

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

APPELLATE JURISDICTION

MISC. LAND APPLICATION NO. 03 OF 2022

(Arising from Kigoma District Land and Housing Tribunal, Land Appeal No. 39 of 2019 dated 12/10/2021, Originating from Makere Ward Tribunal Land Case No. 07 of 2017).

KAHUNGU KIBHABHI..... APPLICANT

VERSUS

KABWINDAGI KAYUGIRO.....RESPONDENT

RULING

25th May. 2022 & 20 June 2022

F. K. MANYANDA, J.

A delay of 37 days equivalent to one month and 7 days has brought the Applicant to this Court in this application seeking for extension of time within which to file an appeal to appeal out of the prescribed time. The Applicant is challenging a judgment dated 12/10/2021 which gave victory to the Respondent in Land Appeal No. 39 of 2019 filed in the District Land and Housing Tribunal for Kigoma, hereafter referred to as "the DLHT".



When this application was tabled before this Court for hearing on 31/03/2022, Ms. Edna Aloyce, learned Advocate, holding the brief for Mr. Denis Katambo Kayaga, learned Advocate, prayed this Court to dispose of the case by way of written submission. This court granted the prayer and Mr. Dennis Katambo Kayaga submitted for the Applicant whereas the Respondent fended for himself. Both parties discharged their obligations by filing their submissions in time.

Submitting in line with the Applicant's affidavit, Mr. Dennis stated that, the Applicant orally requested for a copy of judgment immediately after delivery of judgement and made follow up but was promised the same would be ready for collection within 3 weeks.

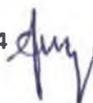
Mr. Dennis went on submitting that, on 17 November, 2021, the Applicant went back to the DLHT following the copy but he was told that the same was yet to be ready by one of the tribunal official lady attendants. As a result, on 18th November, 2021 he returned back to Makere. However, due to his old age and the long journey in rough road, on arrival to his home, he fell sick and decided to undergo traditional treatment which, according to the Counsel, cured him after two weeks of treatment.

The Counsel further submitted that, on 10/12/2021 the Applicant went again to the DLHT to inquire as to why his copy of judgment has not been given to him. This time he was given the copy but it was recorded on the issuance form that the Applicant collect it lately.

The Counsel submitted further that, on 11/12/2021, the Applicant being a lay person after receiving the said judgment, went back to Kigoma to consult his children regarding finance for handling the appeal whereas his elder son told him to be patient till the end of the month. It was not until 07/12/2021 when the Applicant managed to engaged an advocate hence the current Application.

Summarising the reasons for extension of time, the Counsel submitted that, the main reasons for delay are that, the trial tribunal failed to provide the Applicant with necessary copy of judgment in time, also the Applicant was seriously ill at the said time, moreover, the applicant being a lay person and elderly, lack of economic muscle that led to dependence on his eldest son and illegalities that the trial tribunal's decision is tainted with.

Supporting his arguments, the Counsel referred to some cases such as the case of **Mumello vs. Bank of Tanzania** [2006] EACA 227, **Administrator General vs. Mwanaarabu Rajab and Others** [1980]



TLR 303 and the case of **Shanti vs. Hindoche and Others** [1973] EA 207

On the issue of illegality, the Counsel said that the impugned judgement contains illegalities. He cited the cases of **Principle Secretary Ministry of Defence and National Service vs. Devram Valambhia** [1992] TLR 387, **CRDB Bank LTD vs. Serengeti Breweries Services**, Civil Appeal No. 12 of 2009 (unreported) and **Kalunga and Co. Advocates vs. National Bank of Commerce Ltd** [2006] TLR 235

Answering the Applicant's submission, the Respondent adopting his counter affidavit argued that the Applicant's assertion that he timely applied for the copy of judgment is not founded because he failed to prove that he so did by either attaching a letter of request for the said copy or by proving that he made follow ups for the same.

Moreover, the Respondent argued that, the judgment of which copy the Applicant is referring to was delivered on 12/10/2021 in the presence of both parties and the statutory grace period of 60 days expired on 11/12/2021.

