

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

**(IRINGA DISTRICT REGISTRY)**

**AT IRINGA**

**MISC. LAND APPLICATION NO. 41 OF 2020**

*(Arising from Land Application No. 87 of 2018 of the District Land and Housing  
Tribunal for Njombe at Njombe)*

**MUSA NGIMBUDZI ..... APPLICANT**

**VERSUS**

**EMMANUEL WILSON MAKAO ..... RESPONDENT**

**RULING**

Date of Last Hearing: 17/03/2022,

Date of Ruling: 27/07/2022.

**MLYAMBINA, J.**

The Applicant filed in this Court the instant application seeking for extension of time to file his appeal out of time against the judgment and decree of the District Land and Housing Tribunal for Njombe at Njombe (henceforth the Tribunal) which was delivered in *Land Application No. 87 of 2018* dated on 2<sup>nd</sup> June, 2020. The application is made under *section 41 (2) of the Land Disputes Courts Act [Cap 216 R.E. 2002] as amended by section 41 of the Written Laws (Miscellaneous amendments) Act No. 2 of 2016* and is supported by the affidavit affirmed by the Applicant.

The Applicant did not file his counter affidavit in opposition of the application. By the consent of the parties this application was argued by way of written submission. The Applicant was represented by Mr. Method Msokela, learned Advocate while the Respondent was not represented.

In his submission, the Applicant told this Court that the impugned decision was delivered on 2<sup>nd</sup> day of June, 2020, at the same date he orally applied for the copy of the said judgement. He made follow up until on 12<sup>th</sup> October, 2020 when he was supplied with the said copy. Unfortunately, he was already out of time to file the intended appeal, hence this application. After going through the judgement, he discovered that there is illegality on the face of record which requires this honorable Court to cure, as the Chairman delivered a judgement without opinion of Assessors and it was not read out.

Moreover, the Applicant averred that *section 23 (2) of the Land Dispute Courts Act [Cap 216 R. E. 2019], and Regulation 9 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation G.N. No. 174 of 2003* requires the opinion of Assessors to be given in presence of the parties before the delivery of the judgement. He supported his submission with the case of **Edna Adam Kibona v.**

**Absolom Swebe @ Sheli**, Civil Appeal No. 286 of 2017, Court of Appeal of Tanzania at Mbeya (unreported) where at page 4-6, the Court referred to its previous decision of **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017, Court of Appeal of Tanzania at Mbeya (unreported). In both decisions, the Court of Appeal was of the findings that failure of the Assessors to give their opinion in the presence of Parties, even if the opinion is in the record, render the decision nullity.

In reply, the Respondent alleged that the Counsel for the Applicant is a Solicitor who is incompetent and unqualified as per provision of *section 5(2) of the Office of the Attorney General (Discharge of Duties) Act, Cap 268*. He prayed to this Court to struck out this application with costs. He then prayed for the Court to adopt his counter affidavit to form part of his submission. The later prayer puzzled the Court as the Respondent did not file the said Counter affidavit.

The Respondent further averred and there was no any objection to the trite law that delay of even a single day has to be counted. He supported his argument with the case of **Ramadhani Kikwani v. Tazara**, Civil Application No. 401/18 of 2018. He invited the Court to consider these facts with eye or extreme caution. Also, to consider

whether the Applicant has made any due diligence in prosecuting this case. He backed up his argument with the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) as it was cited in the case of **Efrasia Mfugale v. Andrew J. Ndimbo and Another**, Civil Application No. 38/10 of 2017, where by Massati, J.A recorded the factors to be considered in determining the grounds for extension of time; to the effect that: *One* the Applicant must account for all the period of delay. *Two*, the delay should not be inordinate. *Three*, the Applicant must show diligent, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take. *Four*, if the Court feels that there are other sufficient reasons, such as the existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.

The Applicant lodged this application after 132 days from the date of the decision. He did not act diligently in pursuing the case. In the case of **Dr. Ally Shabhay v. Tanga Bohora Jamaat** (1997) TLR 305, the Court held that; those who comes to Court of law must not show unnecessary delay in doing so, they must show great diligence.

As to the issue of illegality, the Respondent submitted that the allegation of illegality by itself suffices for an extension of time. However, such illegality must be apparent on the face of record such as question of jurisdiction, not one that would be discovered by long drawn argument or processes. He buttressed his submission with the case of **Unilever Tea Tanzania Limited v. Conrad Msekwa**, Misc. Application No. 03 of 2021 and the case of **Efrasia Mfugale** (*supra*). From this case, it is clear that the alleged illegality is not apparent on the face of record.

The Respondent added that, the cases of **Edna Adam Kibona v. Absolom Swebe** (*supra*), **Tubone Mwambeta v. Mbeya City** (*supra*) cited by the Applicant, are distinguishable from the case at hand since the opinion of the Assessors were read out to the parties before the date fixed for judgement. Also, he submitted that the Court record is always presumed to be accurately representing what actually transpired in Court. At paragraph 4 and 5 of page 4 of the typed judgement, the Chairman stated that two Assessors who are Mrs Grace Mbwilo and Mr. Hassan Mwampinga, advised him to allow the application with costs. He assisted his argument with the case of **Yohana Mwaifani and Aida**

**Jacob v. Patrick Onesmo Lupondo and 2 Others**, Land Appeal No. 65 of 2019.

In his rejoinder, the Applicant said that the objection raised by the Respondent that Method Akilimali Msokela who is a State Attorney employed in the Office of the Solicitor General is an allegation without prove. The above said State Attorney, is an employee of Mufindi District Council in a position of Ward Executive Officer and the employer authorized him to practice laws since he was admitted as a practicing Advocate. He attached the authorized letter to prove the same.

