

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPLICATION NO. 82 OF 2021

(From the High Court of Tanzania at Mbeya in Misc. Land Appeal No. 7 2014. From the High Court of Tanzania at Mbeya in Misc. Land Application No. 52 of 2018. From the District Land and Housing Tribunal for Rungwe at Tukuyu in Land Appeal No. 125 of 2012. Originating from Kyimo Ward Tribunal in Land Case No. 48 of 2020.)

MICHAEL MWAKIBIBI.....APPLICANT

VERSUS

HILDA SANJALA.....RESPONDENT

RULING

Date of Hearing: 09/06/2022

Date of Ruling : 14/07/2022

MONGELLA, J.

The applicant filed the application at hand seeking for extension of time to file notice of appeal to the Court of Appeal against the decision of the High Court rendered in Misc. Land Appeal No. 7 of 2014; and to apply for certificate on point of law to appeal to the Court of Appeal. It is made under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and supported by the affidavit of one, Justinian Mushokorwa, the applicant's counsel. It was argued orally.



The applicant's counsel, in his submission largely referred the Court to the affidavit in support of the application which he prayed to be adopted to form part of his submission. In the said affidavit he provided the history of the case whereby he said an appeal was filed in this Court vide Misc. Land Appeal No. 7 of 2014 against the decision of the District Land and Housing Tribunal. The same was dismissed. Then an application of certificate to appeal (sic) to the CAT was filed vide Misc. Land Application No. 52 of 2018, which was also dismissed on 15th May 2019. A letter was immediately written to the Deputy Registrar to be availed with documents necessary for the appeal; the same were ready for collection on 02nd June 2020, a year later. A certificate of delay was also issued to that effect. He then filed in the Court of Appeal an application for extension of time, which was struck out on 24th September 2021 on ground of incompetence. He said that the order striking out his application rendered the notice of appeal ineffectual. In the premises the applicant now seeks to move this Court to grant extension of time so as he can re-file the notice of appeal and certificate to appeal to the Court of Appeal.

The other reason advanced is presence of illegality in the impugned decision in Misc. Land Appeal No. 07 of 2014. Explaining the illegality he contended that High Court failed to consider the doctrine of adverse possession and the effect of sale agreement in the dispute, that is, the sale which the father of the applicant did on behalf of the husband of the respondent. He argued that the High Court failed to consider that if the applicant's father bought land on behalf of the husband of the respondent, then the act deprived the applicant her rights as the money was never refunded.



He added that the High Court misconstrued the evidence and mis-directed itself. He referred the Court to the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia** [1992] TLR 182; and that of **Agness Severin vs. Musa Mlowe** [1989] TLR 164. The cases, he said, direct for extension of time to be granted where there is an illegality on point of law in the impugned decision. He prayed for the application to be granted.

The respondent was represented by Mr. Barnabas Pomboma, learned advocate. He opposed the application on the ground that no sufficient reason has been advanced by the applicant's counsel. Addressing Mr. Mushokorwa's contention that there was delay in obtaining copies of proceedings, ruling and drawn order, he saw the applicant being negligent as the notice would have been filed while waiting for the said copies.

He added that the applicant has also not accounted for the delayed days after the application was struck out by the Court of Appeal. Referring to the case of **Mbogo vs. Shah** [1968] E.A. he submitted that as much as the grant of extension of time is within the discretion of the Court, the Court has to consider whether the application was brought in time, the length of the delay, the degree of prejudice to the respondent, and legality of the decision. Considering the authority cited, he contended that no explanation has been provided regarding the length of the delay and it is clear that the prejudiced party is the respondent.



Concerning the claim of illegality, Mr. Pomboma contended that the same lacks base in consideration of the applicant's counsel's submission. He argued that the law requires the illegality to be of sufficient importance and on face of record. He also referred to the case of ***Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia*** (supra). He contended that the issue of adverse possession and evidence of sale agreement are not on face of record, thus not meeting the criteria in Valambhia's case. He was of the view that the applicant's counsel presented on what the witnesses stated which attracts long process of argument. On those bases he prayed for the application to be dismissed with costs.

In rejoinder, Mr. Mushokora was of the view that the respondent's counsel misconceived the contents of the supporting affidavit which clearly explains the history of the dispute. He said that the affidavit shows that the notice was filed within time, but the same was no longer tenable after the Court of Appeal struck out their application. In the premises, he said that the applicant had to start afresh by seeking for extension of time. He claimed to be technically delayed.

On delay in obtaining copies, he argued that the appellant should not bear the burden of blame as the same was caused by the Court and certificate of delay was issued to that effect. With regard to the point of illegality, he argued that they succeeded in showing the illegality. He said that the High Court at page 10 of its decision talked about adverse possession and sale of the land in dispute, but mis-directed itself in



comparison to the evidence adduced. He prayed for the Court to consider the application and grant it.

I have considered the arguments by both parties and gone through the court record, the affidavit in support of the application and the counter affidavit by the respondent. The law is trite to the effect that extension of time is granted in the discretion of the Court but upon consideration of good cause being advanced by the applicant and the delay not being caused by dilatory act of the applicant. See: **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (CAT, unreported); and **Jaluma General Supplies Limited v. Stanbic Bank Limited**, Civil Application No. 48 of 2014 (CAT, unreported).

