

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LAND DIVISION
AT MOSHI.

Misc. Land Application No. 7 of 2022

[C/F Land Application No. 2 of 2021, District Land and Housing Tribunal
for Moshi at Moshi]

TIMAMU BILLY MZIRAY..... APPLICANT

VERSUS

SARIA RINGO..... 1ST RESPONDENT

DASTAN MZIRAY2ND RESPONDENT

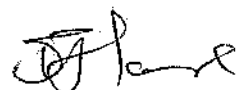
RULING

14/4/2022 & 1/6/2022

SIMFUKWE, J

This is an application for extension of time to appeal against Land Application No. 2/2021 of Moshi District Land and Housing Tribunal (DLHT). The application has been made under **section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E 2019** and any other enabling provision of law. It is supported by the affidavit sworn by the applicant, which was contested by the counter affidavit deposed by the 2nd respondent.

Upon the prayer by Mr. Charles Mwanganyi the learned counsel for the respondents, the application was ordered to be argued by way of written submissions. The applicant was unrepresented.



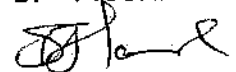
The applicant prayed to adopt his affidavit and form part of his submission.

The applicant submitted to the effect that under **section 41 of Land Dispute Courts Act**, (supra) the time limit to appeal or to file revisions of a land matter in case one is aggrieved with the judgment of the **DLHT** exercising its original jurisdiction is forty-five days from the date of judgment. However, **section 41(2) of Cap 216** provides for an avenue to apply for extension of time to appeal out of time.

It was stated that it is undisputable fact that the court has powers to extend time when moved properly with sufficient cause having proper arguments and legal backup. The applicant also argued that **section 14 of the Law of Limitation Act [Cap 89 R.E 2019]** empowers this Court to extend the period of limitation for lodging an application where the time for the same has lapsed either before or after the period of limitation prescribed for the same.

The applicant stated further that, he was the applicant in Land Application No. 2/2021 in the DLHT which was decided in favour of the Respondents on 19/5/2020. He argued that judgment of the said Land Application No. 2/2021 is tainted with material irregularities and legal issues which need the assistance of this court.

The applicant continued to submit that, prior to Land Application No. 2/2021, the Respondents had instituted Land Application No. 24/2013 before Ng'ambo Ward Tribunal on the same suit land which was decided in favour of the Respondents. He was aggrieved especially on the quorum of Ng'ambo Ward Tribunal members. His grievances were dealt with through administrative forum by the Executive Director of Moshi

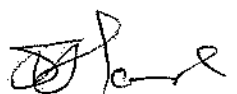


Municipality. That, the Municipal Director dealt with the matter and after satisfying himself about the allegation of the members of Ng'ambo Ward Tribunal, he nullified all the decisions which were given by those members in Land application No. 24/2013. Then, a new member of Ng'ambo Ward Tribunal was appointed and the Municipal Director ordered the land dispute to be retried.

Following such order, the applicant filed Land Application No. 01/2019 which was decided in his favour. The Respondents were aggrieved by the decision, he appealed to the DLHT through Appeal No. 05/2020. The DLHT quashed the decision of Land Application No. 01/2019 and ordered the matter to be heard afresh before the DLHT. Following such order of the DLHT, the Applicant filed Land Application No. 02/2021 which was dismissed without the Applicant being given right to be heard. Thus, the Respondents filed Application for Execution of Land Application No. 24/2013 which was nullified vide Administrative Letter which is attached in the applicant's affidavit.

The applicant was of the view that assistance of this court is highly needed to determine material irregularities and legal issues which occurred in determining the ownership of the suit land between the parties herein as submitted above. He opined that if this application will not be granted, the parties will have no avenue to clear interpretation on legal issues arising from this matter which are: -

- (i) *Whether the District Executive Director may nullify Ward Tribunal Decision and order retrial (sic).*
- (ii) *Whether it was proper for the chairman to dismiss Land Application No. 02/2021 for being res judicata while the*



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Applicant filed the same in compliance to the District Land and Housing tribunal's Order

(iii) *Whether the tribunal chairman was proper to grant application for execution which was already nullified by the District Executive Director*

It was the applicant's argument that the legal position is settled that whenever there is an allegation of illegality, then it is important to give an opportunity to the party making such allegation to have the issue considered. He referred to the case of **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambia [1992] TLR 182** which stated that: -

"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending the time for the purpose of ascertaining the point and if the alleged illegality be established to make appropriate measures to put the matter and record right."

