

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPLICATION No. 22 OF 2022

(Arising from the Land Appeal No. 98 of 2018 of the District Land and Housing Tribunal of Mwanza a Mwanza, Originating from Mahina Ward Tribunal in Land Complaint No 163 of 2018.)

DAVID SHING'OMA----- APPLICANT

VERSUS

BALUYA NUMBU-----RESPONDENT

RULING

Last Order date: 20.10.2022

Ruling Date: 28.10.2022

M. MNYUKWA, J.

The applicant came to this court through a chamber summons for an order to extend time to file an appeal to this court out of time against the Decision of the District Land and Housing Tribunal for Mwanza at Mwanza (DLHT) in Land Appeal No. 98 of 2018 dated 19.11.2021. The application is preferred to this court under section 38 (1) of the Land Disputes Courts Act, Cap. 216 [Re: 2019] supported by the affidavit sworn by David Shing'oma, the applicant.



The matter is briefly that, the application emanates from the decision of the DLHT of Mwanza in Land Appeal No. 98 of 2018 which was dismissed with costs. In its origin, it was the respondent who filed a land complaint before the Ward Tribunal of Mahina claiming ownership of the suit land. After hearing both parties, the Ward Tribunal declare the respondent as the winner. Dissatisfied with the decision of the Ward Tribunal, the appellant filed his appeal to the DLHT claiming that he was not given the right to be heard as the matter was heard ex-parte. In its decision, the DLHT satisfied the matter was heard inter-parties before the Ward Tribunal of Mahina. Finally, the DLHT dismissed the appeal with costs.

Following his dissatisfaction with the decision of the DLHT, the applicant found himself to be out of time to approach this court to file his appeal and therefore he filed this application for an extension of time. In his affidavit, briefly, the applicant deponed that, he delayed to file his appeal within time as he was supplied with copies of the Proceedings and judgment from the DLHT after the expiration of sixty (60) days. He also depone that, he further delayed to file the appeal after getting the copies of the Proceedings and Judgement as he was looking for a lawyer. Lastly,



he deponed that, he seeks an extension of time as there was illegality in the decision of two lower tribunals.

The applicant's affidavit was strongly opposed by the respondent through a reply to the affidavit. He opposed the delay to be caused by requesting copies of the Proceedings and Judgement as the same lacks proof in the applicant's affidavit. On the issue of illegality, the respondent stated that there was no illegality which has been revealed by the applicant.

During the hearing of the Application, the applicant appeared in person, unrepresented while the respondent was represented by the learned counsel, Joseph Mange. The application was argued orally.

Being a layperson, the applicant did not have much to submit. He prayed for his affidavit to be adopted and form part of his submission. He briefly stated what he had deponed in his affidavit which is adapted to form part of his affidavit. His main reasons for delay are; he was not supplied with copies of the Proceedings and Judgement on time, he is a layman and therefore he spent a lot of time finding a lawyer and that there was illegality in the decision of the DLHT.

Responding, the counsel for the respondent prayed to adopt the contents of his affidavit to form part of his submission. He went on that,



granting an extension of time is the discretionary power of the court. However, that discretion must be exercised judiciously. He added that, for the application of the extension of time to succeed, the applicant has to give sufficient reason for his delay. He went on to attack the applicant's affidavit by averring that, the impugned Judgement sought to be challenged was delivered on 19/11/2021, and the applicant alleged that he was supplied with the copy of the Judgement out of time while there is no evidence on record to substantiate the same. The respondent's counsel finds it difficult to believe that the DLHT contributed to the delay of the applicant to be supplied with the copy of the Proceedings and Judgement as he viewed that the applicant was not diligent.

The counsel refers to the case of **Dar es Salaam City Council vs S. Group Security Co. Ltd**, Civil Application No. 234 of 2015 CAT at Dar es Salaam that, in the above case, the applicant demonstrates inaction and unqualified lack of diligence which is equivalent to our case at hand as the applicant failed to show diligence in pursuing his legal action. He further submitted that, the applicant failed to exhibit as to when he was supplied with a certified copy of Judgement as Annexure B attached in his application, is a mere receipt showing the date of payment on the request to be supplied with the copy of the Judgement.



The counsel for the respondent went on to attack the delay to file an appeal within time for the reason that, the applicant was looking for a lawyer as ignorance of the law is not a sufficient reason for extension of time. He referred to the case of **Hamimu Hamisi Totoro @ Zungu Pablo & 2 Others vs R**, Criminal Application No. 121/07 of 2018.

In his submission, the learned counsel for the respondent stated that, even if the applicant complains to be supplied with copies of the Judgment within time to enable him to file his application within time, he did not account for each day of delay after the expiration of 60 days to the time when he filed the present application. He stated that, it is the settled position of the law that, the applicant should count for each day of delay and that delay of even a single day should be accounted for. He supported his argument with the case of **Dar es Salaam City Council vs S. Group Security Co. Ltd** (supra) and the case of **Moto Matiko Mabanga vs Opher Energy PLC & 2 Others**, Civil Application No. 463 of 2017. He finalized his submission by praying the application to be dismissed with costs.

