

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

LAND APPEAL NO. 46 OF 2021

*(C/f Misc. Application No. 345 of 2021 at District Land and Housing Tribunal for Moshi;
Original Land Application No. 18 of 2020 Holili Ward Tribunal)*

ENOCK KIMONDIO ----- APPELLANT

VERSUS

BERNARD NZYOKI ----- RESPONDENT

8/6/2022 & 19/7/2022

JUDGEMENT

MWENEMPAZI, J.

The Appellant herein named had applied for an order of extension of time in the District Land and Housing Tribunal of Moshi so that he may appeal against the decision of the Holili Ward Tribunal in Application No. 18/2022. In the ruling delivered by the District Land and Housing Tribunal of Moshi, Hon P.J. Makwandi, Chairman it was ruled that the applicant herein has failed to account for delay of 191 day which had elapsed. In that ruling the Honourable Chairperson reviewed the affidavit by the applicant it has facts showing that he is not satisfied with the decision of the trial tribunal. The honourable Chairman being mindful of the legal requirement that the reasons for delay must be contained in the affidavit, observed that the



applicant/appellant did not show the reasons for delay or account for the said delay and therefore he agreed with the reasons for opposing the application in the counter affidavit. Thus, the application was dismissed.

In this appeal the appellant has raised only one ground of appeal, namely:

"That the Honourable Trial Tribunal erred in law and in facts for failure to exercise its discretion properly."

At the hearing the appellant was served by Ms. Regina Mwanri, learned advocate and the Respondent was representing himself. The matter proceeded by way of written submission pursuant to the order of the court.

In the written submission, the counsel for the appellant submitted that for the court to exercise its discretion there must be some material on which to act. She cited the case of **Godwin Ndewesi and Karoli Ishengoma vs Tanzania Audit Corporation [1995] TLR 200** where the court stated:

"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."

The counsel submitted that in the application the appellant raised points of illegality which were not considered by the District Land and Housing Tribunal. The submission was relying on the case of **Lyamuya Construction Co. Ltd vs Board of Trustees of Young Women's Christians Association, Civil Application No. 2 of 2010** as an



authority that where illegality is a factor the court has to act on its discretion and extend time. Thus, it was wrong to deny an order extending time to file an appeal.

The appellant has also argued that the points he raised were worthy of consideration. The said points he raised were as follows: that, the Quorum was not properly constituted, the respondent had no *locus standi*, that the tribunal lacked pecuniary jurisdiction.

The Respondent has not raised any much arguments save for the fact that the appellant failed to account for each day of delay in the application whose decision is challenging in this appeal.

I have read the application and written submission made by the parties; the question is whether the ground raised has any merit. In law reasons for delay must be shown in the affidavit as per the case of the ***Registered Trustees of the Archdiocese of Dar es Salaam Vs. The Chairman of Bunju village Government and 11 others, Civil Appeal No. 147 of 2006***. The Court of Appeal of Tanzania at Dar es Salaam.

I have read the affidavit in Miscellaneous Application No. 345 of 2021 in the District Land and Housing Tribunal. The applicant did show that there are illegalities in the impugned decision which were coached in the way as grounds of appeal. He wanted the same to be acted upon as facts for the purpose of application for extension of time. For example, paragraphs 4 to 7 were written as follows:



4. *That, the judgment and proceedings were tainted with illegalities.*
5. *That, the number of women was two (2) women sat at the tribunal.*
6. *That, there was no any determination of suit land value and demarcations.*
7. *That, the respondent had no locus standi in the suit land.*
8. *That, the intended appeal has overwhelmingly chances of success."*

In the case of **Lyamuya Construction Co. Ltd Vs The Board of Trustees of Young Women's Christian association, Civil Application No. 2 of 2010(unreported)** the Court of Appeal of Tanzania held that a point of law of importance such as the legality of the decision sought to be challenged could constitute a sufficient reasons for extension of time but the errors of law, must be clear on the face of the record. Although the appellant had cited the case and tried to point the illegalities according to his opinion, still that could not amount to what the court held in the cited case as to warrant extension of time.

Thus, it is not true that every applicant who demonstrates that the intended appeal raises points of law should as of right be granted extension of time, if he applies for the same. The point of law must be that of sufficient importance and also must 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.

Under the circumstances of the present appeal, I find there was no such demonstration as to warrant the tribunal to exercise the discretion properly so said by the appellant. No materials were presented to exercise such discretion. It was thus necessary to dismiss the application, which decision I find no reason to disturb. Therefore, the appeal is dismissed with costs. It is ordered accordingly.

Dated and delivered at Moshi this 19th July, of 2022.



A handwritten signature in black ink, appearing to read "T. M. Mwenempazi".

**T. M. MWENEMPAZI
JUDGE**

Judgment delivered in court this 19th day of July, 2022 in the presence of appeal and the respondent.

A handwritten signature in black ink, appearing to read "T. M. Mwenempazi".

**T. M. MWENEMPAZI
JUDGE**