

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. LAND APPLICATION NO. 1 OF 2022

*(Arising from the District Land and Housing Tribunal for Rungwe in Land Appeal No. 50 of 2014, Originated in Land Case No. 5 of 2015 in Kabula Ward Tribunal)*

**SAID MWAKIBASA.....APPLICANT**

**VERSUS**

**OMALI KASITO.....RESPONDENT**

**RULING**

*Date of Last Order: 20.07.2022*

*Date of Ruling: 17.08.2022*

**Ebrahim, J.**

After almost six (6) years of the decision made by the District Land and Housing Tribunal for Rungwe in Land Appeal No. 50 of 2014 which was delivered on 16/02/2016, the applicant **SAID MWAKIBASA** has instituted the instant application seeking for this court to grant an extension of time to appeal to this Court out of time. The application was made under **section 38 (1) of the Land Disputes Act, Cap. 216 R.E 2019.** It was supported by two affidavits; one sworn by the applicant and another by Mr. Daud Mwamakamba, learned advocate.

In brief, the record reveals that the applicant herein was a complainant in Nkunga Ward Tribunal vide Land case No. 5 of 2015. He claimed that the Respondent, OMALI KASITO had invaded his piece of land. Having heard both parties' evidence, the Ward Tribunal found in favour of the respondent on the reason that the Applicant failed to establish his case. Dissatisfied, the Applicant appealed to the District Land and Housing Tribunal for Rungwe vide Land Appeal No. 50 of 2015 (which its judgment was mistakenly written as Land Appeal No. 50 of 2014). In that appeal the Applicant lost again. He is now in this court seeking to challenge that decision if granted an extension of time to appeal out time.

At the hearing, the Applicant was represented by Mr. Simon Mwakolo, learned advocate whereas the Respondent was advocated by Mr. Justinian Mushokorwa. The application was disposed of by way of written submissions.

Submitting in support of the application, advocate Mwakolo, apart from narrating the background of the matter stated that the Applicant's reasons for extension of time are illegalities pointed out under paragraph 12 of the applicant's affidavit. Those are as follows:

- (a) Both the trial tribunal and the appellate tribunal granted ownership of the disputed land without showing location, that is without definite boundaries between the parties.
- (b) Illegality in the judgment of the appellate tribunal indicating that the case originated from Kabula Ward Tribunal instead of Nkunga ward tribunal both in land case No. 5 of 2015.
- (c) The proceedings of the Nkunga Ward Tribunal did not show when the proceedings commenced.
- (d) The proceedings of the mentioned Nkunga Ward tribunal did not indicate the quorum and genders issues(sic) of members who commenced and decided the dispute before the Ward Tribunal.
- (e) Illegality of land appeal No. 50 of 2014 indicating that it originated from Kabula Ward tribunal in land case No. 5 of 2015 which shows that the appeal was filed against the case which was not yet filed.

According to advocate Mwakolo when a point of illegality is raised, that amount to good cause in extending time. To substantiate his argument, he cited the cases of **Selina Chibago vs**

**Finahas Chibago**, Civil Application No. 182 "A" of 2007 Court of Appeal of Tanzania at Dar es Salaam, (unreported) and the **Principal Secretary, Ministry of Defence and National Service v. Devran Valambia** [1992] TLR 182. Advocate Mwakolo thus, prayed for this court to grant the application.

In reply, advocate Mushokorwa submitted that the Applicant has filed the present application after a lapse of about five (5) years and he has failed to advance any good reason for such long delay. He contended that the alleged illegalities raised by the Applicant are not, since the applicant's counsel in his submissions did not cite any law or decision of the court of records which supports the said illegalities. He further argued that the circumstances in the cited case of **Selina Chibago** (supra) are different from the matter at hand. Hence the case is irrelevant. Mr. Mushokorwa thus urged the court to dismiss the application with costs.

In his rejoinder, Mr. Mwakolo reiterated his submissions in chief. He added that Mr. Mushokorwa did not object the existence of the raised illegalities which means that he conceded to their presence on the face of record. He therefore insisted the previous prayers.

I have considered the rivalry submissions by the parties' counsel and the applicant's affidavit. Generally, granting or refusing the grant of extension of time is absolutely at the court's discretion. Nevertheless, the same has to be judiciously exercised upon sufficient cause being shown. See the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012 CAT (unreported).

