

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT IRINGA**

MISC. LAND APPLICATION NO. 19 OF 2020

*(Originating from Application No. 38 of the District Land and Housing Tribunal of Njombe before
Hon. C. Hatson – Chairperson)*

MIC TANZANIA LIMITED **APPLICANT**

VERSUS

JULIANO CHARLES MIKONGOMI }

(Administrator of the estate

Of the late **Charles Mikongomi**) }

..... **1ST RESPONDENT**

HTT INFRANCO TANZANIA LTD **2ND RESPONDENT**

ALICE BOAZ **3RD RESPONDENT**

RULING

10th Nov. 2022 & 16th March, 2023

I.C. MUGETA, J:

The applicant seeks extension of time to file an appeal against the judgment and decree of the District Land and Housing Tribunal for Iringa (DLHT). The applicant's advocate, Sinare Zaharan, learned counsel averred in her affidavit that the impugned judgment was delivered on 01/07/2019. Then she requested for certified copies of judgment and decree but was unsuccessful despite constant follow ups. She also averred

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that the tribunal delivered its judgment without giving notice to the applicant.

The respondent resisted the application by filing a counter affidavit sworn by her advocate Mr. Baraka Mbwilo. He stated that the applicant was negligent and that she knew the date of judgment. He averred that copies of judgment and decree were certified on 19/11/2019.

In her submissions, the applicant's counsel submitted that the court has discretionary powers to grant extension of time upon sufficient reasons adduced by the applicant. She cited the case of **Mugo & Others v. Wanjiru and Another (1970) E.A 481** to buttress her submission. She added that what amounts to sufficient reasons depends on the circumstances of each case. She argued further that the applicant has to account for each day of the delay as it was stated in **Kalunga and Company Advocates v. National Bank of Commerce Limited (2006) TLR 235, Tanzania Fish Processors Ltd v. Eusto K. Ntagalinda**, Civil Application No. 41/08 of 2018, Court of Appeal of Tanzania (CAT) at Mwanza (unreported), **Lyamuya Construction Co. Ltd v. Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha (unreported),

Sebastian Ndaula v. Grace Rwamafa (Legal Personal Representative of Joshua Rwamafa), Civil Application No. 4 of 2014, CAT at Bukoba (unreported) and **Yusufu Same & Hawa Dada v. Hadija Yusufu**, Civil Application No. 1 of 2002, CAT at Dar es Salaam (unreported).

She submitted further that, the applicant has been diligent in prosecuting her intended appeal but she was delayed by the availability of certified copies of judgment and decree despite her several follow ups. On the delay of obtaining the certified copies as good reason, she referred the court to the cases of **Mrs. Kamiz Abdullah M. D Kermal v. The Registrar of Buildings and Hawa Bayona (1988) TLR 199, Tanzania Bureau of Standards & Another v. Charles Nyato**, Civil Application No. 315/01 of 2021, CAT at Dar es Salaam (unreported) and **District Executive Director, Kilwa District Council v. Bogeta Engineering Limited**, Civil Appeal No. 37 of 2017, CAT at Mtwara (unreported).

Another reason for this court to grant this extension of time as argued by the counsel for the applicant is illegality of the impugned judgment. The alleged illegality according to the counsel for the applicant is the DLHT ordering the 1st respondent to be paid Tshs. 287,500/= while there is no

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proof of existence of contractual relationship between the parties. She cited the case of **The Principal Secretary, Ministry of Defence and National Service v. DevramValambia (1991) TLR 387** to support her argument.

The respondent's counsel submitted that the applicant has not adduced good cause to move the court to grant extension of time. The judgment was delivered on 1/7/2019, the applicant's letter for requesting the copies was written on 16/7/2019 though the letter does not have the tribunal's stamp. The second letter which bears the stamp of the tribunal was received at the tribunal on 3/9/2019. The copies were certified and ready for collection on 19/11/2019. Therefore, in his view the applicant was negligent as they failed to make follow ups for almost seven months. He argued that the tribunal had no duty to reply to letters requesting for judgment and decree unlike the CAT.

On the ground of illegality, the learned counsel contended that there are no illegalities on the face of record as it is trite law that a point of illegality has to be apparent on the face of record.

The issue for determination is *whether the applicant has adduced sufficient grounds for this court to exercise its discretion to grant extension of time.*

I agree with counsel for both sides that in applications of this nature, the applicant has to show good cause for the court to extend time and account for each day of the delay. What amount to good cause is a question of fact and depends on the facts of each case. Such factors were considered in the **Lyamuya case** (supra). They include accounting for all day of delay, the delay should not be inordinate, the applicant must show diligence and not apathy, negligence or sloppiness in prosecution of the action that he intends to take; and the existence of a point of law of sufficient importance such as the illegality of the decision sought to be appealed against.

The law under section 19 (2) of the Law of Limitation Act [Cap. 89 R.E 2019] excludes the time of awaiting to be supplied with the certified copies of judgment and decree from the reckoning of limitation period. The record shows that the judgment and decree were certified on 6/11/2019. The reckoning time, therefore, was from 6/11/2019 inclusive. This application was filed on 9th March, 2022 which is more than two years from the date of reckoning the time. The applicant's delay at issue by any standard, is inordinate and unexplained as she has not accounted for each day of the delay in the affidavit.

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The alleged illegality raised by the applicant in the present application does not amount to a sufficient cause too. This is because not every allegation of illegality can constitute a good reason for extending time. In **Lyamuya case** (supra) the court held that for a point of law to constitute a good cause for extending time, it must be of sufficient importance and apparent on the face of the record, such as the question of jurisdiction. It should not be one that would be discovered by a long-drawn process of examining the record and evidence. The issue raised of whether the respondent is entitled to payment of Tshs. 287,500/= cannot be established without delving into evidence which disqualify it from a point of law but a point of fact.

Owing to the above reasons, I am inclined to answer the issue posed above negatively. I hold that the applicant has not advanced sufficient grounds for this court to grant extension of time for her to appeal out of time. I, consequently, dismiss the application with costs.

It is so ordered.




I.C MUGETA
JUDGE
16/3/2023

Court: Ruling delivered in chambers in the presence of Omary Khatibu, advocate holding brief for Mr. Obeid Mwandambo for the applicant in the absence of the respondents.

Sgd: M. A. MALEWO

DEPUTY REGISTRAR

16/03/2023