

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC LAND APPLICATION NO. 112 OF 2018

REHEMA YACUUB

ALIMA YACUUB

AZIZA YACUUB

..... APPLICANTS

VERSUS

AMIRI MALEMA.....RESPONDENT

RULING

Date of last order: 15. 09.2021

Date of Ruling: 29.10.2021

Ebrahim, J.:

The Applicant has initiated the instant application for extension of time under **section 38(1) of the Land Disputes Courts Act, Cap 216 RE 2002** so that he can lodge his appeal against the decision of the District Land and Housing Tribunal for Mbeya at Mbeya in Land Appeal No. 10 of 2010. The application is supported by an affidavit deposed by Fortunatus Zachariah Mwandu, counsel for the applicants.

According to the averments in the Applicants' affidavit, they explained the reason for the delay being that after the delivery of the judgement of the DLHT on 11.11.2014, they applied for a copy of judgement and decree on 17.11.2014 which was availed to them on 11.02.2015. The applicant lodged an appeal on 19.03.2015 which unfortunately was struck out by this court on 29.06.2018 for being time barred, hence the instant application.

The Respondent in his counter affidavit vehemently opposed the contents of the affidavit that there were no cogent reasons for the delay from 29.06.2018 when the applicant's appeal was struck out at the High Court to 24th December 2018 when the applicant filed the instant appeal which is a span of six months.

When this case was called for hearing, the applicants were represented by advocate Jennifer Biko and the respondents were represented by advocate Mbise.

In her submission, counsel for the applicant adopted the contents of the affidavit to form part of her submission. She explained on the delay from when the applicant obtained copies of judgement and

decree on 11.02.2015 after the decision of the DLHT to when the instant application was filed on 24.12.2018 after the appeal was struck out to be time barred by this court before hon. Dr. Ngwala, J (as she then). She submitted that the judgement that the applicant intends to appeal against was tainted with illegalities and irregularities as the chairman did not read the opinion of assessors to the parties. To cement her argument, she cited the case of **Edina Adam Kibona Vs Obsolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 where at page 4 the Court of Appeal referred to the case of **Ameir Mbarak and Azania Bank Corp Ltd Vs Edgar Kahwili**, Civil Appeal No.154 of 2015 on the relevance of assessors' opinion.

In response, advocate Mbise opposed the application and adopted the contents of the counter affidavit. He contended that in an application for extension of time, the applicant is required to show to the satisfaction of the court that the reason for the delay including accounting for each day of delay. He contended further that there is no explanation issued between 11.02.2015 when the applicants were issued with the copies of judgement and decree to the filing of the instant application i.e. 24.12.2015. He said the period has to be

accounted for and the applicants have not done so. To cement his argument, he cited the case of **Best Mwansasu Vs Joel Kiputa**, Misc Land Application No. 119 of 2016, pg 7 (HC); and the case of **Azulu Mwalongo and 12 Others Vs Ambonisye Mbilike Mwandembo**, Misc Land Application No. 33 of 2019(HC) pg 22.

As for the issue of irregularity on assessors' opinion, Mr. Mbise stated that the same does not feature in the affidavit. He contended further that the issue of assessors cannot be used to revive a long-time case. He prayed for the application to be dismissed with costs.

In rejoinder, counsel for the applicants apart from reminding the court that the decisions cited do not bind this court, she reiterated her earlier submission.

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 the 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 applicants as expounded by their advocate in paras 11, 12, 13 and 14 that the ruling by this court that struck out the appeal was delivered on 29.06.2018. Hence, the applicants delayed because they were waiting for the judgement and decree from DLHT.

In reading further the remaining paragraphs of the affidavit, none of it introduces the reasons for the delay after the struck out order of this

court on 29.06.2018 to when the case was filed on 24.12.2018 as rightly argued by advocate Mbise. Therefore, as the law requires, the applicants have not shown any good cause or reason for delay of four months from 29.06.2018 to 24.12.2018 for consideration of the court to extend time. In the circumstance, I am highly persuaded by the observation made by my brother Judge hon. Dr. Utamwa in the cited case of **Azulu Mwalongo and 12 Others (supra)** when he held as follows:

*"However, as rightly argued by the respondent's counsel, the applicants did not recount in the affidavit as to what happened between these two dates. The law provides that, reasons for the application regarding extension of time must be embodied into the affidavit supporting the application; see the case of **The Registered Trustees of the Archdiocese of Dar Es Salaam Vs. The Chairman Bunju Village Government and 11 Others, Civil Appeal No. 147 of 2006, CAT at DSM** (unreported). In fact, by simple arithmetic, the period of two months and nine days elapsed between striking out of the previous reference and the filing of the application at hand".*

In fact, the holding of the High Court above falls squarely with the position of this case. I therefore do not agree with the counsel for the applicants that the delay was not deliberate. Rather, I find that the delay was caused by the applicants for lack of diligence, apathy and negligence in filing the instant application, the qualities that are highly censured by law.

Coming to the issue of illegality, Counsel for the Applicant has stated that there was illegality as the Chairman did not read the opinion of the assessors in his decision. However, the illegality claimed by the Counsel for the Applicant in her submission does not feature in the Applicants' Affidavit. I am inspired by the holding in the case of **TUICO at Mbeya Cement Co. Ltd Vs Mbeya Cement Co. Ltd and Another** [2005] TLR 41 (HC) that:

"It is now settled that submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence."

In another case of **The Registered Trustees of the Arch Diocese of Dar Es Salaam Vs The Chairman Bunju Village Council and 4 Others**, Civil

Appeal No. 147 of 2006, CAT, it was stated that submissions do not constitute any evidence for the court to act on it.

From the above positions, it is clear that the court cannot act on the words from the bar which are not in the affidavit which is a substitute of oral evidence. Thus, the submission of the counsel for the applicant on the issue of illegality are mere words from the bar which do not support the affidavit.

I would have ended here but however, I find it prudent to address albeit in brief 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**. Again, 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].

In this case, even if I was to consider the issue of illegality or the irregularity of the proceedings for the chairman not reading the assessors' opinion it is not a point of law on the face of the record. The Issue would require further arguments and analysis of proceedings on record to establish the position which as stated by the counsel for the respondent cannot be a good reason to revive an old case. By all means, the applicants ought to have filed their appeal on time to advance their ground.

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

Accordingly ordered.



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", is written over a horizontal line.

R.A. Ebrahim

JUDGE

Mbeya

29.10.2021