

IN THE HIGH COURT OF THE UNITED REPUBLIC OF ARUSHA

ARUSHA DISTRICT REGISTRY

MISC LAND APPLICATION NO. 101 OF 2021

(C/F Misc Land Application No 68 of 2019 in the District Land and Housing Tribunal
for Manyara at Babati)

GIDAWE DAWITE..... APPELLANT

VERSUS

DAWITE MAYUMBA..... RESPONDENT

RULING

Date of last order 15/02/2023

Date of Ruling 31/03/2023

BADE, J.

This is an application for an order of extension of time which has been preferred by the Applicant. The Court is moved through a chamber summons specifically under **Section 14 (1) of the law of Limitation Act**, (Cap 89 R.E 2019).

The applicant prayed to be granted an order for the extension of time to file Revision out of time against Misc. Application No. 68 of 2019 which was filed in the District Land and Housing Tribunal for Manyara at Babati. The Application is supported by an affidavit which is deponed to by Gidawe Dawite sworn on 11th November 2021.

This matter had to be proceeded with *ex parte* since the Respondents never entered appearance despite being served through Mwananchi

Newspaper dated 30th July 2023 after they could not be traced to receive Court Process. On the hearing date, the Counsel for the Applicant prayed and was granted with an order to argue the application by way of written submission, and the same were filed on 23rd of March, way ahead of the scheduled Court timings. I commend the Counsel for being prompt on his filing.

The Applicant Counsel submitted that they have preferred this application under the provision of section 14 (1) of the Law of Limitation Cap 89 R.E. 2019, which provides that:

"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

He further urged, that basing on the cited provision, there should be a reasonable or sufficient cause for the court to grant the extension of time. Counsel invites the court to the contents of the applicant's affidavit which refers to the ruling at issue, which had been delivered on the 27th day of August 2021, and for which the applicant lodged a letter dated the 6th day of September 2021 to the trial tribunal to be supplied with a copy of Proceeding, Ruling, and Order which were not supplied to the applicant on time.

The Counsel further submits that he took it upon himself to peruse the tribunal's file, where he discovered that there was issued a letter to seek the appointment of the broker which was directed to the 2nd respondent herein to execute the same and its report be submitted to the tribunal on or before 30th September 2021. Further, it was also discovered as reflected in paragraph 5 of the affidavit, that on the 8th day of October 2019, when the respondent herein who was the sole applicant at the trial tribunal, was represented by a person called Clement Dawite who was a donee of a Power of Attorney. The said Power of Attorney was later challenged to be forged whereby the trial tribunal made an order for the parties to address it on the issue that was brought forth, which Whether the 1st respondent herein signed to appoint the person called Clement Dawite to represent the applicant at the trial tribunal.

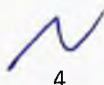
On an unpleasant turn of events, the trial tribunal took a decision to ignore the raised issue of the illegal power of attorney on the basis of a single none appearance of the Respondent then, without stating anything about the raised issue of the power of attorney. At the time of perusal, there was no report in the file of the trial tribunal of the respondent herein or on how the trial tribunal failed to supply the documents for purposes of preferring an appeal on time to the applicant.

So in a nutshell, the applicant herein has two major reasons for the application for an extension of time to file revision out of time - that is the delay caused by the trial tribunal, and the illegality apparent in the record of the trial tribunal. These reasons are well manifested under paragraphs 2, 3, and 10 on the first issue, and paragraphs 5 and 6 for the second issue of the applicant's affidavit respectively.

On the 1st issue, the counsel argued that the tribunal made the said order of investigation by the police on the power of attorney being presented before the trial tribunal, and it never vacated this particular order. Meanwhile, the trial tribunal as per paragraph 6 of that applicant's affidavit, proceeded with the hearing on 24th day of March 2021, ignoring its own order. This was without basis and illegal because the challenge on the power of attorney is a direct challenge to the legality of a person representing the 1st Respondent herein as he was the applicant at the trial tribunal. The counsel reasons that in one way or another, the jurisdiction of the trial tribunal was in question under those circumstances.

The Counsel refers on the decision of the case of *Laemthong Rice Co. Ltd vs Principal Secretary Ministry of Finance Zanzibar, Civil Appeal No. 259 of 2019, In the Court of Appeal of Tanzania at Dar es Salaam*, whereby the court insisted the parties and the court has a duty to respect the court orders, stating that

"... What was stated by the court in **Victoria Real Estate Development Limited** (supra), on the duty of the parties and *even the courts to respect court orders,*"



Having taken in the Application, its supporting affidavit, and the submission by the Counsel, the issue to be determined then is whether the Application is meritorious. The issue of extension of time is a discretion of the Court to grant and since that discretion is judicial it must be made upon sufficient reasons being shown by the applicant.

As guided by the case of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No. 02 of 2010, [2011] TZCA 4 (TANZLII) where the Court of Appeal has laid down some describable conditions when one wishes to apply for time enlargement as follows:

Firstly, the Applicant must account for the whole period of delay; *Secondly*, the delay should not be inordinate; *Thirdly*, the Applicant must show diligence, not apathy, negligence, or sloppiness in the prosecution of the action that he intended to take; *Fourthly*, there is an illegality that arises from the violation of fundamental legal principles or if the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance.

Even though the applicant has failed to account for every day of the delay, I am inclined to consider the grant on the basis of the illegality apparent

on the record. In the case of ***Boaz Mwaifwisi Mwakifumbwa vs Bertha Jones Maro, Misc. Civil Application No. 26 of 2019***, the Court reasoned:

"..... a claim of the illegality of the challenged decision constitutes a good reason for the extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay. However, the threshold is that, a point of law on illegality must be apparent on the face of the record in order to constitute good cause to grant the extension of time sought. "

Also in the case of ***Selina Chibago vs Finihas Chibago, Civil Application No. 182 "A" of 2007***, the Court of Appeal resound the principle on illegality as the basis of the extension of time:

"Be it as it may, one of the accepted reasons for granting extensions of time under Rule 8 of the Rules was and still is, the illegality or otherwise of the impugned decision."

The court on the said case of **Selina Chibago vs Finihas Chibago** (supra) when quoting its decision from the case of Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia [1992] TLR 182 at page 189, states that

"In our view, 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".

I find that there is a valid reason for the extension of time since the applicant has demonstrated sufficient reasons based on the illegality apparent on the record, and the application has been brought in good faith without undue delay despite not accounting for each day delayed. I hereby grant the order and extend the time on which the Applicant can file his Revision Application. Costs to follow the event.

Order accordingly



A handwritten signature in blue ink, appearing to read "A. Z. Bade".

**A. Z. BADE
JUDGE
31/03/2023**