

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

LAND CASE APPEAL NO. 01 OF 2022

(Arising from the decision of the District Land and Housing Tribunal for Tabora in Land Application No. 58 of 2021 and Misc. Land Application No. 05 of 2022)

**REGISTERED TRUSTEES OF CATHOLIC
ARCHDIOCESE OF TABORAAPPELLANT
VERSUS
ABRAHAM FRANCIS MVELLA RESPONDENT**

JUDGMENT

Date of Last Order: 16.08.2023

Date of Judgment: 21.09.2023

KADILU, J.

The appellant was the applicant in Land Application No. 58 of 2021 before the District Land and Housing Tribunal for Tabora. She was claiming from the respondent payment of rent for the leased premises. On 13/12/2021 when the matter was in progress before the tribunal, the parties entered into a deed of compromise which was ultimately registered by the tribunal on 15/12/2021 marking the dispute settled out of court. The record reveals that the parties had 5 years lease agreement from 2021 to 2026 in which the appellant was the landlord and the respondent was the tenant. Despite the agreement, in December 2021 the appellant demanded from the respondent a vacant possession.

The respondent then asserted that he had already deposited to the appellant's bank account rent advance for 5 years. Based on that assertion, the parties agreed in the deed of compromise that the appellant would

refund Tshs. 8,940,000/= to the respondent as part of the advanced rent paid to her. The appellant refunded Tshs. 8,940,000/= to the respondent's savings account No. 0271004997 at Exim Bank on 20/12/2021. The appellant alleges that after they had filed a deed of compromise to the tribunal on 15/12/2021, on 14/01/2022 she realized that the respondent had never deposited the said rent advance to the appellant's bank account. As such, the appellant demanded the respondent to return the Tshs. 8,940,000/= refunded to him as a result of his misrepresentation.

The respondent resisted hence; the appellant had no option but to apply for a review of the tribunal's order of 15/12/2021 regarding a deed of compromise. The appellant realized, however, that she was already time-barred to file her application for review. On 18/02/2022 she made an application to the tribunal seeking to be granted leave to apply for review out of time. After hearing both parties, on 02/09/2022 the tribunal delivered a ruling dismissing the appellant's application for the reason that she had failed to prove the alleged misrepresentation. The decision aggrieved the appellant so, she filed this appeal challenging the decision of the tribunal as follows:

- 1. That, the learned Chairman erred in law and facts in holding that the appellant had failed to prove that the respondent had made a misrepresentation.*
- 2. That, by failing to decide the application for an extension of time within which the appellant could file her application for review, the learned Chairman abdicated from his duties and misdirected himself for deciding matters not before him.*

3. *That, the learned Chairman erred in law and facts by deciding the application for review prematurely.*
4. *That, the learned Chairman erred in law and facts in disregarding the appellant's evidence in support of her application for an extension of time.*

The respondent filed a reply to the memorandum of appeal in which he stated generally that the Chairman of the tribunal was judicially right in holding that the appellant failed to establish the alleged misrepresentation as a ground for granting her the extension of time. He prayed the court to dismiss the appeal with costs for lack of merits.

When the appeal was called on for hearing, the appellant was represented by Mr. M.K. Mtaki and Mr. Akram W. Magoti, both learned Advocates whereas the respondent enjoyed the legal services of Mr. Amosi J. Gahise, also the learned Counsel. Submitting in support of the appeal, Mr. Akram stated that the learned Chairman of the tribunal erred for not determining matters before him. He abandoned the grounds for extension of time and dealt with the grounds for review application which was premature. The learned Advocate supported his argument by citing the case of ***Ismail Abdallah Limbega v Victor Nyoni***, Civil Revision No. 33 of 2020, High Court of Tanzania at Dar es Salaam, in which it was held that parties are bound by their pleadings and that cases are decided based on pleadings brought before the courts.

Mr. Akram opined that courts cannot grant what was not prayed by the parties and doing so would be illegal. He elaborated that the appellant raised

misrepresentation in the tribunal as a point of illegality which was expected to be a foundation for the tribunal's decision whether or not to grant an extension of time. He referred to the case of ***Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, in which the Court of Appeal laid down four (4) factors to be considered before granting any extension of time. He explained that one of the factors is the existence of an illegality in the impugned decision.

