

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

MISC. LAND APPLICATION NO. 11 OF 2023

*(Arising from the judgement and decree of the District Land and Housing Tribunal
for Morogoro at Morogoro in Land Application No. 17/2017)*

RAJABU SAID KIHIMBWA APPLICANT

VERSUS

ALLY ABDALLAH POKONYOKA 1ST RESPONDENT

SALUM MOHAMED MKAMBA 2ND RESPONDENT

RASHID KAMETA 3RD RESPONDENT

VERONICA NYAMBI 4TH RESPONDENT

RULING

Date of last order: 17/05/2023

Date of ruling: 05/06/2023

MALATA, J

This is a ruling in respect to an application for extension of time within which to file appeal out of time against the decision of the District Land

and Housing Tribunal (DLHT) in Land Application No. 12 of 2017. The applicant brought an application under section 41(2) of the Land Disputes Court Act (LDCA) by way of chamber summons supported by affidavit.

When the application was tabled before me for hearing, the Applicant was represented by Mr. Ignas Punge learned Advocate, the 1st and 2nd respondents appeared in person while the 3rd and 4th respondents failed to show up or file their counter affidavit despite being made aware thus the application was determined ex parte against them.

Submitting in support of the application Mr. Punge stated that, this is an application for extension of time to file appeal out of time, the application has been preferred under section 41(2) of LDCA and is supported by affidavit. He prayed to adopt the affidavit to form part of substantive submission. He submitted that the decision by DLHT was delivered on 1/2/2022 and the certified copy of judgement was issued on 29/4/2022.

The applicant was required to file appeal within 45 days from the date of judgement. Mr. Punge submitted that, the applicant failed to appeal within time as he was attending his sick wife one Tunu S. Mkandu at St. Francis Ifakara and attended clinic on 5/1/2022, 21/1/2022, 21/3/2022, 21/7/2022 and 20/10/2022. The reasons for delay are attending

applicant's wife who sick and that in the normal circumstances he could have not left the wife without his services.

To cement his submission, he cited the case of **Kijiji cha Ujamaa Manuto vs. HOTE (1990 – 1994) Vol. E. A 240**, where ground of extension of time was sickness and the court accepted it as a good cause for extension of time. He thus asked the court to apply similar principle and extend time in favour of the applicant.

On the other limb of ground for extension of time that is illegality, Mr. Punge learned counsel submitted that there are illegalities which touches jurisdiction in the sense that there was a change of presiding chairman from **Hon. Mbega** to **Hon Mugassa** and that the same was done without showing reasons for re-assignment. He cited the case the case of **Mariam Sambuo Vs. Masoud Mohamed Joshi and two others**, Civil Appeal No. 109 of 2016 and case of **Principal Secretary Ministry of defence and National Service Vs. Devram Valambhia [1991] TLR 387** which decision put clearly that, illegality is good ground for extension of time. He thus prayed the application to be granted.

When replying to the question posed by the court on whether the ground of illegality isn't subjected to inordinate delay Mr. Punge stated that he

has never come across with such decision that illegality can as well be subjected to inordinate delay.

Submitting in opposition to the application the first respondent stated that he is opposing the application based on the affidavit, that the delay is inordinate and the second respondent shared the same view and no sufficient reason was given.

By way of rejoinder the applicant had nothing to add.

Having heard the rival submissions advanced by both parties, I now turn to determine the merit of the application. Before me, the main issue for determination is whether the applicant has advanced sufficient reasons for delay warranting this court extend time for lodging an appeal out of time. The applicant preferred this application section 41 (2) of the Land Disputes Courts' Act [Cap. 216 of 2019], which provides;

*(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order: Provided that, the High Court may, **for the good cause**, extend the time for filing an appeal either before or after the expiration of such period of forty-five days.*

That is to say, an application for extension of time is entirely in the discretion of the Court to grant or refuse, and that the

extension of time may only be granted where it is established that, the delay was with sufficient cause.

The Court of Appeal of Tanzania has in its several decisions including in the case of **Mathew T. Kitambala Vs. Rabson Grayson and Republic** Criminal Appeal No. 330 of 2018 [CAT-Mbeya Unreported] emphasized that in order for the Court to extend time, the applicant must show good cause and account for each day of delay.

In that regard, the court of appeal has developed a number of factors to be taken into account in the determination of application for extension of time. In the case of **Lyamuya Construction Co. Ltd Vs. The Registered Trustees of Young Women Christian Association of Tanzania**where the court of appeal gave some of the guidelines for consideration in an application for extension of time, that is to say;

- (a) The applicant must account for all the period of **delay**
- (b) The delay should not be **inordinate**
- (c) The applicant must show **diligence**, and not **apathy**, **negligence** or **sloppiness** in the prosecution of the action that he intends to take.
- (d) 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.

Having highlighted the governing principles, this court therefore considered the circumstances of this case and whether the applicant has shown sufficient cause for delay.

In the present case, the applicant pointed out that, the **first** ground for the delay is based on sickness of applicant's wife. To prove the same, he attached evidence of hospitals document to show that at different dates of which his wife was attending the hospital and he accompanied her. The law is settled that, once sickness is established and proved as to justify the delay, it constitutes sufficient cause for extension of time. On this ground, the question, does this ground extend to other people more than the applicant himself. Clearly as there are no hard and fast rules set, sickness can be accepted even when it is not the applicant so long as the applicant can prove that sickness of that other person in one way or another delayed him from filling the appeal on time.

