

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

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**LAND APPEAL NO. 50 OF 2022**

*(Arising from the decision of District Land and Housing Tribunal in Land  
Application No. 1043 of 2021 of Mara at Musoma)*

**NYAKAMELA MAGOTI..... APPELLANT**

**VERSUS**

**MADARAKA MASANJA..... RESPONDENT**

**JUDGEMENT**

*25<sup>th</sup> & 28<sup>th</sup> October, 2022.*

**M. L. KOMBA, J.:**

This appeal traces its root in the decision of Village Council, Application No. 8 of 2013 where parties in this appeal were querying over a piece of land, followed by an appeal to Ward Tribunal where, the Ward Tribunal determines such appeal and decide in favor of the appellant (who is the respondent in this appeal). Dissatisfied on how the Ward Tribunal accepted and entertain the matter, while knowing he is out of time to file an appeal, appellant lodged an application for enlargement of time so that the issue of jurisdiction of ward tribunal can be determine. Appellant lost his application hence this appeal.

On the date of hearing this appeal, Ms. Suzana Jacob Advocate appeared for appellant while Mr. Baraka Makowe Advocate represented respondent. Ms. Suzana said the appellant did not agree with the decision of the District Land and Housing Tribunal (DLHT) and challenge it with one ground of illegality. She submitted that the illegality is one reason for higher Courts to allow application for extension of time and that the DLHT erred in denial the applicant application which was sent for illegality. She further said Ward Tribunal of Nansimo heard the appeal from Makwa Village, appeal No. 8 of 2013 without having jurisdiction to do that. In support she referred this court to the HC Dodoma in Land application 105/2013 between **John Madoshi Vs. Kangwa Mashalia** Misc. Land Case App. No. 105/2013 at page 4 where the Judge ruled on that issue.

Ms. Suzana further presented that it is practice that application for extension of time if involves illegality the reason is enough for the Court to allow and grant time for determining application so that the illegality be determined in appeal as was decided by CA in Arusha Application No. 6 of 2016 between **Alunaben Chagami Mistry vs. Nausha Mohamed Hussen** and 30 others at page 12. She reminded that this court is bounded by decisions of the CAT and pray her prayer to be allowed with costs.

In objecting the application Mr. Makowe complained how can someone stay idle for six (6) years and when another part execute decree then the other one awake and say there is legal issue to be considered by this court. He said that the applicant was idle for six (6) years and beg the court to consider the decision in **Abdalah Hamis Abdalah vs. Zagalea Rajabu** Misc. Civil Application 168/2018 Mwanza Registrar (unreported) at page 8 that extension of time is a matter of equity and that one must have clean hand to claim it and refer the **Lyamuya Construction Company Limited v. the Board of Trustees of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010 (unreported) in the issue of accounting the period of delay for six years. He further said accounting for days of delay is condition precedent given by Court of Appeal in Civil Application 44/08 of 2017 between **Elfuazi Nyatega and 3 others Vs. Caspian Minning Limited** (unreported). Mr. Makowe was of the position that, there might be a good cause in need, that illegality must be an issue but must be coupled with good cause of delay. He said the appeal intends to prevent the execution proceedings and prayed for dismissal with costs.

When given time to rejoin her submission, Ms. Suzana said it is a well established culture that illegality is enough reason for the Court to grant extension of time as was in the case of **Alunaben (supra)** and pray the court to allow this appeal with costs.

I will now consider the ground of appeal in relation to illegality which is the only ground in this appeal. I am mindful of the fact that I am not supposed to dig much on the same, but only to consider as to whether the same constitute good cause to this appeal or otherwise. In her submission, the Ms. Suzana contended that, the Ward Tribunal of Nasimo heard the appeal from Makwa village Appeal No. 8 of 2013 without having jurisdiction to do so, according to her that was illegal.

