

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

MISC. LAND APPLICATION NO. 79 OF 2021

**(Arising from Land Appeal No. 27 of 2018 and Misc. Land Application No. 53
of 2020 in the High Court of Tanzania at Mwanza)**

SHABANI HAMAD..... 1st APPLICANT

JETRUDA JEREMIAH.....2nd APPLICANT

VERSUS

GEITA TOWN COUNCIL.....RESPONDENT

RULING

7th & 18th March, 2022

ITEMBA, J.

In this application, the Court is called upon to exercise its discretion and grant an extension of time within which to institute a notice of intention to appeal to the Court of Appeal of Tanzania. The intended appeal seeks to impugn the decision of the court in Land Appeal No. 27 of 2018 issued on 21st of February 2020.

The application is supported by an affidavit of Pauline Michael Rwechungura, the learned counsel for the applicant. It has been viciously fought by the respondent, through a counter affidavit sworn by Ms. Godlove Peter Kyangala the learned state attorney for the respondent.

When the matter came up for hearing Mr Pauline Rwechungura and Ms. Godlove Kyangala represented the parties respectively.

Arguing for the applicant, Mr Pauline introduced that, the applicant was once granted leave to appeal to court of appeal on 15.10.2020 in Misc. Land application no. 53 of 2020 and that the applicant was supposed to file his application within 21 days counting from 15.10.2020. Therefore, the deadline for filing was on 6.11.2020.

He submitted that on 30th October 2020 he filed an application for leave to Appeal to Court of Appeal of Tanzania but the same was not admitted in the e-filing system as it appeared to be out of time. On 3rd November 2020, being the last day of the 21 days window, he refiled the application through the e-filing system and the application was neither accepted nor denied. He travelled from Geita to Mwanza to see the Deputy Registrar on the issue and he (the Deputy Registrar) instructed him to submit a new application and ordered a certain court clerk to prepare a control number. He was issued with a control number 991400333458. He did the payment on the same day and went back to Geita. He had attached the payment receipt with the said control number as Annex MRA1. He

explained further that, still, he could not trace his application in the system. He made about 30 follow-ups which were unsuccessful. The said Deputy Registrar was later on appointed a Judge and his successor was not aware of what had transpired on his matter. Out of luck, a certain court clerk checked in the old (manual) system and noted that his application was filed manually in the old system that is why it did not feature in the new (online) system. By then he was already out of time for the second time therefore, he was forced to file the current application.

The learned counsel argued that he was not negligent as he made several follow-ups and the court officers were trying to assist him but they could not trace his application online. He insisted that the delay was technical and not actual and he referred the court to the case of **Salvand Rwegasira Vs China Hena Inter. Group Co. Ltd** Civil Reference No. 18/2016.

Arguing the last ground of his application, the learned counsel for the applicants referred to paragraph 12 of his affidavit and stated that the decision which he intends to challenge contains illegality as the law relied by the court, which is the Land Act 1999, was not yet in operation when

the applicants were buying the in plot in question. Leaning on the decision in the case of **Samwel Philemon Vs Republic** Criminal Application No.1/8 of 2016, CAT, Mwanza, he argued that illegality may constitute a sufficient reason for extension of time.

In reply, Ms. Godlove state attorney for the respondent opposed the application. She asserted that on 10th June, 2020 the applicant filed a similar application for leave to file an appeal to court of Appeal in Miscellaneous Land Application no. 53 of 2020 and the court relied on the grounds in the affidavit to allow the application. She added that, the applicant is relying on the same grounds to file this second application without even editing them.

The learned state attorney argued further that based on the control number attached in the affidavit, when the applicant was filing his application on 14th of November 2020, he was already beyond 21 days and therefore out of time. She distinguished the case of **Salvand Rwegasira** as that case relates to issues of technical delays but in this application, the applicant is out of time.

She insisted that there would be no objection to this application if the applicant had brought any receipt which shows that he attempted to file the application while he was still within time because Rule 21 of JALA (E-filing Rules) of 2018 provides for timing of filing of electronic documents and it states that the deadline for filing is midnight. Thus, she prayed for the application to be dismissed as the applicant was simply negligent.