Further, the relationship and position of the applicant and the sick person is of relevant consideration. In this case, the applicant's wife was sick certainly what the applicant need to prove is the sickness of his wife and

nature of sickness which prevented the applicant from pursuing for his rights.

The applicant brought evidence to show the dates on which his wife was attending medication. The sick sheet shows that, she was admitted on 05/01/2022 and got discharged on 06/01/2022 before delivery of the judgement of the DLHT on 1/2/2022. The applicant was present when the decision was delivered on 01/02/2022 by the DLHT.

Further, the evidence indicates that, she was attending clinic on various dates which means she was not admitted in the hospital, in those circumstances, the sickness of wife did not prevent the applicant from appearing in court as he was able to attend on the date of delivery of judgement while the wife reportedly to be sick. This proves that, **first**, the sickness occurred before delivery of judgement as it occurred one month before the delivery of decision, **second**, applicant attended on the date of delivery of decision, **third**, applicant delayed for 273 days of which he did not account for.

Without hesitation, I am of the settled view that, there is no connection between the applicant's delay and sickness of the applicant's wife. Further, there no indication that, the applicant was unable to deal with other business including his case as on the date of judgement that is on

01/02/2022 the applicant was present despite allegation of his wife being sick. Additionally, the applicant's wife became sick and released from hospital a month before delivery of judgement i.e. on 6th January, 2022. This is evidence by sick sheet attached to the affidavit in support of the application.

Consequently, the ground for sickness doesn't constitute good cause based on the afore said reasons. **This marks the end of discussion in respect to ground of sickness which lacks merits so to hold.**

As to the second ground on illegality, the applicant alleged that there was change of presiding Chairman, thence creating illegality on the impugned decision. The applicant failed to point out the same if there was such change. This court therefore finds that, it was a mere speculation which no truth. The case cited by the applicant of **Mariam Samburo vs. Masoud Mohamed Joshi and two others (supra)**, stated that

*In the circumstances, we are settled that, **failure by the said successor judges to assign reasons for the reassignment made them to lack jurisdiction to take over the trial of the suit and therefore, the entire proceedings as well as the judgment and decree are nullity.***

The applicant referred to decisions cementing how illegality was considered as good cause for extension. Further stated that, the above pointed snag fall within the ambit of criteria of illegality underscored in **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia (supra) and Lyamuya Construction Co. Ltd (supra)**. In the latter application, the Court stated:

*"The Court... emphasized that such point of law, must be that "of sufficient importance"and I would add that it must also be apparent on the face of the record, such as the question of **jurisdiction**; not one that would be discovered by a long-drawn argument or process."*

However, he failed to specifically point out when that happened and who were involved. This court finds no reassignment of the case file, thus the cited case is non-starter, for want of proof of assignment.

One of the interest point for determination is whether illegality as a good cause for extension of time is not subjected to inordinate delay.

Courts, in numerous occasions have insisted that every day of delay must be accounted for. At this juncture, reference is made to the case of **Sebastian Ndaula vs. Grace Rwamafa**, Civil Application No. 4 of 2014 (unreported) where the Court stated that,

"Delay of even a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"

It is on this court's record that, the impugned decision was delivered on 01/02/2021, and the copy of the judgement was ready for extraction on 29/04/2022. Counting from the date the judgement to the date of filing of this application, the applicant is already late for 361 days. However, because the copy of the judgement was certified on 29/4/2022 that date of certification of the copy of judgement is considered to be the date the judgement was ready for collection by the parties. As such, this court started to counter from that date as the applicant could have not filed appeal without first getting a copy of judgement/ decree as directed by **Order XXXIX Rule 1 of the Civil Procedure Code, Cap. 33 R. E. 2019**. Be that as it may, still the applicant delayed for a period of 273 days and he had the duty to show good cause and account for each day of delay.

As to second ground reason for delay, that is illegality, illegality being one of the good and sufficient cause for extension of time must as well be raised timeously otherwise there will be no end to litigation. One cannot remain for longer period without pursuing for his right under pretext that he has ground based on illegality which can be raised at his own time

since illegality on the decision is sufficient or good cause. Equally, illegality must also be raised timeously, otherwise, there will be no end to litigation.

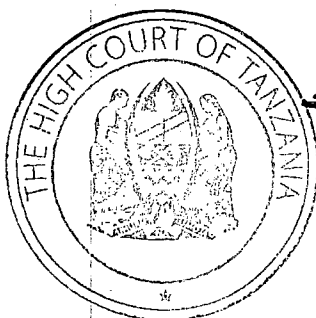
This marks the end of discussion in respect to the ground of illegality which also lacks merits, so to hold.

Having considered the advanced reasons for delay and the courts' governing principles on extension of time as stated herein above, it is with no iota of doubt that, this application has nothing concrete to warrant this court exercise its discretionary supremacies to grant what is asked for. The applicant's delayed for a total of 361 days from the date of decision and 273 days from the date of collection of decision is without any sufficient cause, the delay to file appeal was, therefore due to negligence and inactiveness of the applicant.

For the above reasons, this application is devoid of merits and the same is hereby dismissed with costs.

IT IS SO ORDERED

DATED at MOROGORO this 5th June, 2023



G. P. MALATA

JUDGE

05/06/2023