

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

**DISTRICT REGISTRY**

**AT TABORA**

**LAND APPEAL NO. 14 OF 2020**

*(Arising from the ruling of Nzega District Land and Housing Tribunal in  
Misc. Land Application No. 21 of 2020)*

**PETER SUGAR.....APPELLANT**

**VERSUS**

**LUSOKA MUSA.....RESPONDENT**

**JUDGMENT**

*Date: 27/5/2020 & 15/7/2022*

**BAHATI SALEMA, J.:**

This appeal originates from the decisions of the District Land and Housing Tribunal of Nzega in Miscellaneous Land Application No. 21 of 2020 whereby the appellant's application for an extension of time to file an appeal out of time on the decision by Mwasala Ward Tribunal in the Land Case No. 2/07/2016 was dismissed by the District Land and Housing Tribunal hence this appeal.

The appellant paraded four grounds of appeal couched thus: -

- 1. That the learned chairman erred in law and facts when he based his decision on a very wrong presumption that extension of time will lead to endless litigations.*

2. *That the learned chairman erred in law and facts when he accepted that the trial court's decision was tainted with illegalities with regard to the jurisdiction but went on dismissing the application on the ground that execution had taken place.*
3. *That the learned chairman erred in law and facts when he failed to realize that time spent in litigation in other courts wrongly is a good ground for extension of time.*
4. *That the learned chairman erred in law and facts when he failed to consider that since the respondent instituted the case on the land matter which land belonged to his father, the respondent had no locus standi and the locus stand, being illegality, is a good ground for extension of time.*

I have narrowed down the four grounds leveled by the appellant into one issue that this Court has to respond to whether the trial Chairman gave sufficient reasons for dismissing the application.

At the hearing of this appeal, the appellant appeared in person, he was also represented by a learned counsel, namely Mr. Frank Samwel. On the other hand, the respondent, Lusoka Musa, had the legal service of Mr. Hassan Kilingo, learned counsel.

By the parties' consent, the appeal was disposed of by way of written submissions, and the parties complied with the timeline set by the court. I commend them for the research conducted in support of their respective positions. I do not intend to reproduce their submissions and

cited authorities. They may rest assured that their contending arguments will be considered in the course of determining the ground or issues pertaining to this appeal.

Before determining the merits of the appeal, I find it appropriate to restate the principle that governs this court.

It is a common practice in our jurisdiction that a party seeking an extension of time to file an appeal has to show a good and sufficient reason for his delay. The position of the law is clear that the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or application. The position of the law has been expounded in the case of **Mumello vs. Bank of Tanzania (2006) IEA 227(CAT)** where it is a settled principle of the law that an application for an extension of time is entirely at the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

In that instant matter, the record indeed shows the 45 days set by law to file an appeal to the District Land and Housing Tribunal had expired, and that is what prompted the appellant to apply for an enlargement of time.

The court has discretion in granting orders for time extensions. Since the appellant has been in court litigation all the time, even though by

taking the wrong steps, instead of appealing to the Nzega District Land and Housing Tribunal, he filed a criminal case before the Nyasa Primary Court against the respondent. The Judgment for Nzega District Court quashed the Judgment of Nyasa Primary Court on the ground that the Nyasa Primary Court had no jurisdiction on the land matter, which is a technical delay that, depending on the circumstances of each case, is a good cause for the delay.

The concept of "Technical delay" applies where a party did not sit on his matter but was pursuing it on either wrong forums or invoking wrong procedures which eventually rendered his matter being dismissed or struck out. This concept has been invoked by the CAT and this Court in several cases such as **Salvand K.A.Rwegasira v.China Henan International Group Co.Ltd**, Civil Reference no. 18 of 2006 (CAT decision); **Luhumbo Investment Limited v.National Bank of Commerce Limited**, Misc. Civil Application No.17 of 2018 (HC Tabora, Utamwa J.) and **Mohamed Enterprises (T) Ltd v. Mussa Shabani Chekechea**, Misc. Civil Application no. 81 of 2017 (HC Tabora, Utamwa, J).

In the above-mentioned cases, the courts were of the view that the time in which the applicant spent wrongly pursuing his right in court had to be removed from the computation of time. Time should thus start to run from the last event when his matter was dismissed or struck out for technical mistakes he committed to pursuing his claim. From the foregoing, it is my considered opinion that the appellant was

under technical delay and thus deserves to be granted an extension of time to file the application.

Another circumstance is the complaint of illegality. It is settled law that a claim of the illegality of the challenged decision constitutes sufficient reason for the extension of time regardless of whether or not a reasonable explanation has been given by the appellant under the rule to account for the day. See ***Mosses Mchunguzi vs. Tanzania Cigarette Co. Ltd, Civil Reference no. 3 of 2018***, whereas the Court of Appeal observed that;

*"It must be made clear that for the Court to rely on the issue of illegality as one of the reasons for seeking extension of time, the party must not only list it as one of the grounds for seeking extension but must also establish and explain sufficiently to deserve extension of time."*

This case emphasized that the court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality is established, to take appropriate measures to put the matter and the record right.

From the foregoing and on the strength of the case of ***Mosses Mchunguzi vs. Tanzania Cigarettes Ltd, (supra)***, I hereby grant the extension of time sought to give room for the important issues mentioned above to be dealt with by the District Land and Housing

Tribunal accordingly. In light of the foregoing, I allow the appeal and quash the decision of the District Land and Housing Tribunal. I further order that the appellant be granted forty-five (45) days within which he has to lodge his appeal to the District Land and Housing Tribunal. Cost to follow the event.

Order accordingly.



**A. BAHATI SALEMA**

**JUDGE**

**15/7/2022**

Ruling delivered in chamber on this 15<sup>th</sup> July, 2022 in the absence of both parties. Via virtual court link.



**A. BAHATI SALEMA**

**JUDGE**

**15/07/2022**

Right of Appeal fully explained.



**A. BAHATI SALEMA**

**JUDGE**

**15/07/2022**

