

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TABORA
LAND APPEAL NO. 7 OF 2020**

*(Arising from Misc. Land Application No.70 of 2019 at Nzega
District Land and Housing Tribunal)*

ELIAS LUHENDE.....APPELLANT

VERSUS

MASONGA KAZWENGE.....1ST RESPONDENT
KUYONZA MAHENE.....2ND RESPONDENT
SAYI MAKINGO.....3RD RESPONDENT

JUDGEMENT

Date of Last Order: 23/9/2022

Date of Delivery: 14/12/2022

AMOUR S. KHAMIS, J:

This is an appeal against the Ruling of the District Land and Housing Tribunal for Nzega in Misc Land Application No. 70 of 2019.

At the Trial Tribunal, the appellant unsuccessfully filed an application for extension of time to file application for Revision out of time against the decision of Kihing'ihala Ward Tribunal delivered on 16/3/2020.

The appellant being aggrieved by the said decision she has now lodged this appeal on the ground that: *-Since the appellant adduced sufficient reasons to warrant the application the District Land and Housing Tribunal erred in law for holding in favour of the respondent.*

Pursuant to the order of this Court dated 16/3/2021, the appeal was disposed by way of written submission. I am grateful to both parties for complying with the schedule set and file their submission on time.

The appellant was represented by Ndanga and Co. Ltd Advocate Chamber while the Respondent was represented by Fadhil Kingu, Learned Advocate

In support of the ground of appeal, the appellant's counsel argued that during trial the appellants adduced sufficient reason to warrant grant of his application for extension of time.

He argued that there are illegalities committed by the Ward Tribunal which goes to the root of the case and affect the right of the parties after proceedings.

He was of the view that if there is a point of law overridden by lower court it is a sufficient cause necessary to allow him access to the judicial system being a good ground to warrant a court to

extend the time of limitation. He cited the case of **Principle Secretary Ministry of Defence and National Service Vs. Devram Valambia (1992) TLR 186.**

It is submitted that the record of Ward Tribunal reveals that the 1st Respondent had no locus stand to be sued or sue in respect of the land belonged to his late father who died in 2001. He alleged that the 1st Respondent did not have a letter of administration of estate of his Late father. He therefore submitted that it was wrong for the 1st Respondent to defend the deceased property for want of locus stand. To support his argument, he cited the case of **Lujuna Shubi Balonzi Vs. Registered Trustee of Ccm (1996) TLR 203.**

The appellant's counsel argued further that the Ward Tribunal committed another illegality as the seller who sold the land to the father of the 1st respondent was not joined to the suit as Co-defendant.

It is submitted that the appellant at all material time had been acting diligence to allow him to access to the judicial system. He argued that the record of the District Land and Housing Tribunal reveals that the appellant filed application for revision vide Misc. Application No. 58/2018 but it was struck out for being time barred.

He also argued that there are great chances of successfully by the Appellant and it is a law that overwhelming chances of success is a constitute reasons to the court extend time.

The respondent's counsel strongly disputed the submission and argued that it is a position of law that extension of time should not be granted unless court satisfied that there is a sufficient reason.

The respondent disputed the appellant submission that there is illegality which warrant the District Land and Housing Tribunal of Nzega to grant extension of time, basing on the allegation that the 1st Respondent had no locus stand to sue or be sued in relation to the suit land because he had no proof that he was appointed as administrator of estate of his Late father.

It is the respondent's submission that the appellant's submission is baseless because he was the one who sued the 1st Respondent at the Ward Tribunal and believed that the 1st Respondent was a right person to be sued and that he had locus stand. He added that the 1st Respondent has never claimed to be ana administrator of estate of his late father therefore the requirement fronted by the appellant is for the administrator and

not for a person who acquired land by way of granted like 1st Respondent herein.

The respondent also challenged the submission of the appellant who in respect of joining the seller of the disputed land as a co- defendant. He argued that the suit cannot be defeated by a reason of mis joinder or non-joinder of parties. the non-joinder of parties may only be necessary if it renders the decree ineffective for failure to join a necessary party.

He argued that the decree of this case cannot be ineffective without joining the seller because the decree has never touched him or execution will never affect him or respondents.

It is the respondent's submission that the principle governing the ground of illegality requires that the alleged illegality must be apparent on the face of record of the impugned decision. Reference was made to the case of **Prayg of Mbaga Vs. The Government of Kenya Criminal Investigation Department &The Ho. Attorney General of Tanzania, Civile Reference No. 04 of 2019.**

The respondent counsel further argued that there is no chance of success in appeal as alleged by counsel for the appellant in his submission.

It is therefore submitted that the alleged illegalities do not sound to revise or altered the decision of the Ward Tribunal in revision in case he will be granted to make application for revision in a position fronted by the Appellant.

I have thoroughly perused the record of the lower Tribunal together with the submissions made by the applicant and respondents to find out whether this appeal has merit or not.

My findings are based on determining the issue as to whether the appellant in his application for extension of time which was lodged at the District Land and Housing Tribunal had advanced sufficient reasons for the tribunal to grant his application.

There is no doubt that the law avails discretionary power to court to enlarge time to file an application before or after expiry of the period of the limitation. See Section of the Law of Limitation Act cap 89 which provides as follows:

“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”.

It is a cardinal principle that extension of time can only be granted where the applicant advances sufficient reasons for his or her delay.