Let us look on what the law provides. The provision of section 9 of Land Disputes Courts Act [Cap 216] provides that;

*'9. Where the parties to the dispute before the Village Land Council are not satisfied with the decision of the Council, the dispute in question shall be referred to the Ward Tribunal in accordance with section 62 of the Village Land Act'*

Meanwhile the Village Land Act, Cap 114 provides that;

*'62. (1) Where the parties or any of them do not accept the conclusions of any mediation into a dispute or wish to cease to make use of the services of the village land council, they may refer the dispute to a court having jurisdiction over the subject matter of the dispute.'*

In both cited provisions of law, the word used is that the party shall refer the matter to court having jurisdiction but no appeal is introduced. As submitted by the Ms. Suzana that illegality alone is enough to grant time so that the appeal can determine such illegality and cite the **case of John Madoshi (supra)** where the court ruled on illegality to be so ground. For that matter, since the issue was mediated in the village council then the party ought to file a suit in the Ward Tribunal and not otherwise. This is clear error.

The Counsel for the respondent, Mr. Makowe was of the view that extension of time is a matter of equity and the one must have clean hands to claim the same. He said that applicant was idle for more than 6 years and decide to be active without counting for each day of his delay as decided in **Lyamuya case** (Supra) and the decision of Court of Appeal in **Alfazi Nyatega and 3 others** (Supra) that each day must be countered. He said there might be

illegality but the same must have a good cause of delay. I agree with counsel submission that delay was inordinate and there was no justification for each day of delay.

However, the applicant raised the issue of illegality. At this point I join hands with Ms. Suzana that it is a settled legal position that when there is allegation of illegality it is important to consider it. Mjasiri J.A in **Arunaben Chaggan Mistry (supra)** was of the same position while quoting the case of **Principal Secretary Ministry of Defence and National Service V. Devram Valambhia** [1992] T.L.R 185. where it was stated 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 is established, to take appropriate measures to put the matter and the record right.'*

In the **case of Arunaben** as cited earlier, the delay for the applicant was for four years and it was not countered for and was so inordinate. Relying on existence of illegality, the court agree to enlarge the time so that the applicant can file his appeal.

It is a settled principle of law that, an extension of time can be granted on the sole ground of illegality. This principle was propounded as said in the famous case of the **Principia Secretary, Minsitry of Defence and National Servive v. Devran Valambia** (supra) and the same has been consistently followed in the subsequent decisions of the Court including **VIP Engineering and Marketing Limited Vs Citibank Tanzania Limited** Consolidated Civil references No. 6, 7 and 8 Of 2006 ( Un reported), **Attorney General Vs Consolidated Holdings Corporation and another**, Civil Application No. 26 of 2014 and **Lyamuya Construction Company Limited v. the Board of Trustees of Young Women's Christian Association of Tanzania (supra)**. In the later case the principle was reinstated with clarifications on the scope of its application so that it would apply where the alleged illegality was apparent on the face of the record. In particular it was stated as follows:

*'In VALAM BHIA's case (supra) this Court held that a point of law of importance such as the legality of the decision sought to be challenged could constitute a sufficient reason for extension of time. But in that case, the errors of law, were clear on the face of the record. The High Court there had issued a garnishee order against the Government;*

*without hearing the applicant; which was contrary to both the Government Proceedings Rules, and the rules of natural justice. 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 a point of law should as of right be granted extension of time if he applied 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'.*

In the instant appeal, the appellant applied for extension of time so that the court can determine the issue of jurisdiction of the ward tribunal on alleged determination of appeal from what was done by the village council. This is an error on face of record which don't need a torch one to find as ruled in **Lyamuya case (supra)**. To leave this matter, if at all happened as alleged, will disturb our legal system which, if not dealt with, has the potential of occasioning a miscarriage of justice and abuse of our own legal system.



In view of the fact that the alleged illegality is on the issue of jurisdiction, in the circumstances, I allow this appeal, I set aside the order of District Land and Housing Tribunal, appellant is allowed to file an appeal in the District Land and Housing Tribunal for Mara within 30 days from this order.

No order as to costs.



*NK*  
**M. L. KOMBA**  
**JUDGE**

**28 October, 2022**

Judgement Delivered on before Mr. Makowe who was holding brief of Appellant and before Mr. Makowe for Respondent in my chamber at 09:30 am.

*NK*  
**M. L. KOMBA**  
**JUDGE**

**28 October, 2022**