The Respondent agrees with the Applicant about the principle of law in extension of time that; one, extension of time is granted at the discretion of the court and that discretion must be exercised judiciously

see **Mumello vs. Bank of Tanzania (supra)**. Second, there must be good or sufficient cause for the delay see **Administrator General vs. Mwanaarabu Rajab and Others (supra)** and the case of **Shanti vs. Hindoche (supra)**.

The Respondent submitted that the Applicant has not shown sufficient cause for the delay to apply for appeal since October 2012 to January 2022.

The Respondent further argued that the Court of Appeal made it crystal clear that an application for extension of time has to account for every single day of delay, failure of which renders the application without good/sufficient cause. He referred to the cases of **Bushfire Hassan vs. Latina Lucia Masaya**, Civil Application No. 3 of 2001 (unreported), **Wambele Mtumwa Shahame vs. Mohamed Hamis**, Civil Application No. 138 of 2016 where the Court of Appeal held that a delay of even a single day has to be accounted for. He also cited the case of **FINCA (T) Limited and Another vs. Boniface Maulakia**, Civil Application No. 589 of 2019 (unreported).



The Respondent contended that the Applicant has not in his submission accounted for those days from the date of receiving the copy of judgment to date of filing this application, which is about 33 days.

On the reasons for the delay, the Respondent answered that they are not reliable because there is no evidence to show that he timely applied for the same such a copy of a letter requesting the copy. The Respondent further stated that there is no affidavit from an officer of the DLHT to support him that he made follow ups. He prayed that the application be dismissed with costs.

Since there was no rejoinder from the Applicant, that marks the end of the submissions by parties.

In this case the main issue is whether this application is meritorious. In the first place I agree with both parties on the position of the law in extension of time to do an act where time is prescribed. That, among the criteria looked at include but not limited to, length of the delay, reasons for delay, the prejudice to the opposing side is likely to suffer, likelihood of success of the matter for which the application is made, whether there are legal issues involved such as illegalities in the matter for which application is made.

There is plethora of authorities on the position of the law which include the cases cited by the parties of **Mumello vs Bank of Tanzania** (supra), **Administrator General vs Mwanaarabu Rajab and Others** (supra) and a famous case of **Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), to mention a few.

In the latter case the Court of Appeal expounded the criteria for extension of time to be considered courts in the exercise of its discretion to extend time or not. The Court held at page 6 the following guidelines: -

- 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 action that he intends to take and.*
- d. If the court feels that there are sufficient reasons such as the existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged.*

The Respondent opposed the argument contending that there is no evidence showing that the Applicant applied for the copy of judgment.



There is no letter requesting for the said copy and that he made follow ups for the same. Furthermore, the Respondent argued that the Applicant failed in accounting for each day of delay especially for those days from the date of receiving the copy judgment to filing date which is about 33 days.

He insisted that the delay was caused by the Applicant himself for his negligence which can't be taken as an excuse.

I have dispassionately considered this piece of argument. In my perusal of the record, I found as a matter of facts, that it is true, there is no indication that the Applicant applied for the copy of judgment on the day the judgement was delivered. In his affidavit, the Applicant deponed that he applied for the copy of judgment, he stated as follows;

"3. That, soon after the said judgment was pronounced, I orally informed the chairperson that, I was aggrieved by the decision detailed in paragraph 2 herein above, and that I am fully intending to remedy the situation whereby I requested for the copy of the judgment and I was told and promised that the same would be ready for me to collect after three weeks hence I should come back after the said period."

As it can be seen above, in the said paragraph, there is no explanation on the way the Applicant used to apply to get the said copy.

He only said that he orally requested for the copy and was promised to be supplied with it after three weeks. However, the record is silent, there are no such words on the record the day the judgement was delivered.

As rightly submitted by the respondent, I subscribe to him that it is hard to believe the assertion by the Applicant that he applied for the copy and made several follow ups. He did not show any proof of the said allegation.

Again, the Applicant laments that he was misled by the statement of one lady attendant at the DLHT whom he didn't know her name whom he contends she told him that the copy was not ready and advised him to continue waiting.