Rejoining, the applicant has just insisted that, there is illegality in the decision of the DLHT that cannot be left to stand.



Having gone through the applicant's application, the affidavit in reply filed by the respondent, the impugned Judgment sought to be challenged as well as the submissions of both parties, the central issue for consideration and determination is whether the application is merited.

As submitted by the learned counsel for the respondent, it is the settled position of the law that when it comes to granting an order for an extension of time to appeal, the court has the discretion to grant it. The discretion has to be exercised judiciously and normally based on the circumstance of each case on establishing that the delay was with a sufficient cause or else there was a point of illegality that impedes justice.

The discretionary power of the Court on granting an order for extension of time has been stated in the case of **Benedict Mumelo vs. Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held;

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

In the application at hand, the applicant raised the issue of illegality on the decision of both tribunals. The Ward Tribunal which heard and



determined the matter in the first instance and the DLHT which heard and determined the matter as the first appellate Tribunal. As illegality is based on the point of law, and as the applicant has raised it in his affidavit and submissions, even though he did not point out clearly the alleged illegality, I will first determine the point of illegality.

The law is settled that where illegality is raised as a ground for seeking an extension of time, such ground amounts to sufficient cause. The Court of Appeal in **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015 quoted with approval the case of **Principal Secretary Ministry of Defence and National Service vs Devram Valambia** [1991] T.L.R. 387 observed as follows when the issue of illegality was raised and it was held that: -

"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 measures to put the matter and the record right"

Going to the circumstances of this application, the applicant is applying for extension of time to appeal against the decision of the DLHT which dismissed its appeal with costs and claimed that, there is illegality



in the decision of both tribunals meaning the Ward Tribunal and that's why he wanted to lodge an appeal so as to address the said illegality. As I have earlier on indicated, the applicant did not clearly point out the alleged illegality. Upon going into the record, specifically the Judgment of the DLHT, I found the illegality apparent on the face of the record on page 5 of the Judgement in which there is a clear admission that the Judgment of the Ward Tribunal was not signed by the Members including the Chairman and the Secretary.

The law is settled under Order XX Rule 3 of the Civil procedure Code Cap 33 RE; 2019, which provides that: -

*"The judgment shall be written by, or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and **shall be dated and signed by such presiding judge or magistrate...**"*

After the DLHT chairman noticed the legal defects, he turn a blind eye and proceeded as the part of the Judgement of the DLHT is captured hereunder:

"Hata hivyo ni vyema sana kusema kuwa nakubaliana na maoni ya wajumbe wa Baraza hili ingawa ninatofautiana kidogo na Mzee Cheneko F, kwani sababu aliyoweza kuibua



ya wajumbe kutoweka Saini sahihi zao katika Hukumu ya Baraza la Kata Mahina n ahata mwenyekiti na katibu pia.

Nimejaribu kuangalia kwa umakini na kuiona kwamba jambo hili halikuwa tatizo katika rufaa hii na hivyo wahusika hawakuweza kuliongelea hivyo hata mimi sipaswi kuamua juu ya hilo.”

From the above point of reasoning of the Chairperson of the DLHT, it is clear that the Chairperson had noted that the Judgement of the Ward Tribunal was not signed by the members and he left that anomaly to stand for the reason that the same was not raised and argued by the parties. It is my observation that the Chairperson of the DLHT was aware of the legal issue raised by one of the assessors.

I am mindful of the settled position of the law that, where there is an allegation of illegality, it is important for the Court to grant the applicant the extension of time so that the alleged illegality can be considered by the Court as it was stated in the case of **Attorney General v Mkongo Building and Civil Works Contractors Ltd & Another**, Civil Application No. 266/16 of 2019.

It is also a settled position of the law that, a point of illegality sought to be challenged by the party should be apparent on the face of the record. In the case of **Omary Ally Nyamalege & 2 Others v Mwanza**



Engineering Works, Civil Application No 94/08 of 2017 when quoted with approval the case of **Lyamuya Construction Co. Ltd** (supra) stated that: -

"... Such point of law must be of sufficient importance and I would add that it must be apparent on the face of the record, such as the question of jurisdiction not that one would be discovered by long argument or process."

It is further the settled position of the law that, if there is a point of alleged illegality, by itself constitutes sufficient cause to grant an extension of time even if the applicant is out of time as there is no other option but to grant an extension of time. (See the case **Kashinde Machibya v Hafidhi Said**, Civil Application No 48 of 2009).

In view of the fact that there is an alleged illegality which is apparent on the face of the record and conceded by the DLHT, I find it appropriate to allow the application based on this point so that the issue may be considered as my mandate in this application is to determine an application for extension of time.

To that end, and as it is settled that illegality alone is a ground sufficient to extend time, I proceed to allow the application by granting the applicant 30 days from today to present his appeal before this court. I make no orders as to costs.



Order accordingly.




M.MNYUKWA
JUDGE
28/10/2022

Court: Ruling delivered in the presence of the parties.


M.MNYUKWA
JUDGE
28/10/2022