

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**MISC LAND APPLICATION NO. 4 OF 2022  
(Emanating from Land Application No. 83 of 2020 of the Maswa DLHT)**

**MWOMBEKI ALEXANDER EMIL.....APPLICANT**

**VERSUS**

**MOJOHN MAYALA BUBIZA .....RESPONDENT**

**RULING**

*21<sup>st</sup> June & 29<sup>th</sup> July 2022*

**MKWIZU, J:**

This is an application for extension of time to file an appeal against the decision of the DLHT dated 17<sup>th</sup> May 2021 in Land application No 83 of 2020 out of time filed by the Applicant under the provisions of section 41(2) of the Land Disputes Court Act, Cap 216 RE 2019.

The application is supported by an affidavit sworn by the applicant on 27/1/2022. Contesting the application, the respondent, on 25/4/2022 filed a counter affidavit. The hearing was conducted by written submissions and both parties did comply with the filing schedules hence this ruling.

In his written submissions, in support of the application, Mr. Martin Sabin learned advocate for the applicant, first prayed to adopt the applicant's affidavit to form part of his submissions. He then submitted that the trial tribunal's decision is tainted with egregious illegalities that need to be rectified by the court through appeal process. Pointing out the said irregularities, Mr. Sabini said, the trial tribunals' order to proceed ex-parte

was given in denial of the applicant's right to legal representation and an opportunity to defend and state his case. The said decision also indicates to have arisen from the Malili Ward's Tribunal hence irregular. He contended that, having adjourned the matter on 22<sup>nd</sup> April, in the absence of the respondent (now applicant) and his advocate, the trial chairman proceeded to hear the matter *ex-parte* as if the matter was on that date scheduled for hearing *ex-parte* and without serving a summons to the Respondent- now applicant notifying him of the judgment date. He on this cited the decision of **Chausiku Athumani V Atuganile Mwaitege**, Civil Appeal No 122 of 2007 (HC) Dare salaam (Unreported).

Addressing the irregularity of the tribunal's decision, Mr. Martin was of the view that while the matter before the tribunal was a fresh case filed by the parties, its decision shows to have emanated from Malili Ward tribunal, the error that requires a proper forum for. He, citing the decisions of the **Principal Secretary, Ministry of defense and National Service v Devram Valambhia**, (1992) TLR, 182; **Amour Habib Salim V Hussein Bafagi**, Civil Application No 52 of 2009 and **Mohamed Salum Nahdi V Elizabeth Jeremiah**, Civil Reference No. 14 of 2017 (All unreported) insisted on his prayer for an extension of time constructed on illegality to allow him a platform to address the situation.

In reply, Mr. Emmanuel Sululu advocate for the respondent prayed to adopt the respondent's counter-affidavit as part of his submissions. He in addition thereto suggested that the trial tribunals' proceedings were regular for the *ex-parte* hearing was conducted after failure by the respondent (now applicant) to justify adjournment. He said, after all the *ex-parte* hearing proceeded in the presence of one MS Recho advocate

who held the brief of Mr. Lugundiga Advocate and the judgment date that is 17/5/2021 was fixed in her presence hence there was no error. He thus invited the court to find that Chausiku's position is irrelevant in the circumstances of this case.

Mr. Sululu said, the insertion of the words Malili Ward Tribunal in the trial tribunals' decision is a mere clerical error that occasioned no injustice to the parties. He further submitted that, in an application for an extension of time applicant must account for each day of the delay. The decision by the DLHT was delivered on 17/5/2021 and this application was filed on 9/2/2022 after inordinate period of nine (9) months without clarification. This point was supported by case of **Dr. Ally Shabhay V Tanga Bohara Jamat (1997)** TLR 305 and **Caritas Kigoma V KG. DWSI LTD** (2003) TLR,42. The respondent's counsel concluded that the applicant's application has exhibited no sufficient reasons warranting the court to allow the prayer sought in this application.

Having carefully gone through the submissions of both parties and their respective affidavits, one important issue for determination is whether the Applicant has good cause for the delay. Section 41(2) of the Land Disputes Court Act on which this application is premised reads:

*"(2) An appeal under subsection (1) **may be lodged within forty-five days after the date of the decision or order:** Provided that, **the High Court may, for the good cause,** extend the time for filing an appeal either before or after the expiration of such period of forty five days."* (bold is mine)

It is clear from the quoted provision above that an appeal from the DLHT must be lodged within 45 days. And in case of delay, an extension of time

is only granted upon good cause. The requirement of "sufficient cause" has been emphasized by the Court in numerous decisions, for examples **Ludger Benard Nyoni V National Housing Corporation**, Civil Application No. 372/01 of 2018 (Unreported) where the court held:

*"Condonation is not to be had merely for the asking; a full detailed and accurate account of causes of the delay and its effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility" (Emphasis added).*

It is also settled that the sufficient cause depends on the circumstances of each case, the guiding factors being the length of the delay, degree of the delay; diligence on the party of the applicant, and the existence of a point of law of sufficient importance such as the illegality of the decision sought to be appealed against. See **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010 (unreported).

The applicant's application is premised on the illegalities pointed out in paragraph 7 of his affidavit as the sole grounds for the delay. I am aware of the settled rule that a claim of the illegality of the challenged decision constitutes sufficient reason for the extension of time. This is the position in **VIP Engineering and Marketing Limited and Two Others VS. Citibank Tanzania Limited**, Consolidated Civil Reference No.6, 7, and 8 of 2006 (unreported) where it was held:

*"It is settled law that a claim of the illegality of the challenged decision constitutes sufficient reason for extension of time*

*under Rule 8 (now Rule 10) of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay”.*

In **Principal Secretary, Ministry of Defence and National Service** (Supra) also the court said:

*"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measure to put the matter and the rights of the record”*

As rightly observed by the respondent counsel, not every illegality pointed out by a party forms the basis for the enlargement of time. The prescription of the valid and acceptable illegality for purposes of extension of time was given in **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra) where the Court held; -

*"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 that in VALAMBIA'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 an 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.” (Emphasis added)*

I had time to go through the DLHT proceedings in Land Application No 83 of 2020, its decision, and the claimed illegalities. Since there are points of illegalities some admitted by the respondent’s counsel, I think the applicant’s application is worth granting to give the parties a platform where the points can be considered.

As a result, this application is granted, and the intended appeal is to be filed within a period of thirty (30) days from the date of delivery of this Ruling. No order as to costs. Order accordingly

**Dated at Shinyanga this 29<sup>th</sup> day of July 2022**

  
**E.Y. MKWIZU**  
**JUDGE**  
**29/7/2022**