

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

**MUSOMA SUB – REGISTRY**

**AT MUSOMA**

**LAND APPEAL NO 38 OF 2021**

*(Arising from Misc. Application No. 19 of 2021, Arising from Misc. application No 319 of 2018  
Originating from Misc. application No. 44 and 74 of 2017 at the District land and Housing  
Tribunal for Mara at Musoma)*

**JEREMIA LUKONDO (ADMINISTRATOR**

**OF ESTATES OF THE LATE DISHON LUKONDO ..... APPELLANT**

***VERSUS***

**MAGESA MAGORI ..... RESPONDENT**

**JUDGMENT**

28<sup>th</sup> March and 29<sup>th</sup> April 2022

**F. H. MAHIMBALI, J.:**

The appellant has been aggrieved by the decision of the District Land and Housing Tribunal of Musoma for failure to grant extension of time to file the review application against the decision of the same District Land and Housing Tribunal of Musoma which issued out two different copies of decisions one awarding costs and the other not awarding costs. As time had passed and that the appellant came to be aware of the said conflicting orders of the same trial tribunal during

execution of the said order for bill of costs, he resorted to filing an application for extension of time to file review application for the trial tribunal to rectify its order on that illegality. The said application was resisted by the respondent.

Upon hearing the said application, the trial tribunal refused granting the said application on ground that there was no sufficient cause explained to account for each day of delay. It is this ruling that has aggrieved the appellant, thus the basis of the current appeal grounded on three points for this Court's determination, namely: -

1. *That, the trial tribunal erred in law and in fact for dismissing Misc. Application No 19 of 2021 for disregarding serious irregularities raised by the Appellant.*
2. *That, the tribunal erred in law and in fact for dismissing Misc. Application No 19 of 2021 for the reason that appellant failed to account cause for delay while there was a serious point of law in the court records which need rectification.*
3. *That, the trial tribunal erred in law and in fact for not looking the two orders contradicting each other which were attached to the affidavit supporting Misc. Application No 19 of 2021.*

During the hearing of the appeal, the appellant was represented by Mr. Ostack Mligo while being assisted by Mr. Noah Mwakisile whereas Mr. Daudi Mahemba represented the respondent.

In his submission, Mr. Noah Mwakisile submitted that this appeal emanates from the ruling in Misc. Application No 19 of 2021 in which there was an application for extension of time to file review out of time against Misc. Application No 319 of 2018. That the decision in Application No 319 of 2018 was decided by Honourable Kaare which was an application for bill of costs following verdict in no 44 and 74 of 2017 (consolidated). The said bill of costs application was decided on 21/6/2018. In the said Applications No 44 and 74 of 2017 (consolidated), the DLHT awarded costs. That is why Misc. Application no 319 of 2018 (bill of costs) got its birth. In the said application No 319 of 2018, the DLHT dismissed the application on ground that in the said applications, it didn't order costs. As they were out of time to challenge the decision, they then filed Misc. Application No 319 of 2018 for extension of time for the said DLHT to review its own decision. The main ground for extension of time was illegality on the face of record. Upon hearing of the application, the DLHT dismissed the application on account that there was no explanation/accounting for each delayed day

of the said application. Though extension of time is a discretionary power of the trial court and that generally it is not appealable, however, it can be appealed if there are good grounds for doing so. He sought reliance of his position in the case of **Mbogo and Another vs Shah (1968)** I, E.A 93. The appellant's main grievance is that the trial court applied a wrong principle of law. The law is settled an application for extension of time is only grantable where there is accounting of each day of delay or where there is an illegality (See **Juto Ally vs Lucas Kamba and Aloyce Msafiri Musika**, Civil Application No. 484/17 of 2019, CAT at Dar es Salaam at page 13 (paragraph 2 from the bottom), **Hamis Mohamed (as administrator of the Estates of the late Risasi Ngawe vs Mtumwa Moshi (as administrator of the estates of the late Moshi Abdallah)**, Civil application No 407/17 of 2019 (page 8-9)). With this long submission and authorities supplied, he prayed that the appeal be allowed with costs.

