

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(DISTRICT REGISTRY OF MOROGORO)**  
**AT MOROGORO**

**MISC. LAND APPLICATION NO. 39 OF 2022**

*(Arising from Land Application No. 115 of 2017 of Morogoro DLHT at Morogoro)*

**JASTIN RAMADHANI KUNG'ALO** (administrator of the estate of the late  
**ANICETH MAHITA KUNG'ALO**) ..... **APPLICANT**

**VERSUS**

**ALEX MARTIN MHAFIWA** (administrator of the estate of the late **PASCAL**  
**JOACHIM MKOBA**) ..... **RESPONDENT**

**RULING**

*Hearing date on: 13/06/2023*

*Ruling date on: 16/06/2023*

**NGWEMBE, J:**

This application for extension of time is an outcome of the ruling of this court delivered on 2<sup>nd</sup> August, 2022 whereby the applicant's application No. 19 of 2022 was struck out for want of proper verification clause. Having so struck out the applicant through the service of his learned advocate, Wilson Magoti brought and filed a fresh application for extension of time to allow him to file an appeal out of time against the Judgement of Morogoro District Land and Housing Tribunal delivered on 14<sup>th</sup> day of January, 2022.

Rightly so, Mr. Magoti moved this court under section 41 (2) of the **Land Dispute Court Act, Cap 216 RE 2019**. The chamber summons is attached with an affidavit affirmed by advocate Magoti expressing

reasons for delay in paragraphs 6, 7, 8 and 9 together with several letters addressed to the Tribunal asking for copies of judgement.

When this application was called for hearing, both parties had representation of learned advocates. Mr. Magoti was for the applicant while Mr. Juma Mwakimatu represented the respondent.

The learned advocate went straight to the reasons for delay, first stating that it was the Tribunal's failure to supply the applicant with copies of judgement that caused delay. He pointed that the applicant wrote a letter requesting for the same three days after delivery of judgement that is on 17/1/2022, but same was received on 28/3/2022. Thus, time barred to appeal against the impugned decision. He further stated that the applicant sought assistance from an advocate on 8/5/2022, eventually on 15/5/2022 he managed to file an application No. 19/2022 for extension of time. Unfortunate may be to him; the application was countered with preliminary objection upon which the applicant conceded to it and same was struck out for want of proper verification. Also cited the case **of Benedicto Mmetto Vs. BOT Civil Appeal No. 12** at page 9-10.

In the contrast Mr. Mwakimatu learned State Attorney, vehemently resisted the application by arguing that from 28/3/2023 to the date when the application for extension of time was filed in this court was more than fifty (50) days, nevertheless such delay is not explained for.

On the second reason Mr. Magoti pointed fingers on the contents of the judgment itself, that it comprises irregularities apparent on the face of it. He stated that the failure of the trial tribunal to read contents of the tendered documents while the decision was based on those documents is fatal. He referred the case of **Bulungu Nzungu Vs. R,**



**Criminal Appeal No. 39 Of 2018** at page 11. Hence, he prayed that this application be granted.

In reply Mr. Mwakimatu, refuted that such omission is not apparent on the face of the records and cited the case of **Jeremiah Mgonya Vs. Hamis Seleman, Civil Application No. 440/08 of 2020** at page 3, thus prayed the same be dismissed

On the third reason, which is centered on wrong decisions and orders of the trial tribunal, he submitted that, the name of the deceased is different from the application for administrator.

On the contrary Mr. Mwakimatu rightly submitted that, errors on names ought to be corrected by the same tribunal, but should not be a ground for appeal. Lastly, he prayed this application be dismissed with costs.

Generally granting extension of time is purely court's discretionary powers and such powers must be exercised judiciously. Exercising powers judiciously include deciding the matter before it, by considering the statutes, doctrines, rules and equity. The demonstration devoted by the Court of Appeal in the case of **Selina Chibago Vs. Finihas Chibago, Civil Application No. 182A of 2007, (CAT Dar) (2011)**, may suffice as held: -

*"No particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application. Each case, therefore, should be looked at in its own facts, merits and circumstances, by looking at all the circumstances of the case before arriving at the decision on whether or not sufficient reason has been shown for extension"*



Extension of time is granted upon the applicant's exhibition of good cause to the satisfaction of the court, that the said delay was not caused by her negligence or inaction and that by considering the circumstances of the case, it suits the spirit of justice that the applicant be granted such extra time. This is synonymous to the Court of Appeal's decision in **Mumello Vs. Bank of Tanzania [2006] 1 EA 227 (CAT)** where it was held *inter alia* that: -

*"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

Having laid down that foundation, I proceed to determine the merit of this application. The main question is whether the applicant has shown good cause for extension of time.

