

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

**MISC.CIVIL APPLICATION No. 02 OF 2023**

*(Arising from the judgment of the DLHT for Ukerewe at Nansio in Civil Application  
No. 05 of 2019.)*

**ALOYS MARWA EMMANUEL** ( The Administrator of the  
estate of the late **KUMOLWA**)----- **APPLICANT**

**VERSUS**

**MKUU WA SHULE YA MSINGI KITANGAZA**----- **1<sup>st</sup> RESPONDENT**

**MWENYEKITI WA KIJIKI CHA MAMILEMBE**-----**2<sup>nd</sup> RESPONDENT**

**RULING**

*Last Order date: 03.05.2023*

*Ruling Date: 04.05.2023*

**M. MNYUKWA, J.**

By way of chamber summons, supported by an affidavit deposed by Aloys Marwa Emanuel, the applicant, applied to this court seeking an order to extend time to appeal to this court out of time, from the decision of the District Land and Housing Tribunal for Ukerewe at Nansio in Misc. Land Application No. 05 of 2019 which was delivered in favour of the Respondents.



On the date when the matter was scheduled for hearing the respondents did not enter appearance. The applicant who appeared in person unrepresented, prayed this court to proceed ex-parte, the prayer which was granted and the matter proceeded ex-parte against the respondents.

In his brief submissions, the applicant prayed this court to adopt his affidavit to form part of his submissions. He prayed this court to allow the application for the reasons stated in his affidavit.

In the determination of this application which is the application for extension of time, it is an established principle that, a party seeking an order for extension of time has to adduce sufficient reason(s) which prevented him to act within time. See **Regional Manager Tanroads Kagera vs Ruaha Concrete Company Ltd**, Civil Application No .96 of 2007 CAT.

The other factor that the court can exercise its discretion to extend time is the existence of illegality apparent on the face of records of the impugned decision which cannot be left un-interfered. See **Wambura N. J. Waryuba vs The Principal Secretary Ministry Of Finance & Another**, Civil Application No. 320/01 of 2020. Again, a person applying for extension, despite giving sufficient reasons, must also account for each



day of delay. See **Omari R. Ibrahim Vs Ndege Commercial Services Ltd**, Civil Application No. 83/01 Of 2020.

In the application at hand, the applicant's affidavit gave reasons for his delay which can be traced from paragraphs 3 to 9. The applicant filed this application on 23.01.2023 against the decision of the DLHT which was delivered on 24.11.22. The law requires that a person aggrieved by the decision of DLHT to appeal before this court within 45 days. In the application at hand, the applicant delayed for 18 days from the day when the decision was delivered to the day he filed this application.

In his affidavit, he gave reasons that he was making follow-up to be supplied with the copies of judgment and orders for him to file his appeal and he was supplied on 30.12.2022. As I go through the applicant's application, he did not give reasons why he delayed to file his appeal after he was served with the copies of the judgment on 30.12.2022 to the date this application was filed because he received the copy of the judgment within a statutory time. From the date the decision was delivered on 21.11.2022 to the date he claimed to be supplied with copies on 30.12.2022, he was within 45 days and he had 6 more days till 05.01.2023 when he was time-barred. In that regard, I find that the reasons that he



delayed to be supplied with copies were not accounted for to justify his delay.

Again, on paragraph 10 he raised the issue of illegality which which was the subject of the decision by the DLHT. The law is settled that, where illegality is raised as a ground for seeking an extension of time, such ground amounts to sufficient cause. The Court of Appeal in **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015, observed as follows when the issue of illegality was raised:-

*"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 straight"*

The Court has further reaffirmed the stated stance in **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported), wherein it was clearly 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 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay"*



Guided by the above principles, I perused the court records and go through paragraph 10 of the applicant's affidavit, the impugned judgment of the DLHT, and and also I take judicial notice on Civil appeal No. 37 of 1980. It is apparent that what is stated on page 2 of the tribunal's judgment does not reflect what appears on the face of the record of the Civil Appeal No. 37 of 1980. Based on the fact that this court is only called upon to extend time, what I have also endeavoured above, the claim of illegality will be addressed when the applicant will lodge the appeal.


In the final result, this application is merited and I proceed to grant the extension of time as applied. The applicant has to file his appeal within 30 days from today. No orders as to costs.

It is so ordered.



  
**M. MNYUKWA**  
**JUDGE**  
**04/05/2023**

**Court:** Ruling delivered on 4<sup>th</sup> May 2023 in the presence of the applicant and in absence of the respondents.

  
**M. MNYUKWA**  
**JUDGE**  
**04/05/2023**