

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

**MISC. LAND APPLICATION NO. 02 OF 2023**

**NYANDALO MTEBE.....APPLICANT**

***VERSUS***

**MSIBA JANGULE EKWABI.....RESPONDENT**

**RULING**

*15<sup>th</sup> & 15<sup>th</sup> May, 2023*

***Kilekamajenga, J.***

The applicant had a dispute with the respondent's father on the boundaries of their plots. The respondent's father and the applicant are neighbours who have been living on their plots of land since 1960s. Their land dispute commenced in Mukituntu Ward Tribunal in Ukerewe and finally reached the District Land and Housing Tribunal for Mwanza in 2007. The dispute was eventually decided in favour of the applicant in 2008. Thereafter, there was a peaceful living until in 2019 when the respondent filed a case in the Mukituntu Ward Tribunal alleging that, the applicant encroached into the respondent's plot. This time, the respondent alleged that, the same land litigated by his father was his own property. In the latter case, the respondent won the case. In 2020, the respondent filed execution proceedings in the District Land and Housing Tribunal at Nansio Ukerewe. The applicant attempted to file an appeal, albeit, out of time which was consequently dismissed. The applicant filed the instant application



seeking extension of time to file an application for revision. The application was made under section 43(1) (b) and (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] and Order XLII, Rule 2 and section 95 of the Civil Procedure Code, Cap. 33 [R.E 2019].

The matter came for hearing and all the parties appeared in person and without legal representation. The applicant who was unrepresented indicated her grievances on the respondent's conduct. She further reminded the court on her victory on the case against the respondent's father. She insisted that, the land dispute in the former suit is the same in the case filed by the respondent. She urged the court to intervene for justice in this matter.

The respondent on the other hand acknowledged the existence of the former suit between his father and the applicant though he objected on the allegation that, the erstwhile involved the same plot of land with the one he is litigating on. He further alleged that, the applicant encroached into his plot of land by constructing a toilet. The Ward Tribunal visited the locus in quo and the applicant's land was found to be measures 15 times 9 metres. The applicant was found to have encroached ten metres away from the fixed boundaries. However, the respondent did not resist the application and urged the court to allow the application for the applicant to file the revision.

When rejoining, the applicant insisted on the prayer to allow the application.

The two sides of argument bring the court to determination on whether or not this court should exercise the discretion on extension of time to allow the applicant file an appeal/revision. I am aware, the power to enlarge time remains within the arms of this court. Such discretion is exercised where the applicant has advanced sufficient reasons for the delay. This was also held in the case of **Yusufu Same & Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, where the court of Appeal held;

*"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing."*

Furthermore, it is an established principle of the law that, extension of time may be granted where there is an illegality in the decision being challenged. (See the case of **Tanzania National Parks (TANAPA) vs Joseph K. Magombi**, Civil Application No. 471/18 of 2016, **CITIBANK (TANZANIA) LTD vs T.T.C.L & Others**, Civil Application No. 97 of 2003.) I have considered the instant application; the whole file seems to present some disturbing features to invite the intervention of the higher court/tribunal. I have noted some illegalities in the

decision of the Ward Tribunal which was executed by the District Land and Housing Tribunal. As I have pointed out earlier, illegality is among the reasons to warrant extension of time, as it was also held in the case of **The Principal Secretary, Ministry of Defence and National Service v Devram Valambia** (1992) TLR 182, where it was stated 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 appropriate measures to put the matter and the record right."*

For this mere reason, without much ado, I find reason to extend time for the applicant to file the intended appeal. For the interest of justice, I further direct the applicant to file the appeal in the District Land and Housing Tribunal for the matter to be decided on merit. It is so ordered.

**DATED** at **Mwanza** this 15<sup>th</sup> day of May, 2023



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**15/05/2023**





**Court:**

Ruling delivered this 15<sup>th</sup> May 2023 in the presence of all the parties. Right of appeal explained.

**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**15/05/2023**

