

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

MISC. LAND APPEAL NO. 21 OF 2022

(From the Decision of the District Land and Housing Tribunal of Moshi District at Moshi in Land Appeal No. 168 of 2021 and Ward Tribunal of Mwika Kusini Ward in Application No. 136/2021)

**RICHARD PHILEMONI URIO APPELLANT
VERSUS**

GRACE PHILEMONI URIO RESPONDENT

JUDGMENT

Last Order: 05/10/2022

Judgment: 04/11/2022

MASABO, J.:-

This appeal emanates from the District Land and Housing Tribunal of Moshi at Moshi in Miscellaneous Application No. 168 of 2021 where the appellant herein prayed for extension of time to be allowed to appeal out of time against the decision of South Mwika, Ward Tribunal in Application No. 136 of 2021. The brief background of the application as gathered from both tribunals' records is as follows. The respondent who is the biological mother to the applicant complained at the South Mwika Ward tribunal that, without her consent, her son, disposed by way of sale, a parcel of land jointly owned by her and her late husband from 1967. In his defence, the respondent did not dispute to have sold the suit land. In justification of his deeds, he maintained that he committed no wrong as the suit land was voluntarily passed over to him by both of his parents thus, he had the right and legal

capacity to sale it, as he did, to sustain his family needs. The proceedings terminated in favour of the respondent after the sale was declared a nullity and the applicant ordered to return the purchase money to the buyer.

Aggrieved by the decision, the appellant sought to appeal to the district tribunal but was out of time. Hence, he filed Miscellaneous Application No. 168 of 2021 praying for extension. Unfortunate to him, the application ended barren after it was dismissed with costs on ground that he failed to advance any sufficient reason for the delay. Still disgruntled, he preferred this appeal advancing four grounds as follows:

1. That the learned chairman erred in law and in fact in failing to apprehend that, the reasons brought before him for the extension of time to file the appeal were mainly on the illegality committed by the ward tribunal which acted without jurisdiction.
2. That the learned chairman misdirected himself in failing to apprehend that the reasons submitted for delaying to file the appeal were sufficient for him to exercise his discretionary powers and allow the prayed extension.
3. That the learned chairman erred in failing to apprehend that the issue of illegality committed by the ward tribunal by purporting to adjudicate the matter without jurisdiction is a serious issue that could be sufficient to allow the prayed extension of time to file an appeal.
4. That the chairman erred in law and in fact in ignoring the important arguments raised by the appellant in the aspect of illegality, and

directed his mind into the weak points which lead him to disallow the application without sufficient cause.

During hearing of this appeal Mr. Elidaima Mbise, the learned counsel representing the appellant, submitted on all grounds of appeal jointly. He argued that, in the case of **Registered Trustees of Shadhdy vs. Mahfudh Salmomay Bin Zagar**, Civil Application No. 512/01 of 2018 (unreported) the Court of Appeal held that illegality is a sufficient ground for extension of time provided that, it is apparent on the face of record. Thus, as the appellant cited illegality as his ground, the district tribunal was duty bound to examine whether there were illegalities in the ward tribunal and whether the said illegalities (if any) were apparent on the face of record. Expounding this point, he alluded that the illegalities in the impugned decision are as follows;

1. the person who sold the disputed land was not joined in the case as a necessary party;
2. the Ward Tribunal did not have pecuniary jurisdiction.
3. the decision was made by an unknown entity.
4. the Ward Tribunal's proceedings do not show proper coram.

Starting with the first illegality, he referred the court to the case of **Departed Asians Property Custodian Board vs. Jaffery Brothers Ltd**, [1999] 1 E.A 55 where the defunct Court of East Africa stated that, the necessary party to the case must be joined to avoid multiplicity of suit and ensure finality of litigations. He added that the same stance was also emphasized in

the case of **Juma Kadala vs. Laurent Mkande** [1983] TLR 103 where it was held that in the suit for recovery of land sold to a third party, the buyer should be joined with the seller as parties to the suit. In that regard, non-joinder of the buyer/seller is fatal to the proceedings as the court's order will affect a person who is not party to the case and if it does, the proceedings shall be invalid. The learned counsel asserted that, this illegality was raised in the district tribunal but it was ignored while the law is clear that non-joinder of the seller was a fatal irregularity and has rendered the proceedings invalid.

