

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND CASE APPLICATION NO. 71 OF 2022

(Arising from the decision of the District Land and Housing Tribunal for Arusha Land Application No. 169 of 2016)

KENYATTA LOSINGO..... APPELLANT

VERSUS

JOSEPH LENGUJE LUKUMAY..... RESPONDENT

RULING

10th August & 30th September, 2022

TIGANGA, J.

This is an application for extension of time to file an appeal out of time. It has been brought in this court through section 41(2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019]. Through the chamber summons supported by an affidavit sworn by Christina Kimale, learned Advocate, the applicant sought the following orders:

- (a) That, this honourable court be pleased to extend time to the applicant to lodge an appeal against the decision made in Application No. 160 of 2016 decided by Arusha District Land and Housing Tribunal against his favour.
- (b) Cost of this application be in the cause.

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The factual background of the matter gathered from the record briefly stands as follows:

The applicant herein was the respondent in Land Application No 169 of 2016 before the District Land and Housing Tribunal for Arusha at Arusha herein referred to as "DLHT" in which the respondent herein was the applicant. Upon final scrutiny, the decision was given in favour of the respondent herein.

The dispute was about the landed property located at Kimelock hamlet in the village of Olgilai, in Kiutu Ward in Arusha Region. It is recognised by a customary right of occupancy No. 1 ARS/KIJ/24/081 issued in the year 2014.

The respondent claimed to have been purchased the said land in dispute on auction conducted by the Ward Executive Officer of the Ward of Oltoto (Now the Ward of Kiutu) in Arumeru District. That the land was sold in execution of the decree in Civil Case No. 128 of 2012 issued by the Primary Court of Arumeru at Maji ya Chai. It is also said that, the said land was bought at the price of 2,300,000/= coupled with extra costs of 850,000/=. It is alleged that, on 18th March, 2015 the applicant trespassed to the land and made some destructions and alterations thereat.



As above narrated, the application upon being heard on merit, it was held that the land is lawfully owned by the respondent. The applicant was aggrieved by both the decision and decree of DLHT and thought of appealing against them. Unfortunately, at the time he considered such avenue proper, he found himself tied up with the trap of law of limitation only requiring him to first pray for extension of time upon giving good cause before being allowed to continue with the avenue preferred.

The respondent protested this application by filing counter affidavit sworn by the respondent himself. The hearing of the matter was done through written submissions upon grant of leave by this court. Mrs. Christiana Kimale, Learned Advocated appeared for the applicant whereas the respondent appeared in person, unrepresented.

In support of the application, Mrs. Kimale adopted the contents of the affidavit sworn by Advocate Christina Y. Kimale together with the annexed judgment and decree were issued on 28th February, 2022 to form part of the submission.

In her submission, Ms. Kimale contended that, on 29th day of March, 2022 before elapse of appeal time the letter was written to the DLHT requesting for the copy of decree but it was not supplied on time



despite close follow up. That the decree was supplied on 22nd April, 2022 after the appeal period has expired. That, the application for extension of time was filed via application No. 50 of 2022 but later was withdrawn with a leave to refile due to some noticed defects. That, it was withdrawn on 13th June, 2022 and the applicant was given two days to refile another application, the order which was complied with.

Mrs. Kimale submitted that, it is pleased if this court considers that the delay to file an appeal was not caused by negligence or inaction but two reasons. One, that the DLHT failed to supply the copy of decree, a necessary document to institute an appeal in time. Two, the time was lost due to the withdrawing of the first application which was inadvertently filed in a wrong registry. Thus, those two reasons are technical delay. Substantiating her argument, she cited the case of **Alliance Insurance Corporation Limited versus Arusha Art Limited**, Civil Application No. 33 of 2015 which made reference to the case of **Benedict Mumelo versus Bank of Tanzania** (2006) E.A.L.R Vol. 1 which clarified that, extension of time can be granted under discretionary power of the court upon adducing sufficient cause for the delay.



Mrs. Kimale also argued that, the impugned judgment has illegality sufficient for making good cause to extend time for appeal. She cited the case of **Principal Secretary Ministry of Defence and National Service versus Devram Valambia** (1992) TLR 185.

Submitting against, the respondent argued that, the judgment was delivered on 28th February, 2022 in the presence of both parties. The copies were ready for collection on that date. The respondent argued that, the contention by the counsel for the applicant that, she started the process of being issued with copies on 29th March, 2022 approximately a month from the date when the judgment was delivered is negligence and sloppy.

On the issue of filing the application in a wrong registry which was consequently withdrawn, the respondent submitted that, the Advocate failed to diligently perform her duties as per Regulation 9(a) of the Advocates (Professional Conduct and Etiquette) Regulations, GN No. 118 of 2018. The respondent also cited the cases of **Yusufu Same and Another versus Hadija Yusufu**, Civil Application No. 1 of 2022 (Unreported), **Martha Daniel versus Peter Thomas Nko** (1992) TLR 359 (HC). The aim of citing these two cases was to rebut the contention of Mrs. Kimale on diligence as an advocate to file the application in a

wrong registry as an expert who is expected to know where the matter is to be filed.

In rejoinder, Mrs. Kimale reiterated her submission in the submission in chief. She added that, the argument by the applicant that the judgment was ready for collection on the same day it was delivered is false because the judgment itself was certified on 4th March, 2022.

