IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

(*C/F the decision of the District Land and Housing Tribunal for Karatu in Land Application No. 09 of 2020*)

REGINA SIASI.....APPLICANT

VERSUS

PAULINA LULU.....1st RESPONDENT

FLORA MALAAS.....2nd RESPONDENT

FAUSTINI ANDREA.....3rd RESPONDENT

RULING

09th November & 13th December 2022

TIGANGA, J

This is the application for extension of time filed by the applicant Regina Siasi to have the time enlarged to file her appeal out of time against the decision in Land Application No.09 of 2020 delivered on 26th October 2021 before Karatu District Land and Housing Tribunal.

The application was filed vide a chamber summons made by the applicant moving the court under section 14(1) of the Law of Limitation Act [Cap. 89 R.E 2019] and it was supported by the affidavit sworn and filed by the applicant herself. In the affidavit, the applicant relied on the ground of

illegality in the proceedings of the trial tribunal, which she attacked in two folds, **first**, that the proceedings do not show that, the opinion of the assessors were recorded in writings by the chairman of the tribunal. Second, that, the chairman allowed the assessors to cross examine instead of asking question for clarification. On that base, he asked the application to be allowed.

The application was opposed, by the respondents who did through the joints counter affidavit sworn by Paulina Lulu, Flora Malaas and Faustina Andrea. In that counter affidavit, they disputed the alleged irregularity and illegality in the proceedings. Further to that, they also deposed that even if it has been proved that, there is such irregularity, but there is no evidence to prove that, the same prejudiced the applicant. They otherwise informed the court that the appeal was supposed to be filed in 45 days but it took the applicant almost eight months to discover the illegality.

With leave of the court and consent of the parties, the application was argued by way of written submissions. Parties complied with the filing schedule. The applicant submitted in support of the application that, as a matter of law and procedure after hearing of the land dispute, the chairman of the tribunal is legally bound to invite assessors to give their opinions, the

said opinion must be received, recorded and read in presence of the parties. She also submitted that, the chairman is obliged to record the opinion in the proceedings. In her view, failure to do so renders the whole proceedings a nullity. According to her, the record of the tribunal does not show the assessor's opinion, as such, without the opinion of the assessors, the proceedings remain without legal force.

To substantiate her arguments, she cited the case of **Sikuzani Said Magombo and Kirioni Richard vs Mohamed Roble**, Civil Appeal No. 197 of 2018 by the Court of Appeal of Tanzania in which it was held that, where the record does not show the record of opinion of assessors were accorded the opportunity to give the said opinion, it is clear as to how and what stage the said opinion found their way in the tribunal.

Submitting in support of the second limb, the counsel for the applicant also submitted that, assessors were allowed by the Tribunal to cross examine the parties while they were not allowed, what is needed is that, assessors have to ask witnesses for clarification. The Counsel cited section 177 of the Evidence Act, [Cap 6 R.E 2022] as a basis for his argument. In his view, the provision requires in the cases which involves assessors, the Court may allow them to put any question to the witness which the court itself may put and

which it considers proper. She insisted that putting question, is not synonymous with cross examining, but is normally asking questions for clarification. But in this case, according to her, assessors were allowed to cross examine contrary to the law.

In the reply submission, the learned Counsel for the respondent submitted that, it is not true that, the impugned proceedings do not indicate the opinion of assessors since at page 21 of the said proceedings the trial tribunal's Chairman noted that, receiving opinion of the assessors was scheduled on the 13th October 2021 and on that, the record shows that the opinion was read to the parties on the date scheduled. He therefore asked the court to dismiss the complaint on that base.

Regarding the non-inclusion of assessors' opinion in proceedings, he replied that, the contention lacks merit as the opinion is reflected in the tribunal record. This is because regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003, did not intend the chairman to reproduce the opinion of the assessors of the tribunal in the proceedings. The opinion is presented to the chairman in writing and may be in Swahili language.

Lastly, the respondent was of the opinion that, the irregularity of this kind is not fatal as it is cured or saved by the provision of section 45 of the Land Disputes Courts Act [Cap. 216 R.E 2019] which barred alteration on appeal or revision on account of error or omission, or irregularity in the proceedings before or during the hearing or in such a decision or order on account of improper admission, or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned failure of justice. In their view, the applicant did not state how the irregularity had actually occasioned injustice. They in the end asked the application to be disallowed for lack of good cause.