The Applicant's reasons for grant of extension of time have been premised at the alleged illegalities in the decision of the Ward Tribunal and the District Tribunal. In the premise, the issue for determination is whether the said illegalities form sufficient cause to warrant this application?

Admittedly, the position of the law as stated by advocate Mwakolo and as underscored by the Court of Appeal in decisions **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported); **Devran Valambia** (supra); **Selina Chibago** (supra); and **Mohamed Salum Nahd vs Elizabeth Jeremiah**, Civil Reference No. 14 of 2017 CAT at Dar es Salaam (unreported) to mention but a few, that where a point at issue is illegality, the same constitutes a sufficient reason for extending

time so that the pointed illegality can be cured. On the other hand, I agree with advocate Mushokorwa that, not every allegation of illegality constitutes a sufficient reason for extending time. See **Tanzania Harbour Authority v. Mohamed R. Mohamed** [2003] TLR. 76 (CAT). It is my position therefore that, for an allegation of illegality to constitute a sufficient reason shall depend on the factor as to whether the alleged illegality is on the face of the record (eg. Jurisdiction) and shall render the whole decision and proceedings illegal. However, not that its illegality shall be ascertained after submission of arguments.

In the application at hand I state at the outset that the alleged illegalities are not the ones to prompt this court to extend time as they are not straight and on the face of the record. For example, the allegation that the judgment of the District Tribunal was titled that the appeal originated in the Kabula Ward Tribunal instead of Nkunga Ward Tribunal in my view it is not an illegality in the eye of law like the illegality of jurisdiction. Besides it could be termed as clerical error and cured. The same applies to the rest of the alleged illegalities such as non-indication of the genders of the members in the coram of the Ward Tribunal as it would require

further scrutiny of the proceedings and the court decision as to whether it occasioned any injustice to either party.

Moreover, it is my opinion that the delay of this application i.e about six years is inordinate. Considering that the impugned judgment was delivered on 16.02.2016 while the application was filed in this court on 06/01/2022. The Applicant was supposed to raise a serious illegality which would be clearly on the face of record and in the eyes of law that, indeed, it requires the attention of the Higher Court so as to be cured. Nevertheless, considering such hopeless delay with the alleged illegalities, granting of the application, would defeat the objective of the law of limitation in ensuring that matters come to finality. The Court of Appeal of Tanzania in the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 at Dar es Salaam (unreported) had this to say:

*"The very object of the law of limitation would be defeated for, as C. K. Takwani writes in **CIVIL PROCEDURE, With Limitation Act, 1963**, 7th Edition, Eastern Book Company, at page 782:*

*"Statutes on limitation are based on two well-known legal maxims:*

- (i) The interest of the State requires that there should be an end to litigation (**interest reipublicae ut sit finis litium**).*

- (ii) *The law assists the vigilant and not one who sleeps over his rights (Vigilantibus non dormientibus jura-subveniunt)".*

In the above statement, though the Court of Appeal was not dealing with an application for extension of time like the one at hand, the purpose of the law of limitation given above applies in every situation. Again, as I had once underscored in the case of **Donard Asiliya vs Nelson Nsalamba**, Misc. Land Application No. 98 of 2021 HCT at Mbeya (unreported) that:

*"..... the Applicant has delayed for three years. Allowing this application would mean opening a floodgate for the negligent party like the Applicant, who opted to stay on his right for a long period then decide to come to court and say that they intend to challenge the decision on the illegality. This would not only lead to endless litigations but also abuse of the court process."*

At the end result, the Applicant has been hopelessly late and mostly has not exhibited any sufficient reason for granting of the instant application. Therefore, I dismiss the application with costs.

Ordered accordingly.

**Mbeya**  
**17.08.2022**



  
**R.A. Ebrahim**  
**JUDGE**



**Date:** 17.08.2022.

**Coram:** Hon. A.P. Scout, Ag-DR.

**Applicant:** Present.

**For the Applicant:** Mr. Mwakolo, Advocate.

**Respondent:** Present.

**For the Respondent:**

**B/C:** Patrick Nundwe.

**Mr. Mwakolo Advocate** for the Applicant who is present and the respondent is also present. The matter is coming on for Ruling. We are ready to proceed.

**Respondent:** I am ready too.

**Court:** Ruling is delivered in the presence of Mr. S. Mwakolo Advocate for the applicant, applicant, respondent and Court Clerk in Chamber Court on 17/08/2022.



**A.P. Scout**

**Ag-Deputy Registrar**

**17.08.2022**