

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA

MISC. LAND APPLICATION NO. 88 OF 2021

*(Arising from Appeal No. 85 of 2020 in the District Land and Housing Tribunal for Mara
at Musoma)*

IBAMBA KITEBA APPLICANT

VERSUS

MRIGO NYAMSEGERE..... RESPONDENT

RULING

05th April & 16th May, 2022.

A. A. MBAGWA, J.

This is an application for extension of time within which to file an appeal. The application was brought by way of chamber summons made under section 14(1) of the Law of Limitation Act, section 95 of the Civil Procedure Code and section 38(1) of the Land Disputes Courts Act. It is supported by affidavit and supplementary affidavit of MDIMI THOMAS ILANGA, the applicant's counsel.

In contrast, the application was resisted by the respondent through a counter affidavit.

The background giving rise to the present application may, in a nutshell, be recounted as follows;

The respondent, Mrigo Nyamsegere successfully sued the applicant before the Ward Tribunal for Mihingo for trespassing into her land. The trial Tribunal, upon hearing the evidence, adjudged in favour of the respondent and further declared the respondent a rightful owner of the suit premises.

Aggrieved, the applicant, Ibamba Kiteba appealed to the District Land and Housing Tribunal for Mara (DLHT) via Land Appeal No. 85 of 2020. However, the appeal was unsuccessful as it was dismissed for want of merits. The DLHT judgment was delivered in the presence of both parties on 29/01/2021 and the judgment copy was ready for collection as from 15/02/2021.

The applicant did not collect the judgment nor did he prefer an appeal until on 24th day of May, 2021 when the respondent served him with summons in respect of Application for Execution No. 279 of 2021. After being served, the following day i.e. 25/05/2021 the applicant went to collect a judgment copy.

According to the applicant, after obtaining the judgment copy, he filed Appeal No. 61 of 2021 in this Court but the same was struck out for being time barred. Nonetheless, the applicant did not even attach the said ruling which struck out Appeal No. 61 of 2021. Following the striking out of Appeal No. 61 of 2021, the applicant filed the present application.

When the matter was called on for hearing before me, the applicant was represented by Mdimi Ilanga, learned advocate whereas the respondent had the service of Emmanuel Gervas, learned counsel as well.

Submitting in support of the application, Mr. Ilanga strongly argued that there is illegality in the judgment at paragraph 4 of page 4 of the typed judgment. The said paragraph reads;

'And lastly, there is strong evidence to prove that the appellant lawfully acquired the suit land by way of purchasing the same from the said Jackson Makoko, hence the victory in the favour of the respondent, Mrigo Nyamsegere was warranted.

Mr. Ilanga said that in the excerpt of judgment above, the Tribunal Chairman wrote appellant instead of respondent thereby misleading the applicant. The applicant's counsel was therefore opined that the error amounts to illegality in the judgment which warrants extension of time. To buttress his argument, Mr. Ilanga referred to the cases of **Hamis Mohamed (as the Administrator of the estates of the late Risasi Ngawe) vs Mtumwa Moshi (as the administratrix of the estates of the late Moshi Abdallah)**, Civil Application No. 407/17 of 2019, CAT at Dar es Salaam, **Amour Habeb Salim vs Hussein Bafagi**, Civil Application No. 52 of 2009,

CAT at Dar es Salaam and **Stade Mwaseba vs Edward Mwakatundu**, Misc. Land Application No. 19 of 2019, HC at Mbeya. The counsel said that in all these cases, illegality was held to be a sufficient cause for extension of time. Thus, he prayed the Court to allow the application.

In rebuttal, Mr. Emmanuel Gervas was of contrary views. At the outset, he said that it is important to note that the case whose decision the applicant wants to challenge was decided on 29/01/2021. He submitted that as per section 38 of LDCA, the time limit for filing an appeal is sixty (60) days. As such, from the judgment date to the date of filing the present application i.e. 18/10/2021 is almost 264 days. He expounded that by subtracting 60 days, it remains 204 days which the applicant has to account for. The respondent's counsel emphasized that both affidavit and supplementary affidavits do not account for 204 days. He was opined that the applicant ought to account for each day of delay even if illegality existed. To support his position, the counsel cited the cases of **Lyamuya Construction Company Ltd vs Board of Registered of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 of 2010, CAT at Arusha and **FINCA (T) Limited & Another vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 CAT at Iringa. The respondent's counsel clarified that in

the case of **FINCA** (supra), it was emphasized that despite existence of illegality, the applicant should account for each day of delay.

Regarding the contention that the applicant believed that he won the case due to the highlighted paragraph in the judgment, Mr. Gervas disputed the applicant's contention in that he was present when the judgment was delivered and the applicant was clearly informed that his appeal was dismissed.

Further, Mr. Gervas submitted that there is no illegality in the judgement. He said that writing the appellant instead of respondent at page 4 was a mere slip of pen and not illegality. He went further and said that even the decree was very clear that the applicant's appeal was dismissed. Finally, the respondent's counsel prayed for dismissal of the application with costs.

In rejoinder, Mr. Ilanga submitted that where the point of law is raised, it constitutes sufficient cause for extension of time irrespective of length of delay.

I have keenly gone through the submissions of both parties and the respective affidavits in support of their arguments. Admittedly, the main

cause of delay pleaded by the applicant is illegality in the judgment of the District Land and Housing Tribunal (DLHT).

Thus, the relevant question for determination of this application is whether the error in above excerpt of the judgment is indeed an illegality and whether the same constitute a sufficient cause to warrant extension of time.

Mr. Gervas strongly submitted that the error is not an illegality rather a slip of a pen. I agree with Emmanuel Gervas that the alleged error does not amount to an illegality. This is a mere typo which did not, in anyhow, detract the verdict of the Tribunal. Apart from this misprint, the rest of the judgment is quite in order. In my view, for an issue to be illegality, it must be either contrary to the provision of law or an established principle of law. In this case, there is no provision or principle of law which was allegedly violated.

Furthermore, it is noteworthy that not every issue of law would be termed as illegality warranting extension of time rather it is only that of sufficient importance. See the case of **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Arusha. In the case of **Lyamuya (supra)**, the Court of Appeal held;

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasised that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process. "

Applying the foregoing decision, it goes without saying that the applicant has failed to demonstrate illegality in the decision intended to be impugned.

In addition, it was pleaded by the applicant and conceded by the respondent that the applicant initiated the appeal process after he was served with a summons in respect of Application for Execution No. 279/2021. This exhibits that the applicant was negligent and his conduct was intended to delay the respondent from enjoying the decree. It is a trite law that conduct of parties

should also be taken into account while determining extension of time. See **Jaliya Felix Rutihwa vs Kalokola Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam,

In view of the above, it is my unfeigned findings that the applicant has no sufficient cause for this Court to grant him an extension of time. Accordingly, I dismiss the application with costs.

It is so ordered.

Right of appeal is explained.




A. A. Mbagwa

JUDGE

16/05/2022

Court: the judgment has been delivered in the presence of both parties this 16th day of May, 2022


A. A. Mbagwa

JUDGE

16/05/2022