

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

MISC. LAND APPLICATION NO. 28 OF 2022

(Arising from the District Land and Housing Tribunal for Kayunga at Karagwe in Land Application No. 38 of 2015)

STIVIN METHOD

(Administrator of the estate of the late Method Kanyandeko) **APPLICANT**
VERSUS

SALVATORY RUGUGA **RESPONDENT**

RULING

Date of Ruling: 16.02.2023
A.Y. Mwenda J,

This application is for extension of time to file an appeal out of time brought under section 41(2) of the Land Disputes Court's Act [CAP 216 R.E 2019]. It is supported by an affidavit sworn by the applicant. In counter thereof, the respondent filed a counter affidavit which was sworn by Mr. Lameck John Erasto, learned advocate for the respondent.

During the hearing of this application, the applicant was represented by Mr. Peter Matete the learned counsel while the respondent enjoyed the legal services from Mr. Lameck Erasto, the learned counsel.

When invited to submit in support of this application, Mr. Matete prayed this court to adopt the applicant's affidavit to form part of his oral submissions. Further to that he submitted that the tribunal's Proceedings and its Judgment

in Application No. 38 of 2015 are tainted with illegalities. He said that the proceedings shows that the issues were drawn by Hon. R.E Assey and thereafter Hon. Banturaki took over without assigning any reasons for taking over the matter. He submitted that Hon. Banturaki went on with the hearing until the 15th May 2017 when Hon. Assey resurfaced and proceeded with defence hearing without assigning reasons for Hon. Banturaki's disappearance. He thus concluded this ground by printing out that these anomalies are good reasons for extension of time.

Further to that Mr. Matete submitted that during the framing of the issues, members were Ruth Chamani and Mushashu Justine but when the matter was set for hearing members changed to Mushashu Justine and Nzarombi. The learned counsel said in the record there was change of assessors. He thus concluded his submissions by stating that this is another good reason for extension of time.

Apart from the above, Mr. Matete submitted that there is no assessor's opinion in the tribunal's proceedings although the same is reflected in the copy of judgment without showing the names of assessors who opined. He submitted that the Hon. Chairman did not refer them by their names. He made reference to them by referring to them as 1st and 2nd assessors. He further submitted that this irregularity is also one of reasons and a ground for extension of time to enable the appellate court to intervene and correct the said anomalies. To support his argument, he cited the case of KHALID

HUSSEIN MUCCADAM VS NGULO MTIGA & ANOTHER CIVIL APPLICATION NO. 234/2017 of 2019 (unreported) and the case of KALUNGA & CO. ADVOCATES VS NBC LTD [2006] TLR 235. To sum up his submission, Mr. Matete prayed the present application to be granted.

Responding to the submission by Mr. Matete, Mr. Lameck the learned counsel for the respondent submitted that it is true that the tribunal's records are tainted with illegalities which are change of assessors and that their names are not appearing in the coram surfacing in the substance of asking questions. Apart from that Mr. Lameck added to the effect that the tribunal's records lacks assessors' opinion and bad indeed there was change of chairmen without assigning reasons. To him this is a good reason for extension of time. To support his argument, he cited the case of the PRINCIPAL SECRETARY, MINISTRY OF DEFENCE & NATIONAL SERVICE VS DERRAN VHALAMBIA [1992] TLR 183. He then concluded his reply by also praying this present application to be granted.

That being the summary of the submission, by the parties it is now the duty of this court to determine the merits of this application. Before I do so, I found it pertinent to point out that this court has discretionary powers to grant or refuse an application for extension of time. But such discretion has to be exercised judiciously according to rule and principles of justice. In so doing the court has consider as to whether the applicant demonstrated sufficient cause or reason for delay.

In the present application, the applicant raised illegality as the only reason for delay. The said illegalities are change of assessors and chairman without assigning reasons and the records missing assessors opinion. This court also had sight of the records and confirmed existence of the said illegalities.

It is trite law that a claim of illegality is the sufficient reason for the court to grant extension of time. This position was stated in the case of ATTORNEY GENERAL V. TANZANIA PORTS AUTHORITY & ANOTHER, CIVIL APPLICATION NO. 87 OF 2016, where Court of Appeal held inter alia that:

"It is a 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."

In the present application, since the proceedings of the District Land and Housing Tribunal for Karagwe at Kayanga in Application No. 38 of 2015 are tainted with illegalities this court therefore formed an opinion that the applicant has advanced sufficient reasons for extension of time. He is thus ordered to file his appeal within fourteen (14) days from the date of receipt of this ruling.

Each party shall bear its own costs.

It is so ordered.



A.Y. Mwenda

Judge

16.02.2023

Ruling delivered in chamber under the seal of this court in the presence of Mr. Peter Joseph Matete learned counsel for applicant and in the present of Mr. Lameck John Erasto learned counsel of the respondent.



A.Y. Mwenda

Judge

16.02.2023