

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(MUSOMA SUB REGISTRY)

AT MUSOMA

Misc. LAND APPLICATION No. 11 OF 2023

*(Arising from the District Land and Housing Tribunal for Mara at Tarime in
Misc. Land Applications No. 270 of 2016 & No. 21 of 2012; originating from
Land Application No. 78 of 2009)*

TARIME DISTRICT COUNCIL APPLICANT

Versus

1. JOSINA COMPANY LIMITED

2. MARIBA MARWA

3. STEPHEN MUGORE

4. ALPHONCE KISIRI

5. MWITA WANG'ENYI



..... RESPONDENTS

RULING

03.05.2023 & 05.05.2023

Mtulya, J.:

In the present application, three (3) officers of this court are in agreement that a claim of illegality in an application for enlargement of time is one of the pigeon holes established by our superior courts to be considered as good cause in granting the application. However, the learned minds are in contest on whether the present application, the allegation of illegality is apparent or has any sufficient importance to allow this court to exercise its discretionary mandate in granting enlargement of time for the applicant to file an application for revision out of time in this court.

The learned officers have also entered into agreement that the precedent of our superior court, the Court of Appeal, in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, is a good precedent and has been undisturbed since 2010 and this court may invite the same to resolve the present application.

According to **Mr. Haruna Mustafa Matata** and **Mr. Goodluck Lukandiza**, learned State Attorneys for the applicant, the claim of illegality is vivid at the display of the record in the first glance without any perusal and both parties have attached documents justifying the same without any contest hence this court may exercise its discretionary mandate to grant the applicant enlargement of time to come in this court to rectify the claimed illegality.

In substantiating their submissions, the dual had contended that the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal) had resolved one land dispute filed in **Application No. 78 of 2009** (the Application), but issued two (2) distinct execution orders in two (2) distinct applications registered in **Misc. Application No. 21 of 2012** (the first execution) and **Misc. Application No. 270 of 2016** (the second

application). According to the dual, the first execution order required the applicant to pay compensation of **Tanzanian Shillings Fifty Million** (50,000,000/=Tshs). to the respondents whereas the second declared the respondents as the rightful owners of the land. According to the dual, it is unfortunate that the second order does not make any reference to the first order or original suit in the application. In their opinion, the existence of the dual orders makes execution impossible as there is no nullification order of the first order and the second order has brought dilemma and uncertainty which needs intervention of this court.

On the other hand, **Mr. Mwita Emmanuel**, learned counsel for the respondent thinks that the claimed illegality by the applicant is not apparent and, in any case, lacked any sufficient importance. In his opinion, the point of illegality is only part of the reasons to be considered in an application for enlargement of time. According to him, the applicant in the present appeal has shown sloppiness and negligence in following his rights as he remained silent since the issuance of the first order on 12th April 2012, and has delayed for three (3) years after the delivery of the second order. Mr. Mwita finally, cited the authority in **Lyamuya Construction Company Ltd v. Board of Registered**

Trustees of Young Women's Christian Association of Tanzania (supra) contending that the Court of Appeal has insisted applicants for enlargement of time to account on every day of the delay and show diligence in following their contests in courts.

Rejoining the submission of Mr. Mwita, the dual minds have cited the precedents of the Court of Appeal in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185 and **Attorney General v. Emmanuel Marangakisi (as Attorney of Anastansious Anagnostou) & Three Others**, Civil Application No. 138 of 2019, contending that when the point at issue is on alleging illegality of the decision being challenged, the court has duty to enlarge time to allow rectification of the claimed illegality. In their opinions, the dual think that when the complaint on illegality is registered in an application of enlargement of time, this court cannot require accountability of each day of the delay or consider other reasons of enlargement of time. Finally, the dual had claimed that if this court cannot see at glance the vivid display of illegality in the present application, there is no any other version of illegality that can be spotted by this court at first glance.