On the first reason, the applicant's advocate argued that the delay to lodge an appeal within time was never contributed by the applicant, rather was made by the trial Tribunal's failure to furnish him with copy of judgement timely an act which impeded any further action contemplated to.

It is on record, despite the judgment having been delivered on 14/1/2022, copies were furnished to applicant on 28/3/2022. Under section 41 of **the Land Disputes Courts Act, Cap 216 RE 2019** requires that, an appeal to this court be filed within forty-five (45) days. Unfortunate, the 45 days expired before copies were supplied to the applicant. It was after lapse of 76 days, from the date of



pronouncement of judgment thus, those copies were supplied to the applicant.

Our laws recognize that delayed to supply copies of judgement and decree may constitute sufficient cause for delay. See the case of **Benedict Mumello Vs. Bank of Tanzania (supra)** is one of the decisions in which the Court of Appeal stated the position of the law.

Under the circumstance, I accept Mr. Magoti's suggestion that the tribunal's inaction occasioned the applicant delay to exercise his basic right of appeal. However, the question remains, whether the applicant after he received those copies acted promptly? This court finds that, the applicant was not diligent. It is apparent that 47 days passed after receipt of copies. He filed his first application on 14/5/2022, which were struck out, but even in recent application he did not account for the delay as rightly submitted by Mr. Mwakimatu. I am well aware of the duty to account for each day so delayed as in the case of **John Dongo & Others Vs. Lepasi Mbokoso, (Civil Application 14 of 2018) [2019] TZCA 165** among others, the applicant omitted such duty in this application.

On the second reason Mr. Magoti pointed fingers on the contents of the judgment itself, that it comprises irregularities apparent on the face of it. Alleged that, failure of the trial tribunal to read the contents of the tendered documents, while the decision was based on those documents is fatal. He referred the case of **Bulungu Nzungu Vs R, Criminal Appeal No. 39 Of 2018** at page 11. Hence, he prayed that this application be granted.

Undeniably, irregularity is among the reasons for extension of time. One of the earliest cases is the **Principal Secretary, Ministry of**



**Defence and National Service Vs. Devram Valambhia [1992] T.L.R. 387.** However, each case must be decided basing on its own circumstances. Alleging illegality does not *ipso facto* entitle the applicant to be granted extension of time, rather the said illegality must be on the face of record, as correctly argued by both advocates. Also, such illegality should bear public significance. This was so decided in the case of **Lyamuya Construction Company Vs. Board of Trustees of Young Women's Christian Association of Tanzania** it was observed: -

*"In VALAMBHIA's case (supra) this Court held that a point of law of importance such as the legality of the decision sought to be challenged could constitute a sufficient reason for extension of time. But in that case, the errors of law, were clear on the face of the record. The High Court there had issued a garnishee order against the Government, without hearing the applicant, which was contrary to both the Government Proceedings Rules, and rules of natural justice. Since every party intending to appeal seeks to challenge a decision either on points of law or fact, **it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should as of right, be granted extension of time if he applies for one. The Court there 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."*

I stress that the applicant must demonstrate the illegality complained of, is one of significant public importance as in **Lyamuya's** case as well as **Valambhia's** case. As clearly expounded in case at hand the applicant showed the irregularity but did not expressly disclose the public significance.

On the third reason advance by Mr. Magoti on the errors of names of parties before the trial tribunal, in replying Mr. Mwakimatu rightly submitted that, such errors ought to be corrected by the Tribunal, but cannot be a reason for delay. Without wasting much of energy this reason has nothing to do with this application for extension of time.

All said, the reasons for delay advanced by the applicant, I would decide otherwise. However, considering the nature of the dispute itself, I am sure requiring a second eye by a superior court. Thus, I am satisfied that, justice demand the applicant be given an opportunity of being heard by a superior court.

Accordingly, I proceed to grant him an extension of time of 16 days from the date of this ruling to actualize his intention to appeal against the impugned judgement of the trial tribunal.

**I accordingly Order.**

**Dated at Morogoro in chambers this 16<sup>th</sup> June, 2023**



A handwritten signature in blue ink, appearing to read "P. J. Ngwembe", is written over the printed name.

**P. J. NGWEMBE**

**JUDGE**

**16/06/2023**

**Court:** Ruling delivered this 16<sup>th</sup> June, 2023 in the presence Applicant and Mr. Juma Mwakimatu, Advocate holding brief for Wilson Magoti, Advocate for Applicant and in the presence of Respondent and his Advocate Mr. Juma Mwakimatu.



**Sgd: A.W. Mmbando, DR**

**16/06/2023**