Mr. Gahise stated from the outset that he was opposing the appeal. He submitted that he considers the alleged illegality as a mere technicality rather than an illegality that may justify the extension of time to be granted to the appellant. He referred to the case of ***Jubilee Insurance Co. Ltd v Mohamed Sameer Khan***, Civil Application No. 439/01 of 2020 where the Court of Appeal held that the nature of illegality warranting the extension of time to be granted should be apparent on the face of record. In his opinion, the appellant has not pointed out any such illegality. He added that the appellant did not demonstrate a good cause for the delay therefore, the tribunal did not err to scrutinize the application to find if there was a good cause.

By way of rejoinder, Mr. Mtaki argued that the submission by Mr. Gahise does not focus on the contents of his reply to the memorandum of appeal rather, he has argued the grounds of application for an extension of time. He explained that the affidavit supporting the application for extension of

time contained the description of the alleged illegality from paragraphs 5 to 9 so, the same is not a mere technicality. He expounded in addition that illegality by itself is a good cause for an extension of time as held by the Court of Appeal in the case of ***Transport Equipment Ltd & Another v Devram P. Valambia***, Civil Application No. 19 of 1993. He implored this court to allow the appeal and step into the shoes of the tribunal and enlarge the time within which the appellant may file her application for review.

Having examined the memorandum of appeal, the reply thereof and after hearing the rival submissions from the Counsel for the parties, the only issue for determination is whether the appeal is meritorious or not. The main complaint by the appellant is that the tribunal abandoned the grounds for an extension of time and dealt with the application for review which was not yet before it. In the words of Mr. Mtaki, the Hon. Chairman of the tribunal crossed the river before getting to it. I take the liberty to reproduce the relevant part of the tribunal's judgment not only for ease of reference but also because it is the centre of contention between the parties in this appeal. It provides:

"Since the respondent has proved that he has paid Tshs. 17,690,000/= to the applicant, but the applicant did not prove that the respondent had made a misrepresentation, I find that the application has no merit. Therefore, I dismiss the application and each party should bear its costs." (Translation from Kiswahili to English is mine).

The record is clear that the application before the tribunal was for the extension of time to apply for review by the appellant. In this regard, there

was no way the appellant could prove the misrepresentation which was the point expected to be argued in the event the extension of time was granted. I thus, agree with the argument by Mr. Mtaki that in an attempt to determine the application for an extension of time, the learned Chairman of the tribunal failed to guard himself against crossing a thin line between the application before him and the intended application for review which was not yet filed.

On the way forward, I am aware that being the first appellate court, I may step into the shoes of the trial tribunal and determine the application as I hereby do. As noted, the basic ground of the application by the appellant was illegality namely, a misrepresentation by the respondent. It has been several times held by the Court of Appeal that illegality in the decision sought to be challenged must be apparent on the face of the record. See for example the cases of ***The Principal Secretary Ministry of Defence and National Service v Devram Valambia*** [1991] TLR 387, ***Ngao Godwin v Julius Mwarabu***, Civil Application No. 10 of 2015, and ***Jubilee Insurance Co. Ltd v Mohamed Sameer Khan*** (*supra*).

From the above authorities, it may be construed that illegality does not constitute a sufficient ground for extension of time unless it is apparent on the face of the record and not that which has to be discerned from protracted arguments. While I am skeptical not to be trapped within the web of determining the application for review which is not the case before me, only by passing through the impugned ruling, it refers to the existence of misrepresentation by the respondent. The misrepresentation is said to have

arisen from the respondent's representation to the appellant that the former had deposited 5-year rent advance to the latter.

I have no hesitation that the question as to whether there was a misrepresentation or not needs a long determination process which this court cannot deliberate upon at this stage. It is a fact that needs proof by the presentation of evidence and arguments from both parties. Based on this observation, I am not persuaded by the appellant's allegation that there is an illegality that is apparent on the face of the record constituting sufficient cause for this court to extend the time within which the appellant may apply for review.