He also cited the case of **VIP Engineering and Marketing Limited and three others v. Citibank Tanzania Limited, Consolidated Civil References No.6, 7 and 8 of 2006** CAT (unreported) where it was stated that the court have already accepted it as established law in this country that where the point of law at issue is illegality or otherwise of the decision being challenged that by itself constitutes a "sufficient reason."

The applicant also argued that it is trite law that the courts need to act in *ex debito justitiae* for the justice to be attained. He cemented this point

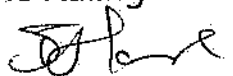
by quoting **Article 107A (2) (e) of The Constitution of the United Republic of Tanzania, 1977** which provides that:

"...in delivering decisions in matters of civil and criminal nature in accordance with the laws, the court shall observe the following principle -to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice." (sic)

The applicant concluded that as per the clear position in jurisdiction and reasonable cause, he implored the court to grant the extension sought after it had satisfied itself that both reasonable and sufficient cause exist. The applicant believed that the reasons advanced are sufficient for the court to grant extension of time to appeal so that this court will have avenue to determine the stated legal irregularities.

In reply, the respondents' advocate Mr. Charles Mwanganyi adopted the counter affidavit to form part of reply submission. The learned advocate opted to give chronological facts arguing that the same is aimed to show how the applicants used to institute frivolous and baseless applications daily against the Respondents.

He submitted to the effect that; the Applicant instituted Shauri Na. 24/2013 at Ng'ambo Ward Tribunal against the 2nd Respondent on the same piece of land which was decided in favour of the 2nd respondent. Such decision was delivered in the presence of the parties on 16/5/2013. The applicant instead of appealing against such decision he filed Application No. 95/ 2013 before the DLHT on the same cause of action and against the same parties. The 2nd Respondent raised preliminary objection on point of law on pecuniary Jurisdiction of the DLHT. The Ruling


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which was delivered before Hon. H.E Mwiha on 19/9/2013 dismissed such application. The applicant through Misc. Application No. 95 of 2013 applied for leave to appeal out of time against the decision of Shauri Na. 24/2013 which was before Ng'ambo Ward Tribunal. Nevertheless, he did not succeed. He then instituted Land application No 159 of 2015 and the respondents raised preliminary objection on the said land application and on 17th 2016 (sic) the same was dismissed for being *res judicata*.

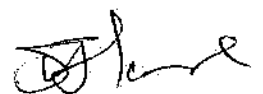
The learned advocate created awareness that the applicant has never appealed against Shauri Na. 24/2013 since he failed to obtain leave to appeal out of time against such decision. The applicant decided to take various administrative actions and as seen in the proceedings attached before this court. Then, the respondents filed application for Execution through Misc. Application No. 293/ 2020 before the District Tribunal for execution of decision of Ng'ambo Ward Tribunal No. 24 of 2013 whereas the same was granted and execution is on the process. That, the Applicant again after he had exhausted administrative remedies, which was not a proper forum, he instituted the same case before Ng'ambo Ward Tribunal vide Shauri No. 01 of 2019 which was heard *ex parte*. The respondents were aggrieved where he appealed before District Land and Housing Tribunal vide Appeal No. 05/2020 whereas the appeal was allowed and the decision of Ng'ambo Ward Tribunal was set aside. The Applicant then instituted Land Application No. 02 of 2021, where the Respondent filed Written statement of Defence together with a Preliminary objection. On 19/5/2021 the Preliminary objection was upheld and Application No. 2/2021 was dismissed for being *res judicata*. Thus, the applicant being aggrieved with such ruling and having noted that time had expired, he filed the instant application.

Having established the material facts of the dispute, the learned advocate noted that the Applicant's submission is at variance with the Applicant's own affidavit. He argued that it is trite law that parties are bound by their own pleadings and the submission must support the affidavit.

Mr. Mwanganyi submitted further that the applicant's submission suggests that one of the reasons for the delay is that there was existence of illegality which was never pleaded in his affidavit since the affidavit states completely to the contrary. As per paragraph 4 of the applicant's affidavit in support of the application, the reason for the delay was demonstrated to be that the applicant was sick. The respondent's counsel thus commented that since such reason of sickness has never been submitted then the applicant has abandoned the same.

The learned counsel insisted that parties are bound by their own pleadings which in this case are chamber summons supported by affidavit and counter affidavit of the Respondent. That, the arguments in the affidavit are under oath. Therefore, when the applicant raised another new argument, for being late in his submission while the same was not pleaded in his affidavit, such arguments are not under oath and the arguments are as good as mere statements which the court should not rely upon. In other words, the Applicant's written submission does not support his affidavit filed in support of the Application.