Mr. Pauline in his rejoinder, denied to have repeated the same grounds as the two applications are different, the first was based on actual delay while the second is on technical delay and the guiding principles are different. He believed that as both applications for extension of time have the same background, there is nothing wrong if they contain similar paragraphs. Regarding being out of time he stated that he was waiting for the control number only to realise that the said number was issued out of the online system, he could have not paid without the number and that situation was out of his control.

The issue here is whether the applicant has made his case in supporting of his application for extension of time.

The law governing the grant of extension of time is to the effect that this is a discretionary remedy granted upon the party's ability to present a credible case, that sufficiently convinces the Court that reasons exist for such grant.

The applicant is therefore, required to meet key conditions some of which were pronounced in the landmark decision in **Lyamuya Construction Company Limited v. Board of Trustees of YWCA**, Ccourt of Aappeal of Tanzania-Civil Application No. 2 of 2010 (unreported).

The conditions are:-

"(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 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 illegality of the decision sought to be challenged."

To start with, as argued by the learned state attorney for the respondent, the applicant has unnecessarily included some grounds which were meant for the application in Miscellaneous Land application no. 53 of 2020. As a matter of clarity, it should be noted that the period of delay which we are dealing with in this application is between 15th October, 2020 when the said ruling was issued by Honourable Mgeyekwa, J and 9th of August 2021 when this application was filed.

The justification of delay raised by the counsel for the applicant as detailed above, is that he had tried several times to file his application within time but all his efforts were futile due to some technical errors in the online filing system.

That may have been the situation, but I do not accept it. As correctly argued by the counsel for the respondent, all these details by the counsel for the applicant are not supported by any evidence. It is just mere words from himself that "I did this" or "I tried that" without any backing up. It was expected of the counsel to either bring the print out of his application which was filed within time or at least the screen shots of the feedback from the e-filing system declining his application.

As regard the fact that the Deputy Registrar and the court clerk knew about his previous application challenges and had issued him a control number which did not work, in attempt to prove his allegation, the learned counsel would have supported his application by an affidavit from the said personel who allegedly assisted him in recovering the said control number, short of that, the rest remain mere allegations and cannot stand as accounting for the delay as intended by the law.

Now I will move to the ground of illegality raised by the applicant. In his affidavit and submission, the learned counsel has explained that the trial Judge in the impugned High Court judgment has applied the law restrospectively. He stated that the Land Act of 1999 was not in operative when the land dispute between the applicant and the respondent arose as explained in paragraph 12 of his affidavit.

In the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185 it was held that:-

"To hold otherwise would amount to permitting a decision, which in law might not exist, to stand. In the context of the present case this would amount to allowing the garnishee

order to remain on record and to be enforced even though it might very well turn out that order is, in fact a nullity and does not exist in law. That would not be in keeping with the role of this Court whose primary duty is to uphold the rule of law."

I will also be guided by the case of **Samwel Philemon v R** (*supra*), the court was of the view that if the decision contain illegality and is left to stand without availing the applicant an opportunity to pursue it would occasion injustice". I believe, allegations of applying the law retrospectively, if proved, amount to an illegality which is open for all to see, it is not 'something which can be established by a long drawn process' as explained in **Lyamuya Construction** (*supra*). For this reason, the grant of an extension of time is justified.

Thus, I hold as follows: -

- i. The applicant has not accounted for all period of delay.
- ii. Nevertheless, there are claims of illegality in the challenged decision that the law was applied retrospectively. Illegality constitutes a sufficient reason for extension of time.

The application is allowed. The applicant should file his application within 30 days from the date of this ruling.

It is so ordered.

DATED at MWANZA this 18th day of March, 2022



L. J. ITEMBA

**JUDGE
18.3.2022**

Ruling delivered under my hand and seal of the court in chambers in the absence of the both parties.

L. J. ITEMBA

**JUDGE
18.3.2022**