On the second illegality, Mr. Mbise submitted that the ward tribunal did not have pecuniary jurisdiction as the land sold had a value of Tshs. 5,000,000/= as shown in the contract of sale which was admitted as an exhibit on 31/01/2020. As the pecuniary jurisdiction of the Ward Tribunals was Tshs. 3,000,000/= as per section 15 of the Land Dispute Courts Act, Cap. 216 R.E. 2019, the District Tribunal erred in turning a blind eye to the illegality.

As to the third illegality, the learned counsel submitted that the Ward Tribunal's decision is titled "Baraza la Ardhi Kata Mwika Kusini" which as per section 3 of the Land Dispute Courts Act is nonexistent as the one recognized by the law is "Baraza la Ardhi la Kata." Thus, the decision was made by an unknown entity. The illegality, it was argued, is that on 30/01/2020 when the decision of the Ward Tribunal was handed out, its coram was duly constituted but in previous appearances the record does not show a proper coram. To support his assertion, he cited the case of **Hamis Wazir vs.**

Mwanaidi Salim, Misc. Land Appeal No. 13 of 2020 where the court held that it is a mandatory requirement for the records to show the names and signatures of members of the tribunal.

Mr. Mbise finally submitted that, had the District Tribunal considered all these illegalities, it would have allowed the application for extension of time because, as held in the case of **Principal Secretary Ministry of Defence vs. Devran Valambia** [1999] TLR 189, illegality suffices as good ground and the court has duty to extend the time so as to correct the illegality. He concluded by praying that the appeal be allowed. The decision of the district tribunal be dismissed so that the appellant can be granted time to appeal against the decision of the ward tribunal.

In rebuttal, Ms. Deva Urio, the respondent's attorney submitted that the first ground is without merit as it does not tell why should the appellant be granted extension of time. She argued that, the learned counsel's submission as regards jurisdiction is devoid of merit as there is no evaluation of the suit land upon which to base the finding that its value was Tshs. 5,000,000/=. She submitted that the actual value of the suit land was below Tshs. 3,000,000/=. Hence the Ward Tribunal had the requisite pecuniary jurisdiction. On the second ground she argued that, the appellant acted negligently. He spent more than a year doing nothing and has not demonstrated why he did not appeal on time. As to the third ground, she submitted that the sale agreement is not a cause of action hence not binding on this case as the same is not evidence of the value.

Regarding non joinder of the buyer, she submitted that, Order I Rule 9 of the Civil Procedure Code, Cap, 33 R.E. 2019 states that a judgment may not be reversed for reasons of non-joinder. As for the mistake in the title, she argued that, the same is trivial and not fatal considering the fact that the Ward Tribunal is less formal. On coram she submitted that on the date of the decision the respondent was present and the coram was recorded. Thus, there is nothing to fault the Ward Tribunal. Conclusively, she prayed that the appeal be dismissed for want of merit.

In his rejoinder Mr. Mbise reiterated his earlier submission and maintained that this application is on extension of time, thus it does not involve determination of the merit of the illegality. This marked the end of the submissions.

From the submission of the parties and the records before me which I have carefully scrutinized, the only issue for determination is whether, the tribunal's dismissal of the application for extension of time was legally tenable. Before proceeding to the grounds of appeal, I will, in preface, highlight that, in exercising the powers for extension of time, the courts and tribunals invoke their discretionary powers and their main preoccupation at that stage is whether a good cause upon which to invoke such powers has been demonstrated. The duty to prove whether a good cause exists rests solely on the applicant and as a matter of principle, he has to prove, to the satisfaction of the court or tribunal that, the delay was occasioned by reasons other than his negligence or apathy or that, there is a point of illegality worth