In the alternative and without prejudice for the forgone, Mr. Mwanganyi argued that the applicant in his written submission in support of the Application stated that the court should exercise its discretion and extend time on the reason of existence of illegality. However, under the law,



when one seeks leave of the court to extend time to file an appeal, he must have advanced sufficient reasons for the delay.

Furthermore, it was stated that the ruling of the DLHT which dismissed Land Application No. 2/2021 for being *res judicata* was delivered on 19/5/2021 and the Applicant filed the instant Application on 8/2/2022 which is almost 263 days which the Applicant has failed to account for.


Mr. Mwanganyi continued to argue that it has been held by this Court and Court of Appeal of Tanzania that for an application of extension of time to be granted there must be sufficient reasons and the Applicant should account for each day of delay. He substantiated this point by referring to the case of **Godwin Ndewesi and Karoli Ishengoma VS Tanzania Audit Corporation [1995] TLR, 200** which stated that: -

"The rules of the court must prima facie be obeyed. And in order to justify extending time during which some steps in proceedings to be taken, there must be some material on which the court can exercise its discretion. "

He also referred to the case of **Joseph Paul Kyauka Njau and Catherine Paul Kyauka Njau vs Emmanuel Paul Kyauka Njau and Hiacitha Paul Kyauka Njau, Civil Application No. 7/2016 CAT ARUSHA (Unreported)** to cement on the same point.

He further specified that the above principles were stipulated in the case of **LYAMUYA CONSTRUCTION CO. LTD V BOARD OF TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION, CIVIL APPLICATION NO. 2 OF 2010** that: -

(a) *The applicant must account for all period of delay*



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- (b) *The delay should not be inordinate.*
- (c) *The Applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of action that he intends to take*
- (d) *If the courts feels that there are other reasons, as such the existence of point of law sufficient importance, such as illegality of the decision sought to be challenged.*

The learned counsel condemned the applicant that he failed to prove the above principles since his main reason which was never pleaded in affidavit was existence of illegality.

Also, Mr. Mwanganyi referred to paragraph 4 of the applicant's affidavit and averred that Land Application No. 2 of 2021 was dismissed on 19/5/2021 and the present application was filed on 8/2/2022 which is almost 9 months of delay which the applicant failed to account for. That, even the attached copy of PF3 was issued on 22/3/2021 two months prior to the dismissal of Land Application No. 2 of 2021, hence does not warrant extension of time, though the applicant opted not to submit on it.

With regard to point of illegality, the learned advocate submitted that the court in the case of **Lyamuya** (supra) made the following observation:

"Since every part 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 raise 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 like to add that it must be apparent on face of record, such as the question of jurisdiction, not that will be discovered by long drawn argument or process".

Opposing the illegality raised in respect of the Letter of the District Executive Director that whether the same may nullify the Ward Tribunal's decision and Order; Mr. Mwanganyi opted not to submit on that since the District Executive Director has no mandate of whatsoever to nullify Court or Tribunal Decision. That, the Courts and Tribunals are independent organs which are free in their decisions as clearly stipulated under the Constitution of the United Republic of Tanzania of 1977 as amended from time to time. Therefore, although the applicant pleaded only in his submission still the same does not constitute illegality.

Mr. Mwanganyi concluded that this application is devoid of merits, he prayed for the same to be dismissed.

In rejoinder, the applicant insisted that he had two reasons which made him to file this Application, thus sickness and existence of illegality of the proceedings of the DLHT as sworn in the Applicant's affidavit as well as in his submission in chief.

Responding on the allegation that his submission is in variance with the affidavit supporting the application, the applicant disputed the same on the reason that under paragraphs 3(i)- (v) and 4 of the Applicant's Affidavit the Applicant stated the reasons which made him to file the application at hand to be reasons of illegality and sickness. Thus, he



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blamed the respondent for trying to mislead this court that the reasons were not stated in the affidavit.

The applicant was of the view that even if the reasons were not stated in the affidavit still the Applicant had an opportunity to submit them on the reason that at the end of the chamber summons it is clearly stated that the application is supported by Applicant's Affidavit and further grounds and reasons to be adduced at the hearing. He added that, despite the fact that the chamber summons stated adducing of other reasons or ground at the hearing, still in the affidavit he stated illegality as the ground which made him to file this application. That, he aimed at getting an opportunity to address the raised illegality occasioned in the proceedings of the DLHT for the purpose of having clear interpretation of the same.

