

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA DISTRICT REGISTRY]

AT ARUSHA

MISC. LAND APPLICATION No. 47 OF 2022

(C/F Arusha District Land and Housing Tribunal of Arusha Application No. 24 of 2020)

SAID HASSAN.....APPLICANT

VERSUS

TUMAINI MATHIAS NJAU..... RESPONDENT


RULING

13th September & 31st October 2022

TIGANGA, J.

In this application, the applicant filed and moved this court seeking for extension of time to file an appeal against the decision of Arusha District Land and Housing Tribunal in Land Application No. 24 of 2020. He moved the court by way of chamber summons filed under section 38(1) of the Land Disputes Court's Act, [Cap 216 R.E 2019] and it was supported by an affidavit sworn by the applicant in which the grounds of the application and reasons for delay were stated.

The application was opposed by the respondent sworn a counter affidavit in which he disputed almost every fact deposed in the affidavit. At



the request of the parties, the court ordered the hearing to be by way of written submission. Mr. Lobulu Osujaki, learned Counsel for the applicant submitted that, on 27th October 2021 the judgment was delivered by Hon. G. Kagaruki and it was in favour of the applicant who is the Respondent herein. Following that decision, the applicant herein was dissatisfied with such decision and desired to appeal against it. However, despite that desire from the inception, he could not do so within the prescribed time the reason being that, on the day the matter was scheduled for judgment, the applicant attended before the tribunal but the case was not called for judgment.

Also that, despite several follow ups to the tribunal, the applicant did not succeed to know the date when the judgment was scheduled for delivery or if the same had already been delivered. He did not get informed until when the applicant was served with the summons to appear before the tribunal to defend the application for bill of cost as per para 5 and 6 of the applicant's affidavit.

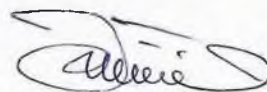
It was further his submission that, the other reason is that the trial tribunal judgment is full of illegalities and irregularities. On that basis he was of the firm view that, the applicant has an arguable appeal for there are

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illegalities and irregularities which require rectification of in the judgment of the trial tribunal for the interest of justice.

He further submitted that, the illegalities embedded in the decision of the trial tribunal in Application No. 24 of 2020 which he wishes to address in appellate stage is that, the tribunal erred in treating the applicant therein as the owner of the suit property and to order the same to pay cost while he stated clearly that, he is not the owner of the disputed property but a mere invitee. The applicant herein categorically stated in his defense that, he does not have interests in the disputed land rather than being a mere invitee on the last paragraph of page 4 and at the 9th to 12th paragraph at page 5 of the judgment, the trial tribunal observe the facts but unfortunately reached into a wrong decision.

He further submitted that, the law has exonerated an invitee from suit for recovery of land. That the invitee being not the owner of the land cannot sue or be sued on the possession of the land. He further submitted that, the decision of the trial tribunal to treat the applicant as the owner of the disputed property and granting the cost to the applicant is improper and illegal, as the invitee is not the owner but merely a stranger who cannot be impleaded in recovery of land. He further submitted that, the order of the

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trial tribunal for the costs and ongoing bill of costs arising out of the same application cannot be rectified if the applicant herein is denied an extension of time to appeal before this court so as to address the illegality occasioning grievous injustice on his part.

Therefore, the counsel lastly implored the court to grant the prayer in order the legality of the impugned judgment be corrected.

Counteracting the submission in chief, Mr. Ephraim Philemon Kisanga, learned counsel for the respondent submitted that, as a general rule, the law avails discretionary power to the court to do so to file an application before or after expiry of the period of limitation. However, for the court to use its discretion to do so the applicant must clearly indicate sufficient reasons in his affidavit including accounting for each day of the delay.

In his view, the applicant did not account for each day of delay or establish any sufficient cause for his delay for this court to allow him to file the appeal out of time. He argued that, the applicant delayed for more than 124 days which shows that, he had no intention to institute the appeal and neither in the affidavit nor in the submissions, the applicant has shown the reasons for



his delay. In his view, he said all arguments in applicants submission and paragraph 5 of the applicants affidavit are an afterthought and meritless.