In the instant case I will now revert to the merits of the application in hand or the matter in scrutiny. There is no doubt that from the records it has taken a long time (almost one year and eight months) since the judgment intended to be revised was delivered by Ward Tribunal on 9/2/2018 and the appellant filed his application for extension of time at the District Land and Housing Tribunal on 7/10/2019

In those circumstances, for the appellant in his application ought to adduce sufficient reason for his delay and to account for each day of his delay. The question that triggers my mind in this appeal is whether the appellant’s reasons for delay suffices to be termed as “sufficient reasons”.

Upon looking at the ground adduced in the appellant’s affidavit on the record. It is so clear that the appellant reasons for delay was that the trial Tribunal committed illegalities and that the appeal has got overwhelming chance of success.

In his submission the appellant contended that the 1st Respondent had no locus to defend the land of his late father because he was not an administrator of estate of his late father.

The appellant also alleged that the ward Tribunal committed illegality in determining the matters before it as there was non joinder of parties in the case.

He also alleged that the appellant had been diligence enough in pursuing his right by knocking the door of the court several times. He submitted further that the delay was due to reason which was out of his control.

The respondents on their part have submitted that the applicant has not given any good reasons and they believe it was just his own negligent.

The appellant's application at the District Land and Housing Tribunal was filed after expiry of One year and eight months but the appellant in his affidavit in support of the application has not clearly count for each day of his delay.

The Court of Appeal in **Ramadhani Vs Geita Gold Mining, Misc, Application No 29 of 2013 at page 2** clearly explained the guiding principle that in order to justify a court extending time there must be some material on which the court can exercise the

discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time. See **Regional Manager, Tanroads Kagera V. Ruaha Concrete Company Ltd Civil Application No. 96 Of 2007 (CAT) (Unreported)**.

The court went on by stating that the test then is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted.

The Court observed that there are two main aspects of the principle of sufficient cause namely. One of those principle is based on key issue that; whether the applicant has disclosed good cause or reasons for delay. This means that the court need to take into account factors such as reasons for delay that where the applicant is expected to account of cause for delay of every day that passes beyond the aforesaid period, lengthy of the delay that is shown that such reasons were operated for all the period of delay.

In the matter at hand, the applicant knowing that the Ruling was delivered on 9/02/2019 he just unjustifiably kept quiet until 7/10/2020 when decided to file this application at the District Land and Housing Tribunal. The reasons advanced by the applicant in his affidavit cannot at any rate be regarded as

sufficient reasons for his delay and he has filed to count for each day of his delay for one year and eight months.

The appellant has considered absence of letter of administration and mis joinder of parties to the suit illegalities, and these, to his view, are good aground for extension of time.

In my view, lack of letter of administration and misjoinder of parties themselves as a principle, cannot be illegality and form ground for extension of time.

Applicant in elaborating more in this point he stated that the respondent had no locus to defend the property of his late father for want of letter of administration. Upon my perusal on the record, I have noted that the 1st respondent was sued by the appellant therefore it is an afterthought to argue that the 1st respondent had no locus stand to defend the property of his late father.

The appellant also argued that there was a mis joinder of parties that the seller who sold the land to the 1st respondent's father ought to be joined as co defender. Again, this is an afterthought and baseless to the fact that non joinder of parties cannot defeat the suit.

It should be noted that whatever the case, illegality alone cannot be a ground of extension of time. For illegality to be a

ground for extension of time, it has to be apparent on the face of record as it was held in the case of **Hamis Mohamed v. Mtumwa Moshi, Civil Application No. 407 of 2009 (unreported)** the Court of appeal held that: -

"It follows then that an allegation of illegality by itself suffices for an extension of time. However, such an allegation of illegality "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... "

Going through the record, I am satisfied that the alleged illegality raised by the appellant in his application does not fall in that category. In other words, it is not apparent on the face of record

In the circumstance, I am settled in mind that the record does not reveals any sufficient reason for application of an extension of time and there is neither point of law nor any clear point of illegality that warrants sufficient reason that could have moved the District Land and Housing Tribunal to grant leave for the application of extension to file an application for revision.

In my observation that in the absence of sufficient reasons and the fact that the applicant has not counted for each day for

his delay, such duration is a long time for the court to grant extension of time.

In the premises, I find this appeal to have no merit since the appellant has failed to adduce sufficient reasons for his delay in his application. Accordingly, appeal is dismissed with no order for costs.

It is accordingly ordered so



AMOUR S. KHAMIS.

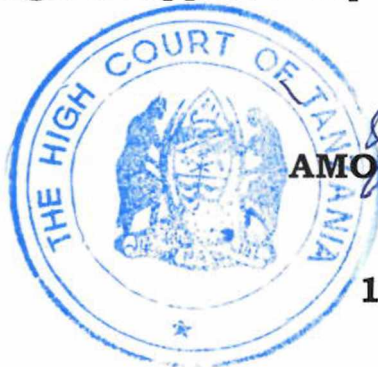
JUDGE

14/12/2022

ORDER

Judgement delivered in open Court in presence of Mr. Kelvin Kayaga, advocate for the respondents who is also holding brief of Mr. Fadhil Kingu, advocate for the appellant.

Right of Appeal is explained.



AMOUR S. KHAMIS.

JUDGE

14/12/2022