The counsel for the Applicant submitted that it is settled principle that time to appeal runs from the date when the necessary document was given to the intended Appellant. It is only for the Applicant to be in a safe side. He preferred this application thinking that time could not be extended automatically. On the District Land and Housing Tribunal proceedings, there is no any record which shows that there is a date when the Assessors gave their opinion and the date when their opinions were read to the parties before the Chairman composed his judgement. This is against the provision of *section 23 (2) of the Land Dispute Court Act [Cap 216 R. E. 2019]* and *Regulation 19 (2) of the Land Dispute Court (the District Land and Housing Tribunal) Regulations, G.N No. 174*

of 2003 as submitted in chief. In the case of **Juto Ally v. Lukas Komba and aloyce Msafiri Musika**, Civil Application No. 484 of 2019, Court of Appeal of Tanzania (unreported) in which the Court held that:

*Only the alleged illegality is sufficient reason for extending time for application to take necessary steps toward lodging the intended appeal.*

The Counsel argued further that failure of the Assessors to give their opinion in the presence of the Parties even if the opinion is reproduced in the judgement render the said decision nullity. At page 27 of the proceedings, it shows that the case was closed and the order of the Tribunal was coming for judgement on 31/05/2019. However, the judgement was delivered on 02/06/2020. There is nothing in the proceedings which shows that the opinion of the Assessors was given and read to the Parties. He prayed to the Court to allow this application because no one will be prejudiced. If it will be refused, the Applicant will suffer irreparable loss.

After careful consideration of the submission from both sides, this Court has noted the issue to be determined in this application is; *whether the Applicant has adduced sufficient cause for delay to file the appeal in the Court within the time prescribed by the law to warrant the*

*Court to grant him extension of time to file appeal in the Court out of time.* The Court is of the findings that; the requirement under the proviso to *section 41 (2) of the Land Disputes Courts Act (supra)* upon which the application is predicated, is to adduce sufficient cause. The question is what is sufficient cause for delay to file appeal in Court within the time? The answer to the above question can be found in the case of **CRDB (1996) Limited v. George Kilindu**, Civil Application No. 162 of 2006, Court of Appeal of Tanzania at Dar es Salaam (unreported) where it was stated *inter alia* that:

*What amount to sufficient cause has not been defined but from cases decided by the Court it includes among others; bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the Applicant.*

Starting with the factor of bringing the application promptly, the Court is of the findings that; as stated by the Counsel for the Applicant, the decision which the Applicant intends to challenge was delivered on 2<sup>nd</sup> day of June, 2020. But the Applicant applied orally to be supplied with the copies of the judgement and decree on the same day. The Counsel for the Applicant explained that the sought documents were not



supplied to them on time as were supplied on 12<sup>th</sup> October, 2020, almost seventy days from the day of judgement and the time to appeal had already lapsed.

From the record the Applicant averred that he was supplied with the copy of the Judgment on 12<sup>th</sup> August, 2020 and the application at hand was filled on 20<sup>th</sup> October, 2020, eighteen days since the day it was delivered. The Counsel for the Applicant did not account for those 18 days as to what he was doing and where. The law requires that each day of delay to be accounted even if it is a single day has to be accounted. This was also held in many decisions of the Court including in the case of **Bushfire Hassan v. Latifa Lucia Masay**, Civil Application No. 3 of 2007, where the Court clearly stated that:

*Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.*

Apart from the above-mentioned reason, the Counsel for the Applicant contended that there is the issue of illegality on face of record to the impugned decision, as the Assessors failed to fulfill their duty of

giving their opinion which has to be read to the parties before the Chairman prepared his judgement.

I went through the record of the Trial Tribunal and noted, as rightly submitted by the Applicant, there is nowhere in record which shows that the Assessor gives their opinion as required by the law. In the case of **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambia** [1992] TLR 185 the Court had this to say:

*Whereas, the point of law at issue is the illegality or otherwise of the decision being challenged that is of "sufficient reasons" within the meaning of rule 8 of the rules of extending time.*

For the illegality to be a good or sufficient ground for granting extension of time, the said illegality has to be apparent to the face of record. From the case at hand, the Applicant averred that, the opinion of Assessors was not taken as required by the law. I went through the record of the trial Tribunal and noted true that the Assessors did not gave their opinion before the Chairman delivered his judgement. Therefore, the issue of illegality is apparent on the face of record.

From the above reasons, I hereby grant the application. The Applicant has to file his appeal within 45 days from today. Costs shall follow events. It is so ordered.



**Y. J. MLYAMBINA**

**JUDGE**

**27/07/2022**

Ruling delivered and dated 27<sup>th</sup> day of July, 2022 through Virtual Court in the presence of the Applicant in person and in the absence of the Respondent. The Applicant was stationed at the High Court of Tanzania Iringa District Registry's premises. Right of Appeal fully explained.



**Y. J. MLYAMBINA**

**JUDGE**

**27/07/2022**