In rejoinder submission, the applicant had nothing new to add apart from reiterating his position in the submissions in chief. He said that, the said illegality cannot be saved by regulation 19(2) of the Land Disputes court (The District Land and Housing tribunal) Regulations 2003, because the provision applies only where there is an appeal or revision, not an application for extension of time. That marked the end of the rival arguments by the parties.

The issue for determination is whether, this application contains sufficient reasons for the court enlarge time within which the applicant may be allowed to file her appeal.

It is trite law that, sufficient reasons for the extension of time has not been defined by law but normally depend on the discretion of the court judiciously exercised. However, the recognized criteria of what constitutes good cause have been defined in a legion of case laws. One of the cases is the case of **Lyamuya Construction Company Limited versus Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010 (unreported), the Court of Appeal of Tanzania underlined some of the element that, constitutes good cause which may be a base for granting extension of time. The court held;

> *"As a matter of general principle, it is in the discretion of the Court to grant 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 arbitrarily. On the authorities however, the following guidelines may be formulated:-*
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> *(a) The applicant must account for all the period 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 sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

In this application the applicant has based his ground on the last principle, that is illegality. The said illegality is premised under two limbs, **one**, that the assessor's opinions were not made part of the record of the proceedings and **two**, that assessors were allowed to cross examine the witness while in fact they were not supposed to do so.

The fist limb is premised under regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, G.N No.174 of 2003 which provides as follows:

"19(2)- Notwithstanding sub-regulation (1) the Chairman shall, before making his judgment, require every assessor present at the conclusion of the hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili."

According to that regulation, three things can be depicted therefrom regarding to the opinion of assessors; **first,** before making judgment the chairman shall require every assessor present at the conclusion of the hearing to give opinion, **second,** that opinion should be in writing, **third,** that the opinion may be written in Kiswahili. At page 21 of the impugned proceedings, the chairman clearly indicated the dates on which the assessors' opinion was submitted and read.

The provision of the law does not mandate the recording of the opinion of assessors in the tribunal's proceedings. What the Advocate for the appellant wants this court to consider as illegality, then he was to make sure that it really falls within the meaning of illegality, as propounded in the case of **Elias Masija Nyang'oro and 2 Others versus Mwananchi Insurance Company Limited,** Civil Application No. 552/16 of 2019 which are that, it must be apparent on the face of record. The alleged illegality in the impugned proceedings is contrary to the principles established by the Court of Appeal in the case of **Elias Masija Nyang'oro and 2 Others versus Mwananchi Insurance Company Limited,** (supra). It is not even of sufficient importance in the circumstances of this case where the record is clear that the opinions were read in the tribunal in the presence of the

parties. That being the case the grounds fall short of the requirement of being illegality worthy a name. That being the case, it also concludes the complaint that the assessors' opinions were not reflected in the impugned judgment.

Regarding the second limb of the ground that, assessors were allowed to cross examination instead of asking questions for clarification, the applicant pointed at pages 19 and 21 of the impugned proceedings attempting to prove the alleged violation due to question asked in cross examination especially those asked by Mr. Akonaay.

However, the applicant did no point out to the Court the complained questions asked in cross examination, rather he said, the questions asked by him were like those asked by Mr. Panga, learned Advocate. His such failure to point out contrives the provision of section 110 of the Evidence Act, [Cap 6 R.E 2022] which requires that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove the existence of those facts. Failure to point out the alleged cross examination is tantamount to failure to prove the allegations. I am aware that assessors are not allowed to cross examine but as earlier on pointed out, to put question where necessary for clarification as required

by section 177 of the Evidence Act (supra). Where a party complains that the question asked were in violation of the law, then he is duty bound, to prove his allegation.

In this application, the applicant has not proved what he wants the court to believe that they exist. Such failure by necessary implication means the applicant has actually failed to show good cause to warrant him the extension of time sought. In the upshot, the application is destitute of merit, it is without further ado dismissed with costs.

It is accordingly ordered.

DATED at **ARUSHA**, this 13th day of December, 2022

J. C. TIGANGA

JUDGE