

**UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**HIGH COURT OF TANZANIA**

**MOROGORO DISTRICT REGISTRY**

**AT MOROGORO**

**MISC. LAND APPLICATION NO. 4 OF 2023**

*(Originated from Land Appeal no. 117 of 2018 DLHT Morogoro)*

**NOEL EDWARD SULUMO (as administrator of the Estate**

**of the late LUCIAN EDWARD LUSUMO ..... APPLICANT**

**VERSUS**

**DEOGRATIUS KWAIMAY ..... 1<sup>ST</sup> RESPONDENT**

**FIDELIS LUSUMO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

Date of last order: 23/6/2023

Date of Ruling: 30/06/2023

**MALATA, J**

This application for extension of time by the applicant is made under Section 14(1) of the Law of Limitation Act, Cap. 89 R.E 2019 and any other enabling provision of the law. The applicant is seeking for extension

of time within which to file revision out of time. The application is supported by an affidavit sworn by the applicant herein.

The supporting affidavit to the application depicts that, the land in dispute is one and half acre belonged to the late Lucian Edward Lusumo. It is stated that, there has been no dispute of the ownership of the said land until the deceased's demise. On November, 2022, it came to the applicant's knowledge that, there has been a case going on between the respondents herein.

Having made a follow up of that case in the District Land and Housing Tribunal (DLHT), the applicant herein found that, there has been a consent ruling on Land Appeal no 117 of 2018. Since, the applicant has never been a party to any case in respect of the said land and that the decision of Ward Tribunal and DLHT affected the rights and interests of the late Lucian Edward Lusumo, as an administrator of the estate of late Lucian Edward Lusumo decided to protect the estate of the deceased.

After being informed that, he was already late to pursue legal remedies by way of revision before the DLHT as the only remedy available to him, the applicant decided to lodge this application for the extension of time to apply for revision.

The respondents were granted right to enter counter affidavit and they all filed accordingly in opposition of the application.

When this application came for hearing both parties were represented, the applicant was represented by Ms. Alpha Sikalumba learned counsel while the respondent enjoyed the legal services of Mr. Michael Mwambanga, learned counsel.

Submitting in support of the application Ms. Sikalumba prayed to adopt the applicant's affidavit to form part of the applicant's substantive evidence in support of the application. She stated that, the applicant herein is the administrator of the Estate of Lucian Edward Lusumo appointed through Probate Cause no. 10 of 2021 by Ngerengere Primary Court.

Ms. Sikalumba further stated that, the late Lucian Edward Lusumo was the rightful owner of the one and a half acre of the Land which was in dispute in Land Appeal no 117 of 2018 between Deogratius Kwaimay and Fidelis Lusumo. The applicant was not a party of the said proceedings. When Land Appeal no 117 of 2018 came to the knowledge of the applicant in November 2022, the 1<sup>st</sup> respondent was in attempt to sale the land in dispute.

Ms. Sikalumba prayed that, as the applicant was not aware of the said land appeal which judgement was delivered on 28/05/2022, the applicant is now praying for extension of time based on the reasons advanced that the applicant was not a party but he is affected by the decision of Land Appeal no. 117 of 2018. Moreover, the applicant stated that, on receipt of the information, he acted promptly and filed the present application. In support of the application, she referred this court to the case of **Laurent Simon Asenga vs. Joseph Magoso and two others**, CAT (unreported) at page 4.

In reply thereof, Mr. Mwambanga prayed to adopt the respondents' affidavit in particular paragraph 9 where the gist of the case lies. He submitted that the words illegalities and irregularities are defined by Black's Law dictionary, illegalities mean complete defects in the proceedings while irregularities mean, doing or not doing in conduct of a suit at law which conformably with the practise of court or ought not to be done. He also defined as violation or non observance of established rules and practices. It was view of Mr. Mwambanga that, the applicant has failed to point out the illegalities and irregularities of the impugned decision, since such illegalities and irregularities are not revealed then this court has nowhere to rely upon. He cited a case of **Principal Secretary**

**Ministry of Defence vs. Devram Valambhia (1992) TLR 189**, that the court can grant extension based on illegality if it is established that, there is illegality in the judgement sought to be challenged. He further cited the case of **Chandracant Joshua Patel vs R (2004) TLR 218** and stated that, the applicant as an administrator has not shown how he was he affected.