On the other hand, Mr. Daudi Mahemba learned counsel for the respondent who resisted the appeal submitted that in the said previous application of bill of costs there was no any illegality pointed out against the decision in application no 44 and 74 of 2017. He submitted further that, in Misc. Application No 319 of 2018 which was an application for

bill of costs there was preliminary objection by the respondent. The DLHT ordered hearing of the said preliminary objection by way of written submissions. The scheduling was made. The respondent who was the first to submit on preliminary objection, did so. Unfortunately, the appellant did not file any. Thus, the DLHT allowed the preliminary objection and dismissed the application with costs on 9/7/2020. The appellants then remained mute until 27/01/2021 when came up with the application for extension of time after had lapsed a total of 203 days. In application no 19 of 2003, they were praying for extension of time to file review. He faulted the review application no 319 of 2018 as being misplaced. The only remedy available to him was perhaps setting exparte order.

On this account, he submitted that the issue of illegality is not established but only pointed out. In the same case of **Hamis Mohamed** (supra) at page 9, has provided that the issue of illegality must be apparent on the face of record. He also made reference to this Court in the case of **Finca (Tanzania Limited and Kipondogoro Auction Mart vs Bonifance Mwakikisa**, Civil Application no 589/12 of 2018 at page 10, that illegality must be of sufficient importance for the court to grant extension of time on the issue of point of law. In his considered

view, the appeal is misplaced. As there is no good reason provided to fault the DLHTs' findings on this, the same be dismissed with costs.

In his rejoinder submission, Mr. Mligo chipped in and submitted that at paragraph 4 of the appellant's affidavit (at DLHT) has been stated illegality has been stated. The same is insisted on paragraph 5. With paragraph 2 and 3, the confliction in the said ruling is pointed out. The argument that there was exparte order in Misc. Application No 319 of 2018, but the same got birth from Application No 44 and 74 of 2017. Despite there being an exparte order in Misc. Application No 319 of 2018, yet that did not make justification of the DLHT in not making perusal of Land Application No 44 and 74 of 2017. By the way the subject of this appeal is the ruling of DLHT in application No 19 of 2021.

Having considered the submissions by both sides, the authorities supplied and the appeal itself, the vital question here is only one whether the appeal is meritorious as argued.

In my perusal to the available records, submissions of both counsel and authorities supplied and referred, I am in agreement with Mr. Noah and Mligo that in an application for extension of time, when an issue of illegality is pointed out for consideration by the higher court,

that amounts to sufficient ground as per law for the grant of the said application for consideration by the said higher court. See the decision in the case of **Finca Tanzania Ltd and Another V. Boniface Mwalukisa**, Civil Application no. 589/11/2018, **Juto Ally V. Lucas Komba & Alloyce Musafiri Musika**, Civil Application no. 484/17/2019, Court of Appeal, **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR 182, and **Gabriel Joseph V. Ambrose Gwasi Mwikhoi and 2 Others** , where there is an illegality, it is sufficient cause to grant extension of time.

However, this is not an automatic grant. Considering that an application for extension of time is court's discretion, it must take into accord all relevant factors in exercising the said discretion (In **Mbogo Vs. Shah** (1968) EA).

In the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women of Association of Tanzania**, Civil Application no. 2 of 2020 , the Court of Appeal of Tanzania held that:

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view be said in Valambhia's case the Court meant to draw a*

*general rule that every applicant who demonstrates 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 emphasised that such point of law must be that of sufficient importance and I would add that it must also be of such importance and, I would add that it must also be apparent on the face of the record, such as question of jurisdiction, (but), not one that would be discovered by a long drawn argument or process**". [Emphasis added].*

Inspired by this sound legal reasoning, I am in agreement with Mr. Daudi Mahemba that as per circumstances of this case, the said question of illegality as pointed out by the appellant is not of sufficient importance and the same is not apparent on the face of record but can be discovered by a long-drawn argument and legal process for one to get it. It needs lightening by a sharp torch cell. As of such, it is not of sufficient importance as to my assessment. I say so because, the order for costs for a dismissed application is court's discretion. It could or could not award. As the DLHT awarded costs in consolidated Misc Application No. 44 and 74 of 2017, did not mean it conflicted with Misc Application No. 319 of 2018 which withheld costs. These are separate applications.



That said, the appeal is dismissed with costs for lack of any merit.

DATED at MUSOMA this 29<sup>th</sup> day of April, 2022.



  
F.H. Mahimbali

**JUDGE**

**Court:** Judgment delivered this 29<sup>th</sup> day of April, 2022 in the presence of Maura Tweve, advocate for the Appellant, Mr. Daudi Mahemba, advocate for the Respondent and Mr. Gidion Mugo, RMA.

Right of appeal is explained.

  
F. H. Mahimbali

**JUDGE**

29/04/2021