I think it was very important for the Applicant to bring in court an affidavit of the lady who told him to continue waiting for the copy of judgment, an act which contributed to his delay. Refer the case of **Airtel Tanzania Limited vs Misterlight Electrical Installation Co. Limited and Another**, Civil Application No. 37/01 of 2020, where the Court of Appeal reiterating what it decided in the case of **Issack Sebegele v. Tanzania Portland Cement**, Civil Application No. 25 of 2002, where when considering claims by an applicant for the delay directed towards a court clerk. It stated as follows: -



*"Evidence in support of the applicant's claim against the Court's clerk was necessary. **The name of the said Court's clerk should have been indicated** in one of the paragraphs of the affidavit of the learned counsel and that, **the application should have been accompanied with the affidavit of the Court Registry Officer duly sworn to that effect.**" [Emphasis added].*

Similarly, in this application, since Mr. Dennis is alleging that the Applicant was delayed by one of the DLHT's official as he termed it, he was expected to substantiate his assertion with the affidavit of the said official.

Therefore, I agree with the respondent that bare assertion and allegation of Mr. Dennis without proof cannot suffice as good cause for the delay.

The other advanced reasons by the Applicant is that he was ill and financially incapacitated. I understand that illness when supported by document can also be accepted a sufficient ground to support application for extension of time.

To prove illness the Applicant, in my understanding, was expected to come with a letter from the local leaders or an affidavit from the traditional healer who purports to attend him, provided that such traditional healer is legally licensed and registered as such. The letter/affidavit would state when did the traditional healer received him as patient and his condition and if was admitted, when did he discharge him and in what condition.

To merely state that he was ill only, without any supporting evidence is not enough.

Therefore, it is my findings that the Applicant has failed to account for the delay of each day. The application cannot stand as there is no good cause upon which this Court can exercise its discretion under section 14(1) of the Law of Limitation Act, [Cap. 89 R. E. 2019] to grant the application.

On the issue of illegality as raised by the applicant, it is a principle of law that once an applicant raises an issue of illegality, it becomes his or her duty to substantiate the same in order for it to be considered as a sufficient cause for extending time within which to appeal out of time.

In the case of **Omary Ally Nyamalege (*as the Administrator of the Estate of the Late Seleman Ally Nyamalege*) and 2 Others vs.**



Mwanza Engineering Works, Civil Application No. 94/08 of 2017 at

Mwanza the Court of Appeal had this to say: -

"It is settled jurisprudence of the Court that where a point of law involved in the intended appeal is a claim of the illegality of the impugned decision, that in and of itself constitutes a good cause for the Court to extend the limitation period involved"

However, the court went further insisting that: -

"Without the details of the alleged illegalities, it is impossible to determine whether the said illegalities are apparent on the face of the record and that they are of sufficient importance to merit the attention of this Court".

The court of Appeal decided this case with authority from the holding in the case of **Lyamuya Construction Company Ltd** (*supra*) where a single Justice of the Court of Appeal elaborated that:

*"Since every party intending to appeal seeks to challenge a decision either on point of law or fact; it cannot in my view, be said that in **Valambhia'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 be apparent on the face of the record, such as the question of jurisdiction;** not one that would be discovered by long drawn argument or process."*

[Emphasis added]

In the instant matter, the applicant just mentioned in his affidavit;

"9. That, the decision of the District Land and Housing Tribunal in regard to the ruling delivered vide land application no. 39/2029 has serious irregularities to the effect that they can only be corrected by way of appeal if granted by this honorable court".

The applicant above did not explain as to what amounted to illegalities in the impugned judgement as alleges. In his written submission, the Applicant's Counsel just said that: -

"paragraph 9 of the affidavit of the applicant contains illegalities and or a serious legal point in the impugned District Land and Housing Tribunal's decision".

Basing on the principle of law in the case of **Omary Ally Nyamalege** (*supra*) which requires the applicant to substantiate the raised illegalities, I have no difficulty in holding that the applicant's

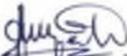


contention that the decision sought to be challenged is troubled with illegalities is nothing but an unsubstantiated general complaint.

In the upshot, it is my finding that this matter discloses no good cause for the Court to exercise its powers to enlarge the time within which to appeal out of the prescribed time. Accordingly, I dismiss this application in its entirety with costs.

It is so ordered




F.K. MANYANDA

JUDGE

20/6/2022