He further submitted with regard to the ground of illegality that in order for it to be a good ground for extension of time as it can be ascertained in various precedents, the point of law must be of sufficient importance. He concluded his submission by stating that, the raised illegality is meritless, and the applicant has failed to account for the whole period of delay, hence the application should suffer the fate of dismissal with costs.

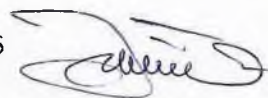
Reading between lines, the affidavit and counter affidavit as well as the submissions by the parties, one issue can be framed to be determined by the Court, which is whether this application constitutes good causes for extension of time.

It should be noted that, under section 38 (1) of the Land Disputes Courts Act (Supra), the High Court may extend time only when there is **good cause shown**. The term good cause has not been defined by the statutes, that is, sections 14 of the Law of Limitation Act (Supra) and section 38 of the Land Disputes Court's Act (Supra). However, a Plethora of case laws have defined what it in tails. One of the famous case in which the term was

defined is the case of **Lyamuya Construction Company Limited vs The Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2/2010 CAT (Unreported)

- i. The applicant must account for all the days or period of delay,
- ii. The delay should not be inordinate,
- iii. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.
- iv. If the court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance such as illegality on points of law, Illegality of the decision Sought to be challenged.

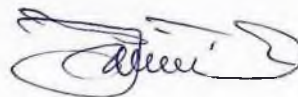
On the length of delay, it is clear on record that the applicant's period of delay is 124 days. But there is nowhere the applicant has managed to account for the whole period of delay be it in submission or affidavit filed in support of the application. The facts adduced by the applicant at paragraphs 4 and 5 of the affidavit which are intending to establish the illegality of the decision Sought to be challenged are in my view falling short of point of law



worthy a name. They are merely factual issues and more of a ground of appeal than being the point of law which can constitute illegality.

With regard to the 5th paragraph on the judgment being on 27th November 2021, and that he attended the court on the said date but he was informed to attend on the next date for judgment, the applicant said that to know that the judgment had already been delivered when he was served with bill of costs scheduled for mention on the 17th February 2022, that is when when he realized that, the case ended in favour of the applicant in the District Land and Housing Tribunal.

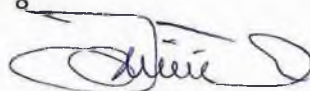
He further stated to have been supplied with the copy of judgment on 10th of February 2022 and come to know that the judgment was delivered on 27th October 2020 in his absence in my settled opinion I find the facts at paragraph 4 and 5 lacking merit as they do not show on how the alleged acts affected the applicant in filing the appeal but also as he has stated that he was informed that instead of delivering judgment on the 27th November 2021 the judgment was to be delivered on the next date, but he did not say as to what happened on the following date when he appeared in the tribunal. For these reasons, the applicant has failed to account for the whole period of delay.



Regarding the ground of illegality of the decision, I would like to be guided by the decision of the Court of Appeal in the case of **Lyamuya Construction Company Limited vrs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, (supra) in which it was held in elaboration that;

*"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view be said that in VALAMBHIA's case, the Court meant to draw a general rule that, every applicant who demonstrates that his intended appeal raises points of law should as of right be granted extension of time if he applies for one. The Court there emphasized that, such point of law must be that '**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 one that would be discovered by long drawn argument or process.**"*

On the issue of illegality, it is my opinion that it is of more evidential support rather than being apparent on the face of record. The question as to whether the applicant is the owner of the suit property can be clearly ascertained by long drawn process which is not within spirit of illegality being a good course for extension of time.

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In the upshot, this application for the extension of time is devoid of merits, it is hereby dismissed with costs.

It is accordingly Ordered.

DATED at **ARUSHA** on this 31st day of October 2022.



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J.C. TIGANGA

JUDGE.