

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
MISC. LAND APPLICATION NO. 16 OF 2022**

**1. YAZA INVESTMENT COMPANY LIMITED
2. AIDAN LUSEGA** }**APPLICANTS**

VERSUS

THEODORE BARTHOMEO SILINGE.....RESPONDENT

(From the decision of District Land and Housing Tribunal of Dodoma)

(O. Y. Mbega – Chairman)

Dated 21st September, 2021

In

Land Application No. 184 of 2018

RULING

03rd August & 04th November, 2022

MDEMU, J:.

The Applicants filed this application supported by the affidavit of Lilian Kimaro sworn on 15th February, 2022 praying for extension of time to appeal. The application is under the provisions of Section 41 (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019. The Respondent filed a counter affidavit deposed on 28th of March, 2022 opposing this application.

Brief facts of this application are that, the Respondent filed land application No. 184 of 2018 at Dodoma District Land and Housing Tribunal (the DLHT) against the Applicants. During trial, the Respondent testified that, the Applicants trespassed to the suit land located at Mpakani village at Kibaigwa. He purchased the same from one James Netalii Ndahani on 04th September, 2017 at the tune of Tshs. 20,700,000/= . The Applicants on their part testified that, James Ndahani mortgaged the suit land which was sold following his default to supply sunflower seeds nor repay back Tshs. 11,295,620/= as per the agreement he entered with first Applicant. The mortgaged property was then sold to the second Applicant.

The DLHT decided in favour of the Respondent holding that, in their agreements, parties agreed that upon failure of a part to adhere to the terms of the agreement; then the dispute will be subjected for mediation first. The Applicants seemed to be aggrieved by that decision and didn't file an appeal in time, hence this application. On 3rd of August, 2022, this application was heard. The Applicants were represented by Ms. Lilian Kimaro, learned Advocate whereas the Respondent was represented by Mr. Mbunda, learned Advocate as well.

To persuade this Court in this application, Ms. Lilian adopted the affidavits of Ms. Lilian Kimaro, Amir Malompa and Aidan Lusenga to be part of her submissions. She thereafter submitted that, after the

Applicants dissatisfied with the decision of the DLHT delivered on 21st September, 2021, made follow ups so that they be supplied with certified copies of decree and judgment. It was unsuccessful. They thus, wrote a letter requesting for the same. She added that, It was until the 28th of February, 2021 when they were supplied with the said copy but time to appeal had already expired on 5th of November, 2021.

She argued further to have been instructed on 10th February, 2022 to represent the Applicants and used four days to prepare the instant application and lodged the same. In her view, this is the first reason of the delay she advanced.

The other reasons advanced is in respect of the question of illegality. Firstly, for nonjoinder of necessary parties. On this she cited the case of **Juma B. Kadala vs. Laurent Mkonde [1983] T.L.R. 103**. Secondly, the chairman raised the issue of mediator *suo motto* and determined it without giving parties an opportunity to submit on it. She cited in this the case of **Tanzania Breweries Ltd vs. Herman Bildad Minja, Civil Application No. 11/2019** (unreported) to bolster her argument. On the above submissions, she said, the delay was not deliberate on the part of the Applicants. She thus prayed for time to be enlarged.

In reply, Mr. Mbunda adopted the Respondent's counter affidavit and submitted that, for the court to extend time, the Applicants must

adduce sufficient cause. In his view, the delay was negligence of the Applicants because the judgment and decree were certified on 16th of November, 2021 while this application was filed on 8th of March, 2021. To him, there was a delay of almost 180 days which have not been accounted for. Reasons advanced by the Applicants regarding follow ups and not supplying documents in time, he said not to be true since the documents were ready for collection. The Applicant also did not attach letters on follow-up of decree and judgment.

As to failure to have instructions in time from the Applicant; the learned counsel found to be insufficient reason which is evident on want of intention to challenge the DLHT's decision. He also faulted reasons advanced in paragraph 7 of the affidavit on financing advocates costs being not a sufficient cause. He cited the case of **FINCA (T) Limited vs. Kipondogolo Auction Mart vs. Boniface Mwalukisa, Civil Application No. 509/121 of 2019** (unreported) to support his argument.

As to illegalities, he submitted that, since the contract was tendered and received during trial, the DLHT properly interpreted it to require reference of the dispute to the mediator. He therefore prayed the application be dismissed with costs.

Having carefully gone through submissions of both parties, Applicants' affidavits and Respondent's counter affidavit; the issue to be determined here is whether the Applicants have shown good and sufficient cause for this Court to enlarge time to appeal.

In essence, a person applying for extension of time must demonstrate existence of good and sufficient cause for delay as prescribed in the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 that:-

"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order.

*Provided that, **the High Court may, for the good cause, extend the time** for filing an appeal either before or after the expiration of such period of forty-five days."* (emphasis supplied).

There is a chain of authorities to the effect that an application for extension of time may be granted upon the Applicant having shown good and sufficient cause. In the case of **Lyamuya Construction Company Limited vs. The Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported) regarding extension of time, the Court of Appeal issued the following guidelines: -

- 1. The Applicant must account for all the period of delay.*
- 2. The delay should not be inordinate.*
- 3. The Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.*
- 4. If the Court feels that there are sufficient reasons such as existence of a point of law of sufficient importance such as illegality of the decision ought to be challenged.*

Back to the application at hand, are there any good and sufficient cause shown by the Applicants for this Court to extend time? In this application, the Applicants in their affidavits deposed reasons for delay to be failure to have decree and judgment in time after delivery of judgment and also illegality in the impugned decision.

Looking at the affidavit and its annexures especially Annexure MPA, and MPA2 (letters by Applicant's Advocate firm requesting certified copies of judgment and decree) were written on 07th of October, 2021 and 07th of November, 2021. From 07th November, 2021 to 28th January, 2022 when certified copies were supplied to them, the Applicants didn't

account for those days. They accounted for the 1st day of February, 2022 when they sought advice from Ms. Lilian's firm, and thereafter they relaxed and woke up again on 10th of February, 2022 where they instructed again Ms. Lilian to file this application which was lodged on 15th of February, 2022.

Looking at those series of events, the Applicants didn't account for some days. It is now settled law that, each day of delay has to be accounted for as was stated in the case of **Dar es Salaam City Council vs. Group Security Co. Ltd, Civil Application No. 234 of 2015** (unreported).

That notwithstanding, the impugned decision subject to this application is tainted with illegalities as submitted by Ms. Lilian. The issue of non – joinder of parties is among the illegalities pleaded. It is settled law that, where there is illegality, an application for extension of time may be granted even in circumstances where the Applicant has failed to account for each day of the delay. This was an expression of the Court of Appeal in the case of **TANESCO vs. Mufongo Leonard Majura and 15 Others, Civil Application No. 230 of 2016** (unreported) that: -

“Notwithstanding the fact that the Applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that

there is a complaint of illegality in the decision intended to be impugned, suffices to move the Court to grant extension of time so that the alleged illegality can be addressed by the Court."

See also the case of **Paul Joma vs. Diesel and Auto Electric Service Ltd. and Two Others, Civil Application No. 54 of 2007** (unreported). Therefore, since the Applicants stated that the judgment of the DLHT is tainted with illegalities, time to file an appeal against such decision is hereby extended for a period of forty-five (45) days from the date hereof. No order as to costs.

It is so ordered.



Gerson J. Mdemu

JUDGE

04/11/2022

DATED at DODOMA this 04th day of November, 2022



Gerson J. Mdemu

JUDGE

04/11/2022