The applicant reiterated what he had submitted in chief in respect of the alleged illegality and he prayed for the same to be considered so as to get an opportunity for the issues to be considered.

The applicant also reiterated what he had submitted in respect of grounds of extension of time. He called upon this court to go through the records to see what transpired in the DLHT since it was that; one chairman supported the District Executive Director's decision to nullify Ward Tribunal's decision while another chairman of the same tribunal was against the same. Thus, these conflicting decisions are sufficient cause for the court to grant extension of time to appeal out of time so that parties have interpretation of the raised issues.

Having considered the submissions of both parties as well as their affidavits, the issue for determination is ***whether the Applicant has***



advanced sufficient reasons for the court to grant extension of time.


It is trite law that granting an application for extension of time is the court's discretion. The applicant is required to establish sufficient reasons for the delay for the court to exercise its discretion judiciously. There are numerous decisions to that effect among them were cited by the parties in their respective submissions. In the case of **Hassan Ramadhani vs Republic, Criminal Appeal No.160 of 2018**, the Court of Appeal at page 6 stated that: -

"It is plain that the High Court's power to admit an appeal after the lapse of period of limitation is not predicated on any benchmark. It is discretionary based on reasons placed before the High Court by a party who seeks admission of his appeal out of time."

Having these words in mind, I now turn to the application at hand. As per the applicant's chamber summons, the applicant is praying this court to extend time so that he can appeal against Land Application No. 2 of 2021 of the DLHT which was delivered on 19/5/2021. From 19/5/2021 when the impugned decision was delivered to 8/2/2022 when the applicant filed the instant application it is more than eight months which the applicant ought to account for.

The applicant's reasons for the delay to file appeal within time is found at paragraph 4 of his affidavit which I will reproduce hereunder:

"That, while making follow up of Judgment and Proceedings I fall sick after being assaulted by Police Officer and sustained injury to the knee which made me to

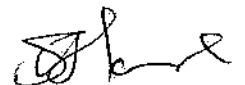

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*fail to appeal within the time. **Copy of PF3 and Applicant letter to the Regional Commissioner dated 12/7/2021 is herein annexed forming part of this affidavit.***

As rightly submitted by Mr. Mwanganyi for the respondents, despite the fact this reason was established in the affidavit, the applicant did not submit on it. The issue is whether the same can be considered by the court. I am of considered view that despite the fact that this reason was only stated in the applicant's affidavit, yet the same can be considered because affidavit contains material evidence. Thus, I will scrutinize this ground to see if the same holds water to extend time.

The applicant under paragraph 4 of his affidavit alleged to have been sick where he specified to have attached a PF3 and the Letter to the Regional Commissioner dated 12/7/2021 to substantiate the allegation. However, I struggled to look at the alleged PF3 one paper after another, I did not find any. I only found a letter dated 12/7/2021 which after reading it, I form a considered comment that the same cannot establish that the applicant was sick to the extent of not being able to appeal on time. Since there is no medical report to prove the applicant's sickness then this holds no water to warrant granting extension of time.

The second reason for extension of time is illegality. The applicant alleged that there is existence of illegalities which are; **first**, *Whether the District Executive Director may nullify Ward Tribunal Decision and order retrial;* **second**; *Whether it was proper for the chairman to dismiss Land Application No. 02/2021 for being res judicata while the Applicant filed the same in compliance to the District Land and Housing Tribunal Order and*



third; *Whether the tribunal chairman was proper to grant application for execution which was already nullified by the District Executive Director.* The said illegalities are clearly stated at paragraph 3 of the affidavit of the applicant.

However, despite the illegalities raised by the applicant, this court hesitates to grant the application on the reason of the inordinate delay of more than 8 months which has not been accounted for.

In the case of **Mpoki Lutengano Mwakabuta V. Jane Jonathan (As a Legal Representative of the Late Simon Mperasoka)**, Civil Application No. 566 of 2018, CAT at page 4 it was held that:

*"For the reason that the applicant's counsel was diligent and the **period of the delay is not at all inordinate, I grant the application.**"*

Emphasis added

In the upshot, the applicant has failed to account for inordinate delay for the court to exercise its discretion to grant extension of time sought. Consequently, the application is hereby dismissed with costs.

It is so ordered.

Dated and delivered at Moshi this 1st day of June, 2022.




S. H. SIMFUKWE

JUDGE

1/6/2022.