

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO DISTRICT REGISTRY)  
AT MOROGORO**

**LAND APPLICATION NO 36 OF 2021**

*(Originating from Land Appeal No. 356 of 2019 at District Land and  
Housing Tribunal at Morogoro)*

**EDINA MANYINYI.....APPLICANT**

**VERSUS**

**DONATI O. SWALA..... RESPONDENT**

**RULING**

**19<sup>th</sup> October, 2022**

**CHABA, J.**

This an application for an extension of time within which the applicant may be allowed to file an appeal out of time against the decision of the District Land and Housing Tribunal for Kilombero, at Ifakara (the DLHT) in Land Appeal No. 356 of 2019 delivered on 14/09/2020. The application has been preferred under section 14 (1) Law of Limitation Act [Cap. 89 R.E. 2019]. It is supported by an affidavit deposed by the applicant, Edina Manyinyi.

Briefly, the matter arose in this way: The respondent herein (Donati O. Swala) was the applicant before the trial Ward Tribunal in Land Case No. 75 of 2019, where she filed the case against the applicant herein (Edina Manyinyi) claiming that the applicant trespassed on his farm located at Mbidula area Mchombe Ward Tribunal, Ifakara District within Morogoro Region. After a full trial, the trial Ward Tribunal delivered her judgment in

favor of the respondent herein. Dissatisfied with the decision of the trial Ward Tribunal, the applicant herein appealed to the DLHT of Kilombero/Malinyi, at Ifakara in Land Appeal No. 356 of 2019. When the DLHT dealt with the appeal, it dismissed the same and upheld the decision of the Mchombe Ward Tribunal. It appears that the applicant herein was aggrieved by the decision of the DLHT but alas he found himself out of time, hence this application.

The affidavit sworn by the applicant contains the substance and reasons for praying grant of an extension of time as indicated in the introduction part and paragraphs 1 and 2 of the applicant's affidavit. The other paragraphs in particular paragraphs 3, 4, 5, 6, and 7 comprises the reasons for the delays which shall be referred soon, and some extraneous matters devised as grounds for appeal.

When the application was called on for hearing, Mr. Hassan Nchimbi who was assisted by Ms. Upendo Mtebe, both learned advocates entered appearance for the applicant while the respondent for reasons better known by himself did not appear, though was severally served with the summons to appear before the court including substituted services. I say so because, on the 29<sup>th</sup> day of April, 2022 I gave an order to the effect that a substituted service by way of publication pursuant to the provisions of the law under Order V, Rule 17 of the Civil Procedure Code [Cap. 33 R. E. 2019] be affected to the respondent and the applicant did comply with the said order and gazetted through Mwananchi newspaper on 30<sup>th</sup> June, 2022. Afterwards, the matter proceeded ex-parte against the respondent.

At the hearing of this application, Mr. Nchimbi prayed to adopt the affidavit deposed by Ms. Edina Manyinyi and submitted that the applicant is

seeking for an extension of time to appeal out of time against the judgment and decree in Land Appeal No. 356 of 2019 of the DLHT for Kilombero/Malinyi at Ifakara, delivered by Hon. Kamugisha Chairperson on 14/9/2020. He argued that the decision of the Ward Tribunal is tainted with illegality as the trial Ward Tribunal's composition was not duly constituted as required by the law. According to the record, there were four (4) members and one of them was a woman which contravened section 11 of the Land Disputes Courts Act [Cap. 216 R. E 2016]. He further argued that Donati O. Swala was the applicant before the Mchombe Ward Tribunal and he made appearance on her own capacity, while the land in dispute did belong to her late husband, one Raymond Manyinyi, which in law the respondent lacked locus stand. To reinforce his argument, Mr. Nchimbi cited the case of **Tropical Air (TZ) Ltd vs. Godson Eliona Moshi**, Civil Application No. 9 of 2017 - CAT where the court at page 13 of the typed judgment, the Court observed that, the issue of illegality did constitute sufficient reason for an extension of time under Rule 8 (Now Rule 10), of the Court of Appeal Rules, 2009.