Mr. Mwambanga submitted further that, the applicant as an administrator was appointed on 13/05/2022 he said that he became aware of the decision affecting the deceased on November 2022 as per paragraph 5, and annexure of proceedings from Ngerengere Primary Court in Probate no. 10 of 2021, also Form no. IV **Hati ya usimamizi wa mirathi** of the Late Lucian Edward Lusumo. The application was filed on 09/01/2023 while the applicant stated that, he became aware of the Land appeal no. 117 of 2018 and he didn't account for such delay. Mr, Mwambanga submitted that, in the case of Lyamuya construction outlined the factors to be considered as guidelines for extension of time that, the applicant should account for period of delay, the delay shouldn't be inordinate, the applicant should show diligence and not apathy and illegality.

He stressed that, the applicant herein failed to account for each day of delay from November 2022 to 09/01/2023, as such the applicant has

failed to account for each day of delay and he prayed for dismissal of the application with costs.

By way of rejoinder, Ms. Alpha Sikalumba stated that, as to the issue of accounting number of delayed days, the applicant made follow up to obtain of documentations such as, proceedings and judgement from the DLHT for the purposes of preparing this application, thus the delay is not inordinate. She finally submitted that, the applicant's interest has been affected and the only way to remedy it is by allowing the applicant to be heard on the interest thereon, and prayed for the extension of time to be granted.

Having heard and considered the arguments from both sides, it is undisputed that, although the court's powers to extend time under Section 14(1) is both broad and discretionary one but has to be exercised judiciously. The Section provides that;

*14.-(1) Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made***

*either before or after the expiry of the period of limitation prescribed for such appeal or application.*

The essence of this provision is that, under section 14(1) such power can only be exercised where good cause is shown. Having considered what is before me, I am of the view that, the crucial point for determination is whether there is a good cause for condonation, thence extension of time. Certainly, there are no laid down variables or a clear definition of the phrase "good cause" when exercising the discretion under Section 14(1) of the Act. However, there are factors which the court considers when determining such kind of an application. This includes but not limited to **first**, the length of the delay, **second**, the reasons for the delay, **third**, the degree of prejudice to the respondent if the application is granted, **fourth** whether the applicant was diligent, **fifth** whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged and **sixth** accounting for each day of delay even a single day.

The above principles have been maintained in numerous court decisions, to with, in the cases of ; **Dar es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987, **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another**, Civil Application No.

6 of 2001 and **Eliya Anderson vs Republic**, Criminal Appeal No. 2 of,2013 and **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (All unreported).

In the present application, the reason for delay advanced by the applicant is illegality and irregularity arising from the applicant's denial of right to be heard.

It is a settled law that, where there is an allegation of illegality, it is important for the court to grant the applicant, extension of time so that, the alleged illegality can be considered by the court. This was so held in the case of **Principal Secretary, Ministry of Defense and National Service vs. Devram Valambhia** (1992) TLR 182 that;

*"In our view, 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 the appropriate measures to put the matter and the record right.***

However, the decision in the Valambhia's case was narrowed down as to the point of illegality and it is now settled law that not any error on a point

of law constitutes an illegality. See the case of **Lyamuya Construction Limited V. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010

*"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."*

Furthermore, in **Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Reference no. 13 of 2019.

*".....it is our conclusion that for a decision to be attacked on ground of illegality, one has to successfully argue that the court acted illegally for want of **jurisdiction**, or for **denial of right to be heard** or that **the matter was time barred.**"*

Having observed the position of the law in the forestated precedents, the applicant's reason for delay is illegality based on the denial of the right to be heard as he was not a party to Land Appeal no 117 of 2018. The issue is whether the ground was raised timeously, or was the delay inordinate?

The applicant stated that, he became aware of the Land Appeal no 117 of 2008 in November, 2022. On 09<sup>th</sup> January, 2023 he filled this application before the court, clearly from the person who was not a party to the case, the period from November to January is not an ordinate delay. The applicant explained how he spent the time in between that is to collect documentation from DLHT.

In the upshot, the applicant has adduced sufficient or good cause for extension of time. I am, therefore, inclined to agree with Ms. Alpha Sikalumba learned counsel for the applicant that, the applicant has given good cause. I, thus proceed to grant the applicant's application for extension time within which to file application for revision out of time, on condition that, he file the application within **fourteen (14) days** from the date of this ruling.

Owing to the circumstances of the application, I make no order as to costs.

**IT IS SO ORDERED**

**DATED at MOROGORO** this 30<sup>th</sup> June, 2023



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G. P. MALATA

**JUDGE**

30/06/2023

**DELIVERED at MOROGORO** this 30<sup>th</sup> June, 2023.



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G. P. MALATA

**JUDGE**

30/06/2023