd**, Civil Application No. 83/01 of 2020 pg 11 on the requirement to account for each day of delay. He prayed for the application to be dismissed with costs.

In re-joinder, advocate Kalala reiterated what she submitted in chief.

Extension of time is a discretionary power of the court to be exercised judiciously. The Court of Appeal has in the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women Christians Associations**, Civil Application No. 2 of 2010 (see also the case of **Hamisi Mohamed (as an administrator of the estate of the late Risasi Ngawe) Vs. Mtumwa Moshi (as administratrix of the estate of the late Moshi Abdallah)**, Civil Application No. 407 of 2019 on the requirement to show that the delay was caused by a good cause) established guidelines to be observed by Court in granting extension of time. The Court held as follows:

"Four guidelines which should be observed by Court in granting extension of time; that is:

- a) The applicant must account for all the period of delay;
- b) The delay should not be inordinate
- c) The applicant must show diligence; and not apathy, negligence or sloppiness in the prosecution of the act that he intends to take, and
- d) If the court feels that there are other sufficient reasons, such as existence of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged"

In going through the affidavit of the Applicant in particular para 3 and 5; and the submission by advocate Kalala, the reasons advanced are that the Applicant fell ill and that the decision was tainted with illegalities and irregularities. As for the illness counsel for the Applicant said the Applicant was ill very a long time causing him to fail to follow up on the appeal. She urged the court to visit the medical chit. The Applicant stated at para 3 of the affidavit that he became very sick and attended hospital. The "purported medical certificate" which is a mere letter stated that the Applicant attended the hospital on 24.08.2020 and thereafter he was under observation. However, the proceedings clearly show that the Applicant appeared before the court on 27.08.2020 on the date when judgement was delivered. This indicates that if the Applicant the hypertension did not stop the Applicant to appear before the court, he could very well file his appeal on time if he so wished. Moreover, the said letter is a photocopy and in no way, it is a medical chit to exhibit the

exact dates that the Applicant attended the hospital for treatment or observations which would assist in accounting for each day of delay. I agree with the counsel for the Respondent that there is no document to show that the attended hospital and what was attached is "taarifa ya afya". I subscribe to the principle illustrated in cited case of **Omar I. Ibrahim (supra)** that delay of even a single day must be accounted for, else there would be no point of having prescribed periods within which steps have to be taken.

Coming to the issue of illegality, Counsel for the Applicant has stated that there was illegality as the Chairman did not attach opinion of the assessors in his decision. However, at para 5(i) the raised legal issue is whether it was proper to determine the matter in favour of the respondent despite the contradiction of the assessors' opinion. Surely, the illegality claimed by the Counsel for the Applicant in her submission does not feature in the Applicant's Affidavit. Her submission are merely words from the bar which do not support the affidavit.

Furthermore, on the point of illegality, the Court of Appeal of Tanzania has underscored that where a point at issue is illegality, the same constitutes sufficient reason for extending time so that the said

illegality can be cured. In the same vein, Court of Appeal of Tanzania has also laid a principle that not every allegation of illegality will constitute a sufficient reason for extending time. The point here being that for an allegation of illegality to constitute a sufficient reason it will depend much on the circumstances of each case as guided by the Court of Appeal in the case of **Tanzania Harbour Authority v. Mohamed R. Mohamed [2003] TLR. 76**. In the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported) Court of Appeal observed as follows:

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process." [Emphasis is mine].

Applying the above-mentioned principle to the application under consideration, I have not been persuaded by the alleged illegality in the impugned judgment to lead me to state that it is apparent on the face of it and thus can be discerned as a good cause for this court to grant the prayers sought in this application. I am saying so because, the issue as to whether it is illegal or irregular for the trial chairman to decide in favour of the party where there is contradiction on the assessors' opinion is not a point of law on the face of the record as it would require further arguments to establish the position of the Applicant for whatever he means.

From the above reasons I find that the applicant has not demonstrated sufficient reasons for this court to grant the prayed extension of time. Consequently, I dismiss the application with costs.

Order accordingly



Mbeya

17.09.2021


R.A. Ebrahim

JUDGE

Date: 17.09.2021.

Coram: P. D. Ntumo – PRM, Ag-DR.

Applicant: Present.

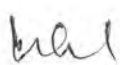
For the Applicant: Mr. Osia Advocate hold brief for Miss Pamela Kalala.

Respondent: Absent.

For the Respondent: Mr. Osia Adam, Advocate.

B/C: P. Nundwe.

Court: Ruling delivered in open chambers in the presence of the applicant and Mr. Osia Adam Advocate who is also holding brief for Miss Pamela Kalala, learned Counsel for the applicant this 17th day of September 2021.


P.D. Ntumo - PRM
Ag- Deputy Registrar
17/09/2021