I have prudently gone through the chamber summons and the supporting affidavit deposed by the applicant and also considered oral submission advanced by the learned advocate for the applicant. In the circumstance of this case, the only question for consideration and determination is whether this application has merit.

Before I go further, I find it apt to start with the provisions of section 14 (1) of the Law of Limitation Act [Cap. 89 R. E. 2019] cited by the learned advocate for applicant to move this court. The law provides that:

*"14 (1) - Notwithstanding the provisions of this Act, the court may, for any*

*reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application” [Emphasize is mine].*

Based on the above provision of the law, it follows therefore that the court has discretionary power to grant an extension of time if beforehand there are sufficient reasons and good cause to warrant this court to exercise her discretion. This principle of law has been stated in several cases including the cases of **Benedict Mumelio v. Bank of Tanzania**, [2006] 1 EA 227; **Bertha Bwire v. Alex Maganga**, (Civil Reference No.7 of 2016) [2017] TZCA 133; (20 November 2017); **Zuberi Mussa v. Shinyanga Town Council**, Civil Application No. 3 of 2007 (unreported). In **Bertha Bwire v. Alex Maganga**, (supra) our Apex Court held inter-alia that:

*“...It is trite law that extension of time is a matter of discretion on the part of the Court and that **such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case.***

However, the term “**good cause**” or “**sufficient cause**” has not been specifically defined. But the courts have discretion construed that good cause usually depends on the circumstances of each case. For instance, in **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Application No. 4 of 2001 (unreported), the Court of Appeal (T) (Mroso, JA.) observed that:

*“This court in a number of cases has accepted certain reasons as amounting to sufficient reasons. But no particular reason or reasons have been set out*

*as standard sufficient reasons. It all depends on the particular circumstances of each application".*

As regards the factors that may be considered as good causes sufficient cause, the proposition was well articulated in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association Tanzania**, Civil Application No.2 of 2010 (unreported) where the Court held among other things that:

*"As a matter of general principle, it is at the discretion of the Court to grant an extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrary. On the authorities, however, the following guidelines may be formulated: -*

- a) The applicant must account for all the periods of delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence, and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take.*
- d) If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

It is settled law that a claim of the illegality of the impugned decision constitutes sufficient cause for the extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay. This was so held in the case of **VIP Engineering and Marketing Limited and Three Others vs. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 CA

(unreported) thus:

*"It is, therefore; settled law that a claim of the illegality of the challenged decision constitutes sufficient reason for an extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."*

Looking at the affidavit deposed by the applicant and filed in court to support the application, she highlighted that there is serious illegality in the decision of the Mchombe Ward Tribunal shown at the face of the record. In the case of **VIP Engineering and Marketing Limited** (Supra) cited in **Lyamuya Construction Company Limited** (Supra), the Court held:

*"...the alleged illegality must be apparent on the face of the records such as the question of jurisdiction; not one that would be discovered by long drawn argument or process."*

Looking at the applicant's affidavit, oral submission advanced by the learned advocates in line with the legal principles articulated in various decisions by our Apex Court, I am satisfied in my mind that the kind of illegality complained of in the decision to which the applicant intends to challenge by way of appeal, possibly did occasion injustice on the party of the applicant. As the Mchombe Ward Tribunal was not well constituted as provided by the law, and considering the fact that the respondent lacked locus stand to institute the case in her own personal capacity, it goes without saying that scrutiny of the impugned decision in the circumstance of this case is inevitable.

In the result, I hold that this applicant has merit. Accordingly, the prayers

sought by the applicant is hereby granted. An extension of time to file the intended appeal shall be within twenty-one (21) days from the date of this ruling.

**It is so ordered.**

**DATED at MOROGORO** this 19<sup>th</sup> days of October, 2022.



  
**M. J. CHABA**

**JUDGE**

**19/10/2022**