On the ground of filing the application in a wrong registry, Mrs. Kimale's rejoinder was to the effect that, it does not imply failure to diligently make the application. She contended that, it was a human error which the blame should not be shifted to her. She therefore distinguished the cited case of **Yusufu Same and Another versus Hadija Yusufu** and **Martha Daniel versus Peter Thomas Nko** (supra) and GN No. 118 of 2018.

After going through both parties' submissions, I properly consider the issue for determination to be whether this application is founded.

As pointed out herein above, the reasons advanced by Mrs. Kimale for justifying this application are two. One, technical delay and two, illegality. I will start with the ground of illegality. It is now a settled principle of law in our legal jurisprudence that, in order for illegality to

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constitute good cause for extension of time, it must be apparent on the face of record. This principle was amplified in various authorities. For instance, in the case of **Elias Masija Nyang'oro and 2 Others versus Mwananchi Insurance Company Ltd**, Civil Application No. 552/16 of 2019 CAT at DSM (unreported) the Court observed that:

*"With respect, I wish to observe right away that having gone through the record, am not persuaded with the grounds of illegality raised by the applicants. The reason behind being that, the claimed illegality is not apparent on the face of record and therefore does not meet the settled threshold. (See **The Principal Secretary Ministry of Defence and National Service v. Devram Valambhia [1992] TLR 387**). Therefore, I find that, the points of illegality raised by the applicants do not constitutes good cause warranting extension of time sought."*

Also, in the case of **Finca (T) Limited and Another versus Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported) CAT at Iringa it was held that:

"It is, however, significant to note that the issue of consideration of illegality when determining whether or not to extend time, is well settled and it should be borne in mind that, in those cases were extension of

*time was granted upon being satisfied that there was illegality, the illegalities were explained. For instance, in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia [1992] TLR 185** the illegality alleged related to the applicant being denied an opportunity to be heard contrary to the rules of natural justice."*

Paragraph 12 of the affidavit sworn by Christina Y. Kimale which alleges illegality on the impugned decision of the DLHT states:

"12. That, it will be in the interest of justice for this court to grant this application on the fact that decision to be impugned suffers illegalities. A copy of intended memorandum of appeal annexed marked 'D' "

During submission Ms. Kimale in relation to the ground of illegality at page 2, the last paragraph said:

"However, apart from reasons stated herein, the impugned decision suffers illegality which the court has held several times that, where illegality has been raised (sic) court has to allow an application for extension of time to enable the illegality to be corrected. Facts in respect to existence of illegalities in decision intended to be appealed against are stated in annexure 'D'."

Reading the quotation, it is crystal clear that, Mrs. Kimale did not apparent state what she considers to be illegality in the impugned decision. Instead, she subjected this court to go to the intended petition of appeal in order to ransack the so-called illegality. As per the above cited authorities, this design of burdening the court to find illegality instead of herself, is not accepted and it cannot be cherished at all. The law requires the illegality complained of to be apparent on the face of record. Ms. Kimale did not even state what that illegality is. Therefore, this ground does not hold water in the eyes of the law to constitute good cause in warranting extension of time within which to file an appeal out of time.

Regarding the second ground of technical delay, it is on record that, the impugned judgment and decree were delivered on 28th February, 2022. This application was lodged in Court on 24th April, 2022. However, the exchequer receipt was issued by the DLHT on 20th April, 2022 justifying that the impugned decree was given to the applicant on that date though the respondent submitted that, the decree and judgment were issued on the same date when the judgment was delivered, which is on 28th February, 2022. Unfortunately, the respondent did not backup the argument in controversy. Therefore, I

will take into consideration that the date of issuing the decree is 20th April, 2022. Now, counting from 20th April, 2022 to when this application was filed in this court on 15th June, 2022 is about 55 days elapsed of which the applicant need account for each day of delay in accordance with the requirement of the law expressed in the case of **Lyamuya Construction Company Ltd versus Board of Registered trustee of Young Women Christian of Tanzania**, Civil Application No. 2 of 2010 (unreported). In this case the court among other principles set in order for the court to extend time within which to file the appeal out of time is accounting for each day of delay and that the delay should not be inordinate. The court said:

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:-

- (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 he intends to take.

(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

However, there is no dispute that before this application there was filed another Misc. Land Application vide No. 50 of 2022 which was withdrawn for being filed in a wrong registry. This application was filed on 24th April, 2022 and the withdrawal was made on 13th June 2022. If we count from the date the decree was served to the applicant by the DLHT which is 20th April, 2022 to 24th April, 2022 means that, the applicant delayed for at least four days.

Let me consider the days under which the application No. 50 of 2022 was in court up to the day it was withdrawn is a technical delay. In my view, the four days of which the applicant did not account for delay are not inordinate. Denying the applicant extension of time in such circumstances is as equal as sleeping under technicalities which saves nothing but misconception of law and justice. The applicant has been all

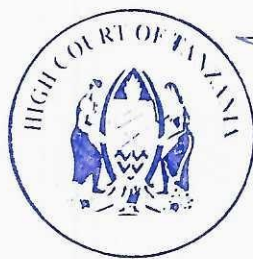


long making efforts in making sure that the tone is audible in legal auditorium.

I therefore must conclude that, the applicant has shown good cause to convince me that, there is a gist in this application, to warrant an extension of time. On that base, I hereby grant this application. The applicant is enjoined to file his appeal within 14 days from today this ruling is delivered. Cost to follow event.

It is accordingly ordered.

DATED at **ARUSHA** on the 30th day of September 2022.




J.C. TIGANGA

JUDGE