

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA**

MISC. LAND APPLICATION No. 90 OF 2021

(Originating from the Judgment of the District Land and Housing Tribunal of Muleba at Muleba dated 19/09/2019 in Land Application No. 09 of 2019)

BONIPHACE MBOJE.....APPLICANT

VERSUS

1. IMANI RUME 1st RESPONDENT

2. PIUS TRYPHONE 2nd RESPONDENT

RULING

22nd February & 10th March 2023

OTARU, J.:

This Application has been filed by **Boniphace Mboje** (the Applicant) under Section 14(1) of the **Law of Limitation Act** (Cap. 89 RE 2019) by way of Chamber Summons and Affidavit in support, for extension of time within which to file Memorandum of Appeal in the High Court, appealing against the decision of the District Land and Housing Tribunal for Muleba at Muleba dated 19th September 2019.

Briefly, the facts of the case are such that, **Imani Rume** the 1st Respondent herein instituted Land Application No. 09 of 2019 in the District Land and Housing Tribunal for Muleba at Muleba against the Applicant and **Pius Tryphone** (the 2nd Respondent) for encroachment by the Applicant over a piece of land located at Nyamiti Hamlet in Kikagate Village within Muleba District (the suit land). He thus

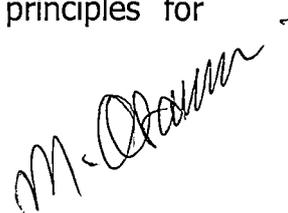


prayed to be declared the owner of the suit land. The 2nd Respondent was sued for his role as the seller of the land in question.

At the District Land and Housing Tribunal, the matter was heard *ex-parte* against the Applicant as he did not appear for hearing. The 2nd Respondent testified in favor of the 1st Respondent, claiming that he sold the suit land to him. Consequently, the 1st Respondent won the case. He was declared lawful owner of the suit land and the Applicant was ordered to give vacant possession. Dissatisfied, the Applicant filed this Application for extension of time after finding that he was time barred to institute an appeal.

At the hearing of the Application, the Applicant appeared in person, the 1st Respondent was represented by Zephine Derrick, learned Advocate, while the case proceeded *ex-parte* against the 2nd Respondent who seemed to have no interest in the same.

The Applicant prayed for the court to adopt his Affidavit so his case be heard on merit. In opposing the Application, Mr. Zephine Derrick argued that the Applicant being late for almost two years, failed to account for each day of delay as required. In support of his argument, he cited the case of **Vedastus Raphael v. City Council & 2 Others**, Civil Application No. 594 of 2021 (CAT Mwanza) (unreported). The learned Advocate for the Respondent expounded further that in the cited case, the court made reference to the case of **Lyamuya Construction**, Civil Application No. 2 of 2010 (unreported) which expounded principles for extension of time to include;-



1. *The applicant accounting for the whole period of the delay,*
2. *The delay should not be inordinate,*
3. *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
4. *Other reasons like existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.*

The learned Advocate prayed for the court to take the steps taken in the cited case of refusing the application where the number of days were 14 but in the instant case the number of days are more than 700 thus the delay is well below inordinate. He also said that the Applicant cannot say that he was not aware of the case because his summons has been published in newspapers. Finally, the counsel prayed that the Applicant has not advanced sufficient reasons for the court to grant the Application. The same should therefore be refused.

In answering the issue *whether the Application before me has merits*, I have considered the rival parties' submissions, the trial tribunal's record as well as the relevant laws. As correctly observed by the counsel for the Respondent, the Applicant has not even tried to account for his delay. Despite the Applicant not accounting for each day of delay, I have noted some procedural illegalities in paragraphs 2 and 3 of the Affidavit, as well as in the trial proceedings.

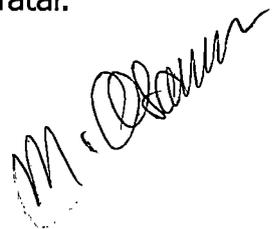
Paragraphs 2 and 3 of the Affidavit sworn by Boniphace Mboje suggest that there was a similar case concerning the suit land instituted by the Applicant against

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the Respondents in Land Application No. 13 of 2015 at Mubunda Ward Tribunal. The decision which was in favour of the Applicant has not been appealed by the Respondents. In that case, is the matter *res judicata*? If the 1st Respondent filed the suit in the DLHT while the matter is *res judicata*, this by itself is an illegality that needs to be looked at by the appellate court.

Another point is found in the Judgement of the District Land and Housing Tribunal of Muleba at Muleba, it is stated that assessors Jovenary and Mugishangwe opined in favour of the 1st Respondent. However, the record of proceedings is silent on the same, such that it is not clear if assessors' opinions were read to the parties and what were the contents thereof.

Section 23(1) of the **Land Disputes Courts Act**, Cap 216 (R.E. 2019) provides for the composition of the District Land and Housing Tribunal as the chairman and not less than two assessors. Sub 2 of Section 23 further provides that the tribunal '*shall be duly constituted when held by a chairman and two assessors who **shall be required to give out their opinion** before the chairman reaches the judgment*'. This requirement is amplified under Regulation 19(2) of the **Land Disputes Courts (the District Land and Housing Tribunal) Regulations**, 2003 which imposes a duty on the chairman before making his judgment to require every assessor present to give his opinion. In the absence of the assessors' opinions, it is implied that assessors were not fully involved. The effect of illegality of not involving assessors has been held to be fatal.

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The law is settled that where illegality is an issue in relation to the decision being challenged, the Court has a duty to extend time so that the matter can be looked into. One of the celebrated decisions of the Court of Appeal on this aspect is the case of **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1992] TLR 185, where it was held that:

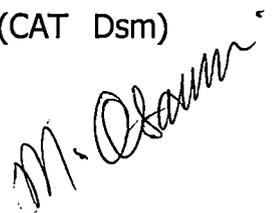
(f) Where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute "sufficient reason within the meaning of Rule 8 (now rule 10) of the Rules for extending time;

(ii) 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 the record right'

In the case of **VIP Engineering and Marketing Limited & Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference Nos. 6, 7 and 8 of 2006 (unreported), the Court stated:-

'It is therefore settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 (now rule 10) regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay,'

Pursuant to the above cited decisions, as well as the case **The Attorney General v. Emmanuel Marangakisi (as attorney of Anastansious Anagnostou & 3 Others**, Civil Application No. 138 of 2019 (CAT Dsm)



(unreported) an allegation of illegality is a good cause for extension of time even if the applicant has failed to account for each day of delay.

Since there are prima facie illegalities in the impugned decision, the same warrants the court to exercise its discretion to grant extension of time to file an appeal. Consequently, I find the Application meritorious which I hereby grant.

The Applicant is to file the intended Appeal within fourteen (14) days from the date of delivery of this Ruling. No Order as to costs is given as one of the points has been observed by the court. It is ordered accordingly.



DATED at BUKOBA this 10th day of March, 2023.

M. P. Otaru
M. P. Otaru
Judge

Court: the Ruling is delivered in court in the presence of the Applicant and the Respondent in person.

The right of appeal is duly explained to the parties.



M. P. Otaru
M.P. Otaru
Judge
10/03/2023