

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

**MISC. LAND APPEAL NO. 13 OF 2023**

**MARTHA SYLIVESTER KAZUNGU.....APPELLANT**  
(Administratrix of the estate of the late Bugumba Mathayo Hwanga)

***VERSUS***

**FATUMA COSMAS KISIMIZA..... 1<sup>ST</sup> RESPONDENT**  
**MATHIAS PIUS KULWA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*06<sup>th</sup> & 06<sup>th</sup> June, 2023*

***Kilekamajenga, J.***

The first respondent sued the second respondent in the Ward Tribunal of Mbarika on a piece of land measuring six (6) acres through civil case No. 02 of 2021. During the trial of the case, the second respondent denied ownership over the disputed land and informed the Ward Tribunal that, the owner of the land was Bugumba Mathayo Hwanga. The Ward Tribunal proceeded to decide in favour of the first respondent. The appellant in this case, being the daughter of the late Bugumba Mathayo and who was not a party in the case in the Ward Tribunal, approached the Primary Court of Mbarika seeking appointment to administer the estate of the late Bugumba Mathayo and she was so appointed vide Probate and Administration Cause No. 01 of 2022. Thereafter, the appellant applied for extension of time in the District Land and Housing Tribunal through Misc. Land Application No. 39 of 2022 in order to file an application for revision



to challenge the decision of Mbarika Ward Tribunal. In her application before the District Land and Housing Tribunal, she raised an issue of illegality. However, her application was not successful after being dismissed. She has approached this Honourable Court of Justice challenging the decision of the District Land and Housing Tribunal that dismissed her application for extension of time. The instant appeal was coined with two grounds that:

- 1. That, the Honourable Chairman erred in both law and facts by finding that irregularity on the face of record is not a good sufficient (sic) to extend time.*
- 2. That, the Honourable Chairman erred in both law by delivering the ruling without considering reasons adduced by the appellant in order for the time be extended.*

When invited to argue the appeal the learned advocate for the appellant, Mr. Alex Luoga confined the discussion on the first ground while abandoning the second ground. The counsel argued that, the fact that the second respondent distanced himself from the ownership of the disputed land, the Ward Tribunal committed an irregularity by declaring the first respondent the lawful owner of the land. The District Land and Housing Tribunal ought to grant extension of time for the irregularity to be addressed. Cementing his argument, the counsel referred the Court to the case of **Principal Secretary Ministry of Defence and National Service v. Davram Valambhia** [1992] TLR 185. He insisted on the illegality being a sole ground for extension of time.

Responding to the submission above, the counsel for the respondents, Mr. Revocatus Sepetu objected the appeal arguing that, for an illegality to constitute sufficient cause for extension of time, it must be apparent. He support his submission with the cases of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Arusha; **Ibrahim Twahil Kusundwa v. Epimaki S. Makoi and Another**, Civil Application No. 437/17 of 2022 where the Court of Appeal quoted with approval the case of **Iron and Steel Limited v. Martin Kumaliya and 117 Others**, Civil Application No. 292/18 of 2020 (unreported). The counsel consistently objected the existence of illegality in the case at hand.

Mr. Luoga re-joined by insisting on the existence of an illegality in the decision of the Ward Tribunal. He reiterated the prayer to allow the appeal.

This appeal originates from an application for extension of time. I have already stated the circumstances leading to the instant appeal and that the sole ground for the intended extension of time was illegality. There is a plethora of authorities point out that an illegality should not be left in the records of the court. Hence, where there is an allegation of illegality, time should be enlarged for the court to correct the anomaly. For instance, in the case of **Principal**

**Secretary, Ministry of Defence and National Service** (*supra*) the Court of Appeal of Tanzania stated that:-

*"We think that where, as here, the point of law at issue is the illegality of or otherwise of the decision being challenged, that is of sufficient reason" Within the meaning of Rule 8 of the Rules for extension of time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand...in our view when the point at issue is one challenging 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 be established, to take appropriate measures to put the matter and the record right."*

In the case of **VIP Engineering and Marketing Limited v. Citibank (T) LTD**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported), the Court of Appeal of Tanzania emphasized further that:

*"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes 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."*

See also, the case of **Veronica Fubile v. National Insurance Corporation and Three Others**, Civil Application No. 168 of 2008 (unreported); **Citibank (T) Limited v. TTCL and Others**, Civil Application No. 97 of 2003

(Unreported); **William Malaba Butabutemi v. The Republic**, Criminal Application No. 5 of 2005 (unreported); **National Insurance Corporation of (T) LTD v. Shengena Limited**, Civil Application No. 63 of 2011 (unreported).

I am also aware, allowing every application for extension of time with a mere allegation of illegality would be a ground for every lax applicant. For that reason therefore, the alleged illegality must be apparent in the decision being challenged. See, the case of **Ngao Godwin Losero** (*supra*). The Court of Appeal has gone further stating that:

*"Illegality of the impugned decision is not a panacea for all applications for extension of time. It is only one in situations where, if the extension sought is granted, that illegality will be addressed."*

See the case of **Iron and Steel Limited** (*supra*).

I am fully aware, extension of time is the discretion of the court. See, the cases of **Tanga Cement Co. v. Jummanne Masangwa and Another**, Civil Application No. 6 of 2001 (unreported); **Sospter Lulenga v. Republic**, Criminal Appeal No. 107 of 2006, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. Republic**, Criminal Appeal No. 130 of 2003, Court of Appeal of

Tanzania at Mbeya (unreported) and **Shanti v. Hindochi and Others** [1973] EA 207.

Therefore, several factors may move the court to grant extension of time. I may not provide an exhaustive list of factors for extension of time but, in my view, where the applicant had no right to be heard in the initial case, an application for extension of time to allow such a party to file revision is sufficient to warrant extension of time. In this case, the appellant was not a party in the case between the first and second respondent. She only came to learn that, the land in dispute which is alleged to be the property of her late mother was a subject of litigation in the Ward Tribunal. The appellant had no opportunity to apply to be joined as a party as the case was already decided by the Ward Tribunal. Furthermore, she could not have filed a case without being appointed the administratrix of the estates of his late mother. In my view, the circumstances of the case do not suggest that the appellant was negligence nor merely slept on her rights. In exercising the discretion entrusted to this court, I hereby find good reason to enlarge time for the applicant to file revision before the District Land and Housing Tribunal. I allow the appeal, set aside the decision of the District Land and Housing Tribunal and order the appellant to file the revision within 30 days from the date of this order. No order as to costs.

Order accordingly.

**DATED** at **Mwanza** this 06<sup>th</sup> day of June, 2023



**Ntemi N. Kilekamajenga.**

**JUDGE**

**06/06/2023**



**Court:**

Ruling delivered this 06<sup>th</sup> June 2023 in the presence of the counsel for the appellant, Mr. Alex Luoga and the counsel for the respondent, Mr. Revocatus Sepetu. Right of appeal explained.



**Ntemi N. Kilekamajenga.**

**JUDGE**

**06/06/2023**

