IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISCELLANEOUS LAND APPLICATION NO. 33 of 2022

(Arising from Land Application No. 104 of 2017 of Moshi District Land and Housing Tribunal)

EMANUELI VICENT .....1ST APPLICANT

EDWARD FREEMIN KIMARIO.....2ND APPLICANT

Versus

NESTORY EPIMAKI.....1ST RESEPONDENT

NOVATI EPIMAKI.....2ND RESPONDENT

RULING

27/10/2022 & 4/11/2022

SIMFUKWE, J.

The applicants herein have filed an application for extension of time within which to file an appeal out of time against the decision of District Land and Housing Tribunal (Trial Tribunal) in Land Application No. 104 of 2017 delivered on 27/4/2022. The application has been brought under **section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019** and any other provision of the laws.

It is supported by applicants' affidavits which were contested by joint counter affidavit of the respondents deponed by both respondents.

During the hearing of this application, the applicants was represented by Mr. Castro Shirima, the learned counsel while the respondents were unrepresented. The first respondent prayed the matter to be argued by way of written submissions. The prayer was granted and the parties filed their respective submissions timely.

In support of the application, Mr. Shirima submitted that in the affidavits of the applicants, particularly under paragraph 5,6,7,8 and 11 they have cited two grounds for delay which are sickness and illegality.

Supporting the ground of sickness, the learned counsel for the applicants submitted that, in his affidavit, the 1st applicant stated the dates on which he felt sick, hospitalized and medically discharged. Also, at paragraph 8 the 1st applicant has supplied a medical report indicating his sickness, the hospital and the medical officer who attended him. Mr. Shirima was of the view that they have demonstrated a good cause and sufficient reason for the delay to file the appeal out of time. That, they have gone further by showing how the sickness prevented the 1st applicant from prosecuting the intended appeal. Reference was made to the case of **Kapapa Kumpimbi vs Plant Manager Tanzania Breweries Ltd, Civil Application No. 6 of 2010,** CAT which was cited with approval in the case of **Maro Wambura vs Chacha Nyamahemba, Misc. Land Application No. 25 of 2021** (HC) at Musoma.

Supporting the ground of illegality, the learned advocate for the applicants raised three illegalities. The first illegality is that, it was wrong for the application before the trial Tribunal to be brought against the applicants

jointly. That, while the 1st applicant purchased the land in dispute in 2007, the 2nd respondent purchased his land way back in 1997 as indicated at page 4 and 5 of the typed judgment of the trial Tribunal. From these facts, it was the opinion of Mr. Shirima that the disputes involve two similar transactions (land purchase) but which occurred at different times and place.

Another noted illegality was that the judgment of the tribunal was premised on non-existing law which cannot be traced and or comprehended. That, it was said:

> *"Kifungu cha 25(10 cha Sale of Goods Act, Cap 214 R.E 2002 (sic) kinaeleza bayana kwamba: -*
>
> *"Such purchaser got no better Title than the vendor had." (sic)*

Mr. Shirima commented that referring to non existing provision of the law to support the findings of the Tribunal is an illegality that needs to be addressed on appeal.

Another point of illegality which was noted by Mr. Shirima was that the judgment and decree of the trial Tribunal does not identify the parcels of the land in dispute. That, the orders issued in the judgment use collective language by referring to the land in dispute without indicating the exact location and size of the parcel of land which was claimed by the respondents. He quoted page 9 and 2 of the judgment and decree respectively to ascertain the said illegality.

The learned counsel continued to argue that such decree is incompetent and cannot be executed. He opined that the identified illegalities in the

judgment and the decree of the Tribunal require intervention of the court of appeal. Therefore, it is safe for this court to find and hold that the applicants have demonstrated good cause and sufficient reason for extension of time.

Further to that, the learned advocate for the applicants cited the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustess of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** which set out the factors for consideration in application for extension of time and among them is a point of law that must be apparent on the face of the record.

Mr. Shirima contended that in the instant application, they have demonstrated how the intended appeal raises points of law. He raised two concerns, first he said that, how did the Tribunal decide a land dispute based on transaction done in 1997? Second, that how did the tribunal consider the will as proof of ownership by the respondents in absence of probate of the said will? It was the opinion of the learned counsel that such questions are apparent on the face of record.

Lastly, it was submitted that granting this application will not prejudice the respondents since the respondents conceded that they shall not be prejudiced by the grant of the prayer in this application. That, it is not correct to assert that the applicants have intention to mislead and deceive the court as stated under paragraph 11 of the counter affidavit.

Mr. Shirima continued to insist that since the respondents said that they will not be prejudiced if the application is granted, then they have consented to the prayer made in the chamber summons. He concluded that this application has demonstrated good cause for extension of time.

In reply, the respondents adopted their counter affidavit to form part of their submissions. They claimed that for the court to grant the reliefs sought by the applicants, sufficient cause to the satisfaction of the court must be demonstrated. That, the applicants are legally required to account for each day of delay and show diligence in prosecuting the intended action. The respondents referred to the decision of the Court of Appeal in the case of **Nada Panga vs Asha Seif and 2 Others, Civil Application No. 312/12 of 2020** to support their contention.

The respondents blamed the applicants' counsel for failure to account for each day of delay as per the principle established in the case of **Bushiri Hassan vs Latifa Lukio Mashayo, Civil Application No. 3 of 2007** that the delay even of a single day must be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken and the applicant should show diligence to prosecute the intended action.