The other ground for extension of time presented by the appellant is the reason for the delay. The record reveals that the appellant was required to file his application for review within 30 days from 15/12/2021 when the order of the tribunal was delivered. She contended that the misrepresentation that led to the impugned order was realized on 14/01/2022, the day on which time limitation knocked. The record shows further that from 15/01/2022 to 20/01/2022, the appellant was busy trying to resolve the matter amicably by *inter alia*, sending a demand letter to the respondent. After having failed to settle the matter harmoniously, the appellant applied for an extension of time in the tribunal on 18/02/2022. Therefore, it is not in dispute that the delay was for about 63 days.

The position of the law is clear that for an extension of time to be granted, the delay should not be inordinate and that, the applicant should account for each day of delay. In this case, it is undisputed that the delay of 63 days is inordinate, but that alone could not disqualify the appellant from being granted an extension of time if she could account for every day of delay. In the case of ***Elius Mwakalinga v Domina Kagaruki & 5 Others***, Civil Application No. 120/12 of 2018, the Court of Appeal stated that a delay of even a single day has to be accounted for otherwise, there should be no point in having rules prescribing periods within which certain steps have to be taken.

As stated in ***Lyamuya's*** case cited earlier, the applicant for an extension of time should not be apathy, negligent, or sloppy in the prosecution of the action that he intends to take. In the instant case, the appellant did not show to the tribunal what she was doing from 20/01/2022 when the respondent refused to accept the demand letter to 18/02/2022 when she filed her application. Indeed, I find that the appellant had not shown diligence in following up her case. She neither showed that she acted promptly nor did she account for the 63 days of delay. Under normal circumstances, the appellant could not be regarded as having demonstrated a good and sufficient cause to justify the court to grant an extension of time as sought.

Nevertheless, in the case of ***Yusuf Same & Hawa Dada v Hadija Yusuf***, Civil Appeal No. 1 of 2002, the Court of Appeal held that sufficient cause should not be interpreted narrowly, but should be given a wide interpretation

to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in the delay in taking any necessary step. It is equally the law that, in deciding whether or not to grant an extension of time, the court should not limit itself to the delay. Instead, it has to consider as well the weight and implications of the issues involved in the intended action and whether the same is *prima facie* maintainable.

See the case of ***Reuben Lubanga v Moza Gilbert Mushi & 2 Others***, Civil Application No. 533/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam in which the Court observed that the order being equitable, it cannot be granted where it will serve no purpose or where it is a mere abuse of the court process. Further to that, in the case of ***R v Yona Kaponda & Others*** [1985] TLR 84, it was held that sufficient reasons do not refer only and are not confined to delay. Rather, it is sufficient reasons for extending time, and it should take into account also the decision intended to be appealed against, the surrounding circumstances, and the weight and implications of the issue or issues involved.

In the present case, the extension of time is sought for review against the order of the tribunal. What is at stake is Tshs. 8,940,000/= which the appellant complains that she erroneously refunded to the respondent due to misrepresentation. Quite surprisingly, in the ruling that she seeks to fault, the tribunal did not consider her grounds for extension of time but rather the grounds for review. As the appellant did not get an opportunity to present her evidence regarding the alleged misrepresentation, the tribunal


ruled prematurely that the same was not established. In my view, therefore, an order for an extension of time is crucial to provide both parties with an opportunity to address the tribunal on the alleged misrepresentation.

Having found so, this court orders as follows:

1. The appeal is allowed.
2. The ruling and order of the DLHT dated 02/09/2022 are quashed and set aside.
3. The appellant is granted 30 days from the date hereof to file application for review which shall be determined by a different Chairman of the tribunal.
4. Given the outcome of this appeal, each party shall bear its costs.

Order accordingly.




KADILU, M.J.
JUDGE
21/09/2023.

Ruling delivered in chamber on the 21st Day of September, 2023 in the presence of Mr. Akram Magoti, the learned Advocate for the appellant and FR. Daud Kaswiza and in the absence of respondent.



S.I. MZIGE

AG. DEPUTY REGISTRAR

21/09/2023

**DEPUTY REGISTRAR
HIGH COURT OF TANZANIA
LABORA**