

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

**(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**MISC. LAND APPLICATION NO. 62 OF 2022**

*(Arising from the District Land and Housing Tribunal for Karagwe at Kayanga in Land Case No. 20 of 2016)*

**THE REGISTERED TRUSTEES OF BAPTIST**

**CHURCH OF TANZANIA..... APPLICANT**

**VERSUS**

**ALLI CHAMANI..... RESPONDENT**

**RULING**

***Date of Ruling: 16.08.2022***

***Mwenda J,***

This application is for extension of time to register an appeal in this court to challenge the decision of the District Land and Housing Tribunal for Karagwe at Kayanga in Application No. 20 of 2016 delivered on 10<sup>th</sup> November 2017. It is brought under section 41(2) of the Land Dispute Court Act [CAP 216 R.E 2019] and section 14(1) of the Law of Limitation Act, [Cap 89 RE 2019].

When this application was scheduled for hearing, the applicant was represented by Mr. Raymond Laurent, learned counsel while the respondent appeared in person without legal representation.

During his submission in chief Mr. Raymond informed the court that the reasons for the delay are found in the applicant's affidavit. He thus prayed the same to be adopted as part of his oral submissions.

The learned counsel begun his submission by stating that, there is no dispute that there has been a dispute between the parties since 2003 in Civil Case No. 3 of 2003 before Karagwe District Court. He submitted that since 2003 the respondent sued the Pastor of Baptist Church of Omurushaka, the case which is still pending before this court over the same subject matter.

He further stated that the respondent having discovered that he sued a wrong party in the above case, he filed another case against the applicant in Land Case No. 20 of 2016 before the District Land and Housing Tribunal for Karagwe. He said this case was heard ex-parte but its proceedings is tainted with anomalies and illegalities which made the applicant seek extension of time to file appeal out of time to challenge the same.

He submitted that, after the said ex-parte judgment, on 06/02/2018 the applicant filed Application No. 20 of 2016 seeking to set it aside. He further submitted that following the filing of that application, the respondent wrote a letter beseeching the Hon. Chairman to disqualify himself from handling the same and having received the said letter (on 11/1/2019), the Hon. Chairman wrote a letter to the

Registrar requesting the Deputy Registrar to re-assign the said file before another chairman.

He went on submitting that when parties appeared before the District Land and Housing Tribunal on 22/2/2019, the Applicant's advocate asked the Hon. Chairman (who took over the matter) as whether he was duly instructed to handle the said matter. He said at page 25 of the typed proceedings the Hon. Chairman replied in that he had no such instructions. He said, from that date, the parties went on attending before District Land and Housing Tribunal while the matter stood for mention.

The learned counsel further submitted that on 22/9/2020, the prayer to set aside ex-parte judgment was dismissed for want of prosecution while the Chairman did not state if he had instructions to take over the matter. He further submitted that, after the said dismissal, the respondent filed execution on the said ex-parte judgment which was registered with the same number i.e. Application No.20 of 2016.

The learned counsel submitted further that, by the time application for execution was filed, the time to file an appeal had already expired hence they preferred to file the present application seeking extension of time to lodge an appeal out of time.

He went on submitting that the impugned ex-parte judgment is tainted with illegalities and its decree is not executable. According to him, illegalities is good cause for extension of time.

The learned counsel further submitted that the judgment of the District Land and Housing Tribunal is also tainted with illegalities for lack of opinion of assessors and reasons for change of chairmen. He also said that the issues framed were not framed by the parties and agreed by the court. He said they intend to file their intended appeal so as to rectify the said anomalies which vitiate the whole proceedings. To support his argument, he cited section 23 of the Land Disputes Courts Act [Cap 216 R.E 2019], the case of KINONDONI MUNICIPAL COUNCIL VS. Q CONSULT LTD CIVIL APPEAL NO. 70 of 2016, and EMMANUEL OSHOSEMI MUNUO VS. NDEMACHI RUMISHECHI MASSAWE CIVIL APPEAL NO. 272 OF 2018. He concluded his submissions by stating that illegalities on the face of records constitute good cause for extension of time and in support thereof he cited the case of ALLY CHAMANI VS. DIONIZI KARWANI AND 2 OTHERS, LAND APPLICATION NO. 67 of 2020 and VIP ENGINEERING AND MARKETING LIMITED AND 2 OTHERS VS. TRI TELECOMMUNICATION (T) LTD, CONSOLIDATED CIVIL REFERENCES NO. 6, 7 and 8 of 2006. He then concluded his submissions by a prayer before the court to allow this application.

Responding to the submissions by the learned counsel for the applicant, Mr. Ali Chamani, prayed his counter affidavit to be adopted to form part of his oral

submissions. He stated that the affidavit is evidence and anything out of it is not evidence at all. He said at paragraph 2 of his counter affidavit he challenged Mr. Dioniz Karwani swearing as principal officer of the applicant. He further submitted that, the said Dioniz did not show if he is a member of the registered Trustee of the applicant. To support his argument, he cited the case of ILELA VILLAGE COUNCIL VS. ANSAAR MUSLIM YOUTH CENTER AND ANOTHER CIVIL APPEAL NO. 317 of 2019.

With regard to the purported illegality on the lower Tribunal records, the respondent submitted that the applicant in his affidavit, at paragraph 10 did not disclose such illegalities. He said the applicant was required to at least enlist them in his affidavit.

With regard to the case of ALLY CHAMANI (supra) cited by the learned counsel for applicant, the respondent submitted that it is distinguishable as in the said case illegality was enlisted in the applicant's affidavit as opposed to the present application where the applicant failed to do so.