I have consulted the cited decisions of our superior court in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra); **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (supra); and **Attorney General v. Emmanuel Marangakisi (as Attorney of Anastansious Anagnostou) & Three Others** (supra). The authority in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra), had resolved, at page 6 of the Ruling, that:

As a matter of general principle, it is in the discretion of the Court to grant extension of time. But the discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated:

- i. The applicant must account for all period of delay*
- ii. The delay should not be inordinate*
- iii. The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take; and*
- iv. If the court feels that there are other sufficient reasons, such as the existence of a point of law of*

sufficient importance; such as the illegality of the decision sought to be challenged.

Finally, the Court of Appeal had refused leave to the applicant to file review out of time and held at page 10 of the Ruling that:

Certainly, the two paragraphs, cannot be reconciled, and it would take a long-drawn-out process to get to the bottom of this, and decipher the point of law or illegality in the decision that is sought to be challenged. I must therefore conclude that the applicant has also failed to convince me that there is a point of law of sufficient importance, involved in the intended appeal, to warrant an extension of time.

According to Mr. Mwita, apart from the claim illegality, the present applicant must display the point of sufficient importance and account on every day of the delay as indicated in the precedent of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra).

In replying the argument, the applicant's learned State Attorneys believed that when the claim of illegality is registered, all other questions come to an end. In support of their

submissions the dual had cited authorities in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (supra); and **Attorney General v. Emmanuel Marangakisi (as Attorney of Anastansious Anagnostou) & Three Others** (supra).

In brief, the precedent in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra) is silent on the subject: *whether an allegation of illegality alone can warrant enlargement of time to file appeals or revisions out of time*. However, the precedent in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (supra), at page 189 of the decision, thinks that:

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.

The decision in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (supra) was delivered on 3rd July 1992, prior to the precedent in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's**

Christian Association of Tanzania (supra), which was resolved on 4th October 2010. However, in between the two decisions, in 2006 when resolving the application for enlargement of time in **VIP Engineering and Marketing Limited & Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference Nos. 6, 7, & 8 of 2006, the Court of Appeal thought that:

It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay.

It is fortunate that all the indicated precedents were invited and considered in the precedent of **Attorney General v. Emmanuel Marangakisi (as Attorney of Anastansious Anagnostou) & Three Others** (supra) at page 8, 17 & 18 of the judgment delivered on 24th February 2023, and the Court of Appeal had observed, at page 19 of the Ruling, that:

Pursuant to the cited decisions, allegation of an illegality is good cause for extension of time even if the applicant has failed to account for each day of delay.

Finally, the Court of Appeal found merit in the application and consequently granted sixty (60) days for the applicant to file application for revision. The Court of Appeal had based its determination on allegation of illegality in the impugned decision.

In the present application, the record is clear and received the support of attachment of the dual complained orders and submissions of learned minds of the parties. In principle, the learned officers of this court agreed that there are dual distinct execution orders emanated from one similar judgment of the tribunal in the application. In such circumstances, it is obvious that this court is duty bound, for interest of justice and smooth running of court's activities, the record of the tribunal be invited in this court through enlargement of time to have it scrutinized for proper record and justice to the parties.

In the end, I find the application meritorious and hereby grant the applicant thirty (30) days leave, from the date of this Ruling, to file the intended application for revision in this court, in accordance to the laws regulating lodging of application for revision. Costs of this application shall abide the outcome of the intended application for revision as the contest is still on the course.

Before I wrap this Ruling, I am aware that the learned minds who appeared in the present application have registered several materials and questions to be answered by this court in the instant application. However, I have glanced the questions and found that in the present contest, it is not an appropriate moment to be replied. The questions have to wait for appropriate stage in the intended application for revision, if the parties so wish to register them for determination.

It is so ordered.



F. H. Mtulya

Judge

05.05.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence **Mr. Charles Temu** for the applicant and in the presence of **Mr. Mwita Emmanuel**, learned counsel for the respondents.

F. H. Mtulya

Judge

05.05.2023