consideration and determination by the higher court/tribunal. As correctly argued by Mr. Mbise and as held in **VIP Engineering and Marketing Limited v. Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2006 (unreported) and numerous other authorities it is now trite that where the point of law at issue in an application for extension of time is illegality or otherwise of the decision sought to be challenged, that by itself constitutes a sufficient cause upon which to exercise the discretion to enlarge the time for filing the appeal subject to the requirement that the alleged illegality be apparent on the face of the record. As held in **Lyamuya Construction Company Ltd Versus Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, Court of Appeal (unreported) for illegality to be relied upon as a sufficient ground for extension of time it must be demonstrated that the illegality is apparent on the face of record not one that require a long-drawn process to establish. Also see **The Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia** [1992] TLR. 185; **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015 CAT (unreported), **Eliakim Swai & Another vs. Thobias Karawa Shoo**, Civil Application No. 2 of 2016, CAT (unreported); and **Registered Trustees of Shadhdy vs. Mahfudh Salmomay Bin Zagar** (supra).

Looking at the affidavit filed in support of the application for extension of time, it is apparent that the point of illegality of the decision of the ward tribunal was raised. Through paragraphs 5, 10, 12 and 14 of his affidavits, the appellant deposed that the ward tribunal lacked the requisite pecuniary

jurisdiction to entertain the matter and that, he discovered this fact at a later stage after the decision has been handed out. As alluded to earlier, as what was before the district tribunal was an application for extension of time, its main task with regard to the point on illegality was to determine whether the alleged illegality was apparent on the face of record to warrant the exercise of its discretion to enlarge the time.

Unfortunately, this question was omitted. In his ruling the district tribunal's chairman dismissed the application after he made a brief finding that the other two reasons advanced by the applicant in support of the application, that is, he did not have money to engage an advocate and that he was ignorant of the law, were insufficient to warrant the extension of time. Whereas this finding was correct, it was incumbent for the tribunal to proceed to consider the point of illegality. The omission to consider illegality which by itself suffices as a good cause for extension of time was a fatal omission with adverse consequences as it is a settled law that when the asserted illegality passes the test above, the court must enlarge the time. Expounding this position in **The Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia** [1992] TLR 185, the Court of Appeal held that;

“In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and there cord straight.

Guided by the principles above and considering that the point raised by the appellant was on the pecuniary jurisdiction of the tribunal which is a creature of statute hence require no prolonged argument to establish, I have no hesitation in finding that, through his affidavit, the appellant ably established the existence of an illegality which require the attention of the higher tribunal to determine its merit.

As for the rest of the alleged illegalities, they merit no consideration as they were not deponed in the appellant's affidavit filed in support of the application before the tribunal and even if they did they would not qualify as they appear to be alluding to errors of law and facts which can only be discovered after a long-drawn argument.

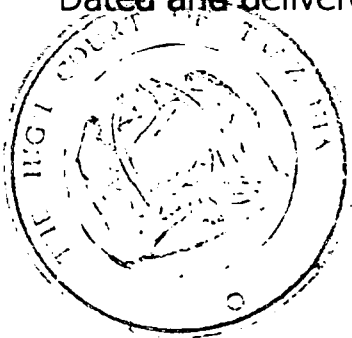
As for the rebuttal submission made by the respondent's attorney, much as it raises pertinent questions, such questions were prematurely raised as they can not be determined at this stage. As pointed out in preceding paragraphs, in an application for extension of time the court is invited to determine whether a good cause has been demonstrated. It is not within its jurisdiction at that stage to deal with the merit of the alleged illegality. Such duty is the reserve of the appeal court. Similarly, as this appeal emanates from the application for extension of time, it certainly be premature to dwell on the merit of the illegalities at this stage.

In the upshot and in the view of the finding that an illegality grounded on the pecuniary jurisdiction of the ward tribunal is a sufficient ground upon

which to enlarge the time, I hereby allow the appeal and proceed to extend time within which the appellant can lodge his appeal before the tribunal. Accordingly, leave is granted to appellant to lodge his appeal before the tribunal within 15 days from the date of this judgment.

Considering that the dispute involved a mother and her biological son, I find it fair and reasonable to order the parties to shoulder their respective costs.

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



X

Signed by: J.L.MASABO

J. L. MASABO
JUDGE
04/11/2022