

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**MISC. LAND APPLICATION NO. 97 OF 2022**

*(Arising from Land Application No. 172 of 2016 District Land and Housing Tribunal for Bukoba  
Originating from Kitendaguro Ward Tribunal in Civil Case No. 35/2014)*

**FILBART FORTUNATUS..... APPLICANT**

**VERSUS**

**ERICA ANTHONI..... RESPONDENT**

**RULING**

9<sup>th</sup> and 22<sup>nd</sup> March, 2023

**BANZI, J.:**

The genesis of this application traces its root way back in 2014 whereby the Applicant and his relative, Phillimon Fortunatus, who is not a party to this application, sued the Respondent at Kitendaguro Ward Tribunal (the trial tribunal) claiming for their inheritance share of their father. After hearing, the trial tribunal decided in favour of the Applicant and it ordered the Applicant and his brother to refund Tshs.230,000/= to the family of Anthony so as to redeem the land that was sold to them in 1964.

The Respondent was discontented by the refund order on the reason that, she found her family in possession of that land when she was married in 1981. She successfully appealed to the District Land and Housing Tribunal

for Bukoba ("the DLHT") where it allowed the appeal on the reason that, the Applicant and his brother had no *locus standi* to institute the case concerning that land because they were not administrators of the estate of their father who died in 1982. It was decided also that the case was filed hopelessly out of 12 years prescribed by the law.

The Applicant did not appeal against that decision. However, in 2019 he filed a new suit, Land Application No. 120/2019 before the DLHT claiming for the same suit land. The application was dismissed for being Res Judicata to Appeal No. 172 of 2016. He attempted to appeal against the dismissal order vide Land Case Appeal No. 75 of 2021 but he later withdrew it. Now he is before this Court with application for extension of time to appeal against Land Appeal No. 172 of 2016 that was decided on 22/12/2017.

At the hearing of the application, the Applicant appeared in person, unrepresented and Mr. Lameck John Erasto, learned counsel appeared for the Respondent. By consent, the application was argued by way of written submissions where, both parties adhered to the scheduling order.

In his submission, the Applicant urged this Court to extend the time sought on the ground of illegality. He clarified his point by stating that, the DLHT failed to record the opinions of the assessors in the proceedings something that rendered the proceedings a nullity. He supported his

submission with the case of **Dr. Clemence Kalugendo v. Peter Andrew Athumani**, Civil Appeal No. 92 of 2018 CAT (unreported).

In reply, Mr. Erasto submitted that, the assessors were effectively involved and the Applicant's allegation was just speculation not backed up with any cogent analysis after failure to cite the pages where the defect is alleged to appear. He further argued that, even if there are defects in the records, that should not be taken as the only factor to extend the time. This court should look at other factors in totality for the sake of justice. He added that, the contention by the Applicant that he had been appealing ever since lacks merit, and what the Applicant demonstrated is laxity, inaction and negligence. To support his submission, he cited the cases of **Idadi Sued v. Mangadalena Philipo and Another**, Misc. Land Application No. 01 of 2021 HC (unreported), **Ibrahim Twahil Kusundwa and Another v. Epimaki S. Makoi and Another**, Civil Application No. 437/17 of 2022 CAT (unreported), **Iron and Steel Limited v. Martin Kumaliya and 117 Others**, Civil Application No.292/18 of 2020 CAT (unreported) and **Issack Sebegele v. Tanzania Portland Cement Co. Ltd**, Civil Application No. 25 of 2002 CAT (unreported). In concluding his submission, Mr. Lameck was of the view that the DLHT in Appeal No. 172 of 2016 held properly that the case at the trial tribunal was filed after expiry of time.

Having considered the records, affidavits and submissions of both parties, the main issue of determination is *whether the Applicant has established sufficient cause to warrant this Court to grant extension of time.*

Ordinarily, granting extension of time is the discretion of the court although it should be exercised judiciously after the court is satisfied that, there is sufficient cause to do so. What constitute sufficient cause has not been defined under the Law of Limitation Act [Cap. 89 R.E. 2019] but there are various factors that should be taken into consideration before time is extended. One of those factors is illegality as it was stated in the case of **Arunaben Chaggan Mistry v. Naushad Mohamed Hussein and 3 Others**, Civil Application No. 6 of 2016 CAT (unreported) that:

*"The legal position is settled. When there is an allegation of illegality, it is important to give an opportunity to the party making such allegation to have the issue considered."*

In another case of **VIP Engineering and Marketing Limited v. Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2016 CAT (unreported) it was held that:

*We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself*

*constitutes sufficient reasons within the meaning of Rule 8 of the Rules for extending time."*

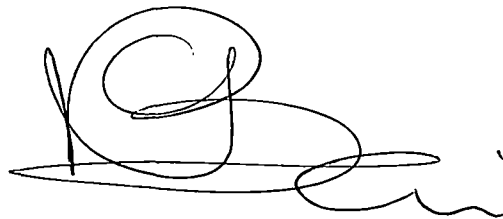
See also the case of **Attorney General v. Consolidated Holding Corporation and Another**, Civil Application No. 26 of 2014 CAT (unreported).

In this case, the Applicant through paragraph 10 of his affidavit has raised the issue of illegality claiming that, the decision of the DLHT is tainted with irregularities as to involvement of assessors in the proceedings. In his submission, the Applicant expounded his point that, the DLHT has failed to record the opinion of assessors in the proceedings. It is a settled law that, failure to record the opinion of assessors in the proceedings is a fatal irregularity vitiating the proceedings and the subsequent judgment. See the cases of **Edina Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 CAT (unreported) and **Dr. Clemence Kalugendo v. Peter Andrew Athumani** (supra). Since the Applicant is alleging illegality and if the extension sought is granted the said illegality will be addressed, it is the considered view of this court that, the Applicant has demonstrated sufficient cause to warrant this Court to grant extension of time. With due respect, the cited cases of **Ibrahim Twahil Kusundwa and Another** and **Iron and Steel Limited** are distinguishable with the case at hand because unlike in

those cases, if the extension is granted in the matter at hand, the said illegality will be addressed.

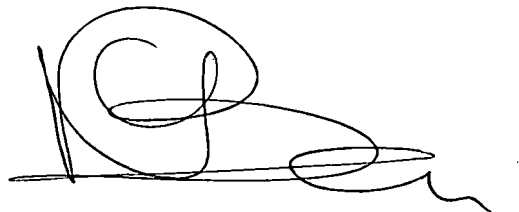
Having said so, I grant the application and the Applicant is given thirty (30) days from the date of this ruling to file the appeal. I make no order as to costs.

It is accordingly ordered.



**I. K. BANZI**  
**JUDGE**  
**22/03/2023**

Delivered this 22<sup>nd</sup> day of March, 2023 in the presence of Mr. Lameck John Erasto, learned counsel for the Respondent and the Applicant in person.



**I. K. BANZI**  
**JUDGE**  
**22/03/2023**