The respondent concluded his submission in that, the applicant's affidavit is not sufficient to move the court to grant the applicant's prayer. He then prayed this application to be dismissed.

In rejoinder, the learned counsel for the applicant submitted that, the pillar of this application is not shaken by the respondent. He submitted that in the applicant's affidavit, i.e. at paragraph 1, Mr. Dioniz stated that he is a principal officer who

was dealing with this matter since 2003 and for that matter he is the right person to swear the affidavit.

With regard to the case of ILELA VILLAGE COUNCIL (SUPRA) cited by the respondent, the learned counsel submitted that the said case is distinguishable and cannot be applied in the present application.

He further rejoined in that, it is trite law that affidavit should not be argumentative and what is stated in it should be clarified in court. He thus prayed this application to be allowed.

I have gone through the submissions by both parties, it is clear that this court has discretion to grant or refuse applications for extension of time. However, such discretion has to be exercised judiciously and in accordance to the rule and principle of justice. The guiding principles in granting application for extension of time is that the applicant must demonstrate sufficient cause or reasons for the delay.

In a bid to define what good cause or sufficient reason is, the court in the case of LYAMUYA CONSTRUCTION COMPANY LTD VS BOARD OF TRUSTEE OF YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA CIVIL APPLICATION 2 OF 2010, propounded four principles for consideration by the court before exercising its discretion to grant or refuse extension of time, these are;

- a) The applicant must account for all the period of delay.

- b) The delay should not be inordinate.
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take and
- d) If the court feels that there are other sufficient reasons such as existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.

Guided by the foregoing legal position, the issue for determination in this application is whether the applicant advanced sufficient cause for the delay.

Through his submissions the applicant displayed illegality as one of reasons for extension of time. He stated that the proceedings of the District Land and Housing Tribunal is tainted with illegalities for lack of opinion of assessors, failure to advance reasons for the change of chairmen and the tribunal's act of dealing with the issues which were not framed by the parties and agreed by the court. Legally speaking a claim of illegality is the sufficient reason for extension of time. This position was stated in the case of ATTORNEY GENERAL V. TANZANIA PORTS AUTHORITY & ANOTHER, CIVIL APPLICATION NO. 87 OF 2016, where Court of Appeal held inter alia that:

*"It is a settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a*

*reasonable explanation has been given by the applicant under the rule to account for the delay”.*

Also, in the case of DIAMOND TRUST BANK TANZANIA BANK LTD V. IDRISA SHEHE MOHAMED, CIVIL APPEAL NO. 262 OF 2017, the Court at page 11 & 12 the court stated as follows that;

*"We wish to point out that, the Court cannot normally justifiably close its eyes on glaring illegality in any particular case because it has a duty of ensuring proper application of the laws by the subordinate's courts ...we think, the superior courts have the additional duty of ensuring proper application of the laws by the courts below... for the interest of justice, the Court has a duty to address a vivid illegality and that cannot justifiably close its eyes thereof". (Emphasis supplied).*

In the present application, I have revisited the records and noted existence of illegalities as were rightly stated by the learned counsel for the applicant. The records are clear that the lower Tribunal's proceedings are lacking opinion of assessors. Also, the change of Hon. Chairmen was effected without assigning reasons. Mr. Chamani while opposing this point was of the view that the applicant ought to have at least enlisted the said illegalities in the affidavit. He however



failed to state if the said illegalities do not exist. I have considered Mr. Chamani's argument but I tend to differ with him. This is because it is trite principle that a point of law can be raised at any time even if it is not raised in the grounds of appeal (or affidavit in our case). In the case of B. 9532 CPL. EDWARD MALIMA VS THE REPUBLIC CRIMINAL APPEAL NO. 15 OF 1989 the Court held inter alia that;

*"We are satisfied that it is elementary law that an appellate court is duty bound to take judicial notice of law relevant to the cases even if such matters are not raised in the notice of appeal or in the memorandum of appeal. This is so because such court is court of law and not a court of the parties."*

Therefore, since the learned counsel for the respondent is not disputing existence of the said illegalities and since this court is satisfied that they do exist then the same amounts to sufficient reason for extension of time.

Also Mr. Alli Chamani challenged Mr. Dionizi Karwani who swore an affidavit in capacity of the applicant's principal officer. He said the deponent is not registered trustee of the applicant. On his part Mr. Raymond was of the view that since Mr. Dionizi has been dealing with this matter, he is capable of swearing affidavit on behalf of the applicant. I have considered this point and came to an agreement with Mr. Raymond that the deponent is capable of swearing an affidavit on behalf

of the applicant since is versed with the facts of the matter. In the record of the District Land and Housing Tribunal, the deponent has appeared many times as a representative of the applicant and in no doubt, he is conversant with the facts surrounding this matter by virtue of Order XIX Rule 3 (1) of the Civil Procedure Code. Also see ALEX DOHO MASSAFE VS AG & 3 OTHERS, MISC. CIVIL CASE NO. 30 OF 2019 (unreported)

This application is thus allowed and the applicant is ordered to file his appeal within fourteen (14) days from the date of receipt of this ruling.

Each party shall bear their own costs.

It is so ordered.




  
A.Y. Mwenda  
**Judge**

16.08.2022

Ruling delivered in chamber under the seal of this court in the presence of Mr. Raymond Laurent, the learned counsel for the Applicant and in the absence of the Respondent.



  
A.Y. Mwenda  
**Judge**

16.08.2022