

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SUMBAWANGA
AT SUMBAWANGA
MISC. LAND APPLICATION NO. 19 OF 2020

*(Originated from Decision of the District Land and Housing Tribunal of Katavi District at
Mpanda in Land Appeal No. 45 of 2017)*

SILVERIUS S/O KOMBAAPPLICANT

VERSUS

LEONARD NKANA RESPONDENT

Date of last order: 13/12/2021

Date of Ruling: 20/01/2022

RULING

NDUNGURU, J.

The applicant one Silverius Komba has lodged this application seeking for extension of time within which to file his appeal out of time against the decision of the District Land and Housing Tribunal for Katavi of the Land Appeal No. 45 of 2017 delivered on 4th day of April 2018. The applicant is further praying for the costs of the application and any other order the court may deem just and fit to grant.

This application is brought under section 38(1) of the Land Disputes Court Act Cap 216. The application is supported by affidavit duly sworn by Mr. Mussa Lwila, the counsel for applicant. Opposing the application the respondent filed counter affidavit sworn by himself.

The reasons for this application are contained at paragraph 7 of the applicant's affidavit. Para 7 provides:

7: That the applicant contends that the impugned decision is tainted with a lot illegality and irregularity which need serious attention of the court, the said illegality includes:

- (i) That the proceedings of the trial tribunal does not accommodate legally and property assessor's opinion as per requirement of the law.
- (ii) That the appellate tribunal Chairman erred in law and fact in declaring the respondent as the lawful owner of the plot in dispute basing on the document which was not tendered in court.
- (iii) That the trial tribunal proceedings and the appellate tribunal are vitiated by lack of necessary party.

At paragraph 9 of the affidavit, the applicant states that allegation of illegality and irregularity against the decision intended to be challenged constitutes good cause for extension of time.

When the case was called upon for hearing, Mr. Mussa Lwila, learned advocate represented the applicant while the respondent appeared in person.

Submitting for application, Mr. Lwila advocate was very brief. He prayed the affidavit be adopted as part of his submission. In his submission the counsel told the court that the reasons for the application are contained in the affidavit, that is the presence of illegality in the decision of the trial tribunal. He referred para 7 (i-iii) of the affidavit.

Mr. Lwila was of the argument that there are three illegalities found in the decision of the trial tribunal. Further that the presence or allegation of irregularity or illegality is sufficient ground for extension of time. He fortified his argument by citing the case of **Frenk Ezekiel V. Maliselina Kalyoga**, Misc. Land Application No. 15 of 2019 High Court Sumbawanga Registry, and **Principle Secretary Ministry of Defence v. Devran**

Valambia (1992) TLR 189. He conclusively urged the application be granted .

The respondent being a layman and unrepresented had nothing substantial to submit. He rather prayed the court to dismiss the application for being devoid of merit. He told the court that the applicant had enough time to go through the judgment and appeal on time.

Mr. Lwila reiterated his submission in chief saying the respondent has not disputed the presence of illegality. He prayed application be granted

Having gone through the chamber summons and the submission of the parties, the point of determination is whether the application at hand is meritorious. The law on application for extension of time is trite that it is entirely the discretion of the court to grant or refuse it. That extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

On what amounts to sufficient cause was stated in the case of **Tanga Cement Company Limited V. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 CAT (Unreported). In the cited case the court said:

What amounts to sufficient cause has not been defined from the decided cases a number of factors have been taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay, lack of diligence on the part of the applicant”.

See: also **Dar es- salaam City council V. Jayantilal Rajani**, Civil Application No. 27 of 1987 (Unreported) and **Yusufu Same & Another V. Hadija Yusufu**, Civil Appeal No. 1 of 2002 CAT (unreported).

The applicant has raised the question of illegality tainted in the judgment intended to challenge as cause for this application. The question is whether illegality is a sufficient cause to warrant extension of time. In **Principal Secretary Ministry of Defence and National Service V. Devran Valambia** (1999) TLR 182. The Supreme Court of the land held illegality is a sufficient cause for granting extension of time. There followed by a forest of authorities to mention but a few are: **VIP Engineering and Marketing Limited and two others V. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (CAT) Unreported, **TanESCO V. Mufungo Leonard Majura and 15 Others**, Civil Application No 2016 and many others.

However, in the land mark case of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (Unreported). The emphasis was that the illegality raised must be on point of law which is that of sufficient importance, further the illegality must 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.

From the affidavit, the applicant has raised three illegalities found in decision subject of this application. The illegalities raised are contained at para 7 (i – iii) of the affidavit. The question is whether such illegalities meet the test stated in **Lyamuya Construction case** cited above.

To start with the first illegality raised, it be known that the trial tribunal in this case was Katuma Ward Tribunal. The question is whether there is legal requirement of assessors before a Ward Tribunal and that their opinions are to be accommodated. Upon my perusal of the Ward Tribunal Act No. 7 of 1985 and the Land Disputes Court Act, there is no such a legal requirement imposed to Ward Tribunal. Unfortunately enough the counsel never gave material and legal facts on that account during the hearing of the application.

As far as the 2nd (ii) illegality such an illegality to my view is not a point of law which is on the face of the record. It has to be discovered by a long process. The same with the third (iii) alleged illegality.

That being the position, I am of the firm view that the applicant has failed to establish a good and sufficient cause for this court to grant the application. In the premises, the application is hereby dismissed with costs.

It is so ordered.




D.B NDUNGURU

JUDGE

20/01/2022