

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MBEYA**

**AT MBEYA**

**MISC. LAND APPLICATION NO. 98 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mbeya in Land Appeal No. 65 of 2018, Originated in Land Case No. 2 of 2018 in Mlowo Ward Tribunal)*

**DONARD ASILIYA.....APPLICANT**

**VERSUS**

**NELSON NSALAMBA.....RESPONDENT**

**RULING**

*Date of Last Order: 31.05.2022*

*Date of Ruling: 28.06.2022*

**Ebrahim, J.**

The applicant DONARD ASILIYA instituted the instant application seeking for this court to grant an extension of time to appeal to this Court out of time. The application was made under section 38 (1) of the Land Disputes Act, Cap. 216 R.E 2019. It was supported by an affidavit sworn by the applicant himself.

Brief facts of the case are that; the applicant is the son of Martha Nsalamba who is now a deceased. The latter (Martha Nsalamba) was a daughter of Nelson Nsalamba, the respondent herein. Hence, the applicant and respondent are grandson and grandfather respectively. The respondent sued the applicant before Mlowo Ward Tribunal claiming for a piece of land located

at Mlowo area in Mbozi District. The Ward Tribunal decided in favour of the respondent. The applicant unsuccessfully appealed to the District Land and Housing Tribunal for Mbeya, at Mbeya through Land Appeal No. 65 of 2018. The decision was passed on 29/10/2018. Discontented by the decision of the DLHT and found that he is late to appeal in this Court, on 26/11/2021 the applicant lodged the instant application.

The respondent did not file a counter affidavit but appeared and protested the application by filing a replying written submission.

The application was disposed of by way of written submissions. The Applicant was represented by advocate Moses Mwampashe whereas the Respondent appeared in person without legal representation.

Submitting in support of the application, advocate Mwampashe stated that the applicant's reasons for extension of time are that; firstly, the applicant was aggrieved by the decision of the DLHT that is why he applied for copies on the next day after the delivery of the judgment. Secondly, that the Applicant delayed in trying to resolve the matter out of court. That the

matter was taken before the office of the Regional Commissioner but borne no fruit. Thirdly, that the decisions of the two lower tribunals were tainted with illegalities such as lack of *locus standi* on the party of the Applicant, failure to record opinion of assessors by the DLHT and that the Ward Tribunal heard the matter without proper quorum. Citing the case of **Principal Secretary, Ministry of Defence and National Service v. Devran Valambia** [1992] TLR 182, advocate Mwampashe argued that when a point of illegality is raised, that amounts to good cause in extending time. In that regard he added the case of **Mohamed Salum Nahd vs Elizabeth Jeremiah**, Civil Reference No. 14 of 2017 CAT at Dar es Salaam (unreported). Advocate Mwampashe thus prayed for this court to grant the application.

In reply, the Respondent essentially submitted that the Applicant has failed to establish sufficient reasons for this court to grant the application. He also submitted that the application of this nature is granted upon the Applicant showing that the delay is not inordinate, that has accounted for each day of the delay and the delay was not caused by negligence. According to the Respondent, in the instant matter the delay is inordinate and that he had already executed the decree since 2019 and disposed of

the property in 2020. He thus urged the court to dismiss the application with costs.

Having considered the submissions by the parties, bearing in mind that the Respondent did not file a counter affidavit, in determining the merits of this application I will thus be restricted to consider factual averments of the Respondent.

Notwithstanding of the foregone fact, it is a settled principle that granting or refusing to grant extension of time is absolutely the court's discretion. Nevertheless, the same has to be judiciously exercised upon sufficient cause being shown. See the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012 CAT (unreported).

In the circumstance, the issue for determination is whether the applicant has established sufficient cause to warrant this application?

Admittedly, there is no hard and fast rule in determining what amounts to sufficient cause. Nonetheless, the principles set in the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) are the best guidance.

These are; the applicant must account for all the period of delay, the delay should not be inordinate, the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and if the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

In the application at hand, it should be noted from the outset that the application was filed in this court after a lapse of three good years. i.e the impugned judgment was delivered on 29/10/2018 while the application was filed in this court on 26/11/2021. To be sincere the applicant has not demonstrated any good reason for this court to grant the application. I have hastily stated so on the following reasons:

Firstly, the reason that the applicant requested the copies of judgment and proceedings on the next day after the delivery of the judgment in itself does not form good reason for extension of time, unless it is further shown that it took a long time to be supplied with the same and immediately after being supplied, the Applicant filed the application. This is not the case in the instant matter.

Secondly, the Applicant's reason that he delayed when he and fellow heirs were trying to resolve the matter out of court in the office of the Regional Commissioner does not also form good reason for extension of time. This is because, the course taken by the Applicant was in his own will, it did not involve the court where the applicant would have pressed the blameworthy to the court for the delay. Nevertheless, for the sake of argument, even if the course would have been forming good cause for granting the application, the Applicant did not state in his affidavit when did the resolution start and when did it end. Thus, his general averment cannot be condoned by this court.



Finally, the Applicant has raised at para 7 of the affidavit the ground that the DLHT decision is tainted with illegality. The applicant did not depict what that illegality is. Counsel for the applicant stated while submitting that the said illegalities are lack of *locus standi* by the applicant, that the DLHT did not involve the assessors as their opinion are not on record and that there was no proper quorum in the Ward Tribunal. In my view, the account by the Applicant's counsel is just statements from the bar. This is because, the applicant did not portray the same in his affidavit. See the observation by the CAT in the case of **Karibu Textile Mills**

**Limited v. Commissioner General Tanzania Revenue Authority**, Civil Reference No. 21 of 2017 (unreported).

Considerably, a general principle of law that illegality forms a good reason for extension of time as per the **Devran Valambia** case (supra). In the instant matter this court cannot give the room and accept it. As hinted earlier the Applicant has delayed for three years, allowing this application would mean opening a floodgate for the negligent party like the Applicant, who opted to stay on his right for a long period then decide to come to the court and say that they intend to challenge the decision on the illegality. This would not only lead to the endless litigations but also abuse of the court process.

At the end result, the Applicant has hopelessly delayed and has not given any sufficient reason for granting the application. Therefore, I dismiss the application with costs.

Ordered accordingly.

   
**R.A. Ebrahim**  
**JUDGE**  
**Mbeya**  
**28.06.2022**

**Date:** 28.06.2022.

**Coram:** Hon. Z.D. Laizer, Ag-DR.

**Applicant:** Present.

**For the Applicant:** Mr. Ibrahim, adv. h/b for Mr. Mwampashe, adv.

**Respondent:** Absent.

**B/C:** Patrick Nundwe.

**Court:** Delivered in the presence of the applicant and Mr. Ibrahim advocate.

**Sgd: Z.D. Laizer**  
**Ag-Deputy Registrar**  
**28.06.2022**

**Order:** (1) Right of Appeal Explained.

  
**Z.D. Laizer**  
**Ag-Deputy Registrar**  
**28.06.2022**

DEPUTY REGISTRAR  
HIGH COURT OF TANZANIA  
MBEYA