Mr. Mushokorwa gave a history of the matter which ended up being struck out by the Court of Appeal. He claimed to have been technically delayed. The law is trite that on technical delay, extension of time is granted where the party did not sleep on his right, but took a wrong path in pursuing his right in court. However, the applicant must have acted within time limit while taking the wrong path. See: **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference no.18 of 2006 (CAT, unreported); **Luhumbo Investment Limited v. National Bank of Commerce Limited**, Misc. Civil Application no.17 of 2018 (HC at Tabora, unreported) and **Mohamed Enterprises (T) Ltd v. Mussa Shabani Chekechea**, Misc. Civil Application no. 81 of 2017 (HC at Tabora, unreported). I find that the Certificate of delay presented by the appellant that enabled him to file the matter in the Court of Appeal,



proves that he did not act negligently. He thus acted on time after being given the Certificate of delay.

In my view, the time to be considered should be from the date the appellant's matter was struck out from the Court of Appeal. The record shows that the applicant's application, that is, Civil Application No. 454/06 of 2020 was struck out on 20th September 2021. The application at hand was filed on 07th October 2021, which was after 17 days. The law is settled to the effect that after a matter is struck out the applicant should not delay in taking the next step. That, the application for extension of time must have been filed immediately. See: **Azizi Mohamed vs. The Republic**, Criminal Application No. 84/07 of 2019 (CAT at Mtwara, reported at Tanzlii); and **Moh'd Bakari Ramadhani & Another vs. Mwanasheria Mkuu wa Serikali Zanzibar**, Civil Application No. 107/15 of 2019 (CAT at Zanzibar, reported at Tanzlii).

The law is also trite that each day of the delay has to be accounted for and that delay of even a single day must be accounted for. See: **Lyamuya Construction Ltd v. Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010; **Finca (T) Limited & Kipondogoro Auction Mart vs. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018. **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 (CAT-unreported); **Moto Matiko Mabanga v. Ophir Energy PLC, Ophir Services PTY LTD & British Gas Tanzania Limited**, Civil Application No. 463/01 of 2017. In the premises the applicant ought to have accounted for the delayed days after his application was struck out in the Court of Appeal but has not done that.

The applicant advanced a point of illegality as a reason to be granted extension of time. Existence of illegality in the impugned decision can alone suffice in warranting the court to grant the extension of time regardless of other sufficient cause advanced. This has been decided in a number of cases. See: **Attorney General v. Consolidate Holding Corporation and Another**, Civil Application No. 26 of 2014; and **CRDB Bank Limited v. George Kilindu and Another**, Civil Application No. 87 of 2009 (unreported). However, the issue of illegality is not to be taken blindly by the Court. The CAT in the case of **Lyamuya Construction Company Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) elaborated on the applicability of the principle of illegality settled in the case of **Valambhia** (supra) referred to by the applicant. At page 9 the CAT stated:

"...it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every applicant who demonstrate 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."

The claim of illegality can therefore only be entertained if it meets certain criteria. That is, if the illegality is apparent on face of record, is of sufficient importance and the determination of it shall not involve a long drawn process of argument. See also: **Kalunga and Company Advocates v.**

National Bank of Commerce Ltd, Civil Application No. 124 of 2005; ***Aruwaben Chagan Mistry v. Naushad Mohamed Hussein & 3 Others***, Civil Application No. 6 of 2016 ***Jehangir Aziz Abubakar v. Balozi Ibrahim Abubakar & Another***, Civil Application No. 79 of 2016.

The point of illegality advanced by the applicant is to the effect that the High Court failed to consider the issue of adverse possession and sale agreement vis a vis the evidence on record. From Mr. Mushokorwa's submission, and the judgement of the Court, it is clear that the Court reached its decision consciously after analysing and examining the evidence on record and submissions by the parties. In the circumstances, the illegality cannot be said to be on face of the record. It shall as well involve a long drawn process of argument if argued on appeal. It therefore does not qualify as an illegality warranting grant of extension of time.

Before I pen down, I wish to remark that apart from the applicant not advancing sufficient reasons, I also find the application a redundant exercise. From the applicant's affidavit and documents attached, it is clear that the applicant is seeking for extension of time to impugn the High Court decision rendered in Misc. Land Appeal No. 07 of 2014. This is stated in the prayers in the Chamber Summons. The supporting affidavit shows that vide Misc. Land Application No. 52 of 2018 the applicant sought for certificate on point of law to appeal against the decision in Misc. Land Application No. 07 of 2014. The said application was dismissed by this Court (Mambi, J.) on 15th May 2019.



In my considered view, once a certificate of delay is denied by the court, one cannot come back through a back door and re-file the application. This is because the court becomes *functus officio* on the matter. In the same line the applicant cannot appeal against Misc. Land Appeal No. 07 of 2014 without a certificate on point of law as the matter emanated from Kyimo Ward Tribunal. In the premises, even if the application for extension of time would be granted, the intended appeal against Misc. Land Appeal No. 07 of 2014 and application for certificate on point of law against Misc. Land Application No. 07 of 2014 cannot be entertained.

In the upshot, the applicant is found to have failed to advance sufficient cause to move the court to grant the extension sought. The application is therefore dismissed with costs.

Dated at Mbeya on this 14th day of July 2022.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 14th day of July 2022 in the presence of the applicant and Mr. Jamaldin Abubakar, legal officer from the respondent's counsel's firm.




L. M. MONGELLA
JUDGE