Responding to the issue of illegalities as a reason to extend time, it was submitted that not every allegation of illegality constitutes good cause as per the case of **Tanzania Harbours Authority vs Mohamed R. Mohamed [2003] TLR 76.**

Responding to the illegality that the verdict is premised on non-existing law which cannot be traced, the respondents argued that the District Land and Housing Tribunal when composing a judgment has to comply with the provision of **Regulation 19(1) (2)** and **Regulation 20 of the Land Disputes Courts (The District land and Housing Tribunal) Regulation GN NO. 174 OF 2003**. The respondents opined that whatever the substantive law discussed in the cause of composing the

judgment should be interrupted as one giving rights of the parties. Therefore, the court should not be misled given the fact that the requirements of the law under the above cited Regulation were duly met by the trial Tribunal.

It was further submitted by the respondents that the pointed-out illegalities do not exist and if they do, cannot prejudice the applicants' rights.

Replying to the allegations that the application was wrongly brought against the applicants, it was argued that this allegation is an afterthought since the applicants had a chance to raise an objection before the trial Tribunal but never raised it.

On the basis of the above arguments, it was the opinions of the respondents that the applicants have failed to advance any reason let alone good cause to warrant this court to exercise its judicial discretion. They prayed the court to find no merit on the preferred application and accordingly dismiss it with costs.

In rejoinder, the learned counsel for the applicants emphasized his submission in chief. In addition to the reason of sickness it was stated that it would have been correct to condemn the applicants for sloppiness if it was alleged that the first applicant fell sick while in Arusha or Moshi which is closer to the respective courts.

I have examined the rival submissions of the parties as well as their affidavits.

Granting extension of time is the discretion of the court upon the applicant showing reasonable and sufficient cause. There is a plethora of cases to

that effect. In the case of **Brazafric Enterprises Ltd vs Kaderes Peasants Development (PLC), Civil Application No. 421 of 2021 [2022] TZCA 624 (13 October 2022)** [Tanzlii] at page 8 & 9 the Court of Appeal had this to say:

> *"It is noteworthy that there is no universal definition of the term "good cause'. Therefore, good cause may mean among other things, satisfactory reasons of delay or other important factors which need attention of the Court, once advanced may be considered to extend time within which a certain act may be done. Good cause may include, but not limited to, allegation of illegality committed by the lower court - See for instance* ***Principal Secretary, Ministry of Defence, National Services v. Devram Valambhia [1992] T.L.R. 185****."*

I subscribe fully to the above position of the Court of Appeal. I will start with the reasons of delay. In this application, the learned counsel for the applicants argued that among the reason for the delay to file an appeal out of time was that the 1st applicant was sick as found under paragraph 5,6,7,8 and 9 of the 1st applicant's affidavit. The 1st applicant attached medical report to substantiate the argument. I have keenly gone through the said annexure; the 1st applicant attended to hospital on 1/6/2022 and he was admitted on 27/6/2022 and discharged on 5/7/2022. However, the impugned decision of the trial Tribunal was delivered on 27/4/2022. Under **section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019** a person aggrieved by the decision of the DLHT may appeal within 45 days to the High Court.

As per the medical report, the 1st applicant went to hospital on 1/6/2022 while the time was not yet out. He was discharged on 5/7/2022 and he filed the present application on 15/7/2022. The applicants did not account for the delay from 27/4/2022 to 01/6/2022 when the 1st applicant fell sick and 10 days from when he was discharged to the date when they filed the instant application. It is trite law that the applicant must account for each day of delay. That, delay of even a single day, has to be accounted for. See the case of **Bushiri Hassan vs Latifa Lukio Mashayo, civil Application No 03 of 2007** (unreported). In this case, since the applicant failed to account for 10 days, then it cannot be concluded that the applicant successfully accounted for each day of delay.

The second ground was that, the impugned decision is tainted with illegalities. The learned counsel for the applicant noted three illegalities. ***First***, that it was wrong for the application to be brought against the applicants jointly. ***Second,*** that the impugned decision cited non-existing law which cannot be traced. **Third**, that the impugned decision and decree does not identify the land in dispute. The respondents on their side argued that not every illegality constitutes good cause for extension of time. They were of the opinion that even if the said illegalities exist, still the same cannot prejudice the applicants' rights.

I agree with the respondents' contention that not every pointed-out illegality suffice to extend the time sought. However, with respect, I don't agree with their argument that the pointed-out illegalities do not prejudice the applicants. The law is settled that once illegality is raised and established; it constitutes a good cause for extending time even if the applicant had not accounted for each day of delay. This was stated in the

case of **Mathew T. Kitambala vs Rabson Grayson & Another, Criminal Appeal No. 330 of 2018, [2022] TZCA 572** at page 12 that:

> *"We agree with Mr. Msumi that an illegality of an impugned decision may be a ground to extend time even where an applicant has not shown good cause for the delay - see: The Principal Secretary Ministry of Defence and National Service Vs. Devram Valambia [1991] T.L.R. 387. However, such illegality, as rightly put by Mr. Alfred, must be apparent on the face of the record."*

In the light of the above decision, I am of settled mind that the ground of illegality raised by the applicants, constitutes good cause for extension of time. Accordingly, I grant the application as sought. I hereby order the applicants to file the intended appeal within thirty (30) days from the date of being supplied with the copy of this ruling.

It is so ordered.

Dated and delivered at Moshi this 4th day of November, 2022

S. H. SIMFUKWE

JUDGE

4/11/2022