IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION CASE NO. 27 OF 2023

(Arising from Land Appeal No. 13 of 2020, in the District Land and Housing Tribunal for Babati at Babati, Original Land Case No. 1 of 2019 in the Mutuka Ward Tribunal)

AMSI TLUWAY.....APPLICANT

VERSUS

NYERERE LAGWEN.....RESPONDENT

RULING

01st & 7th August, 2023

***Kahyoza, J.*:**

Nyerere Lagwen sued Amsi Tluway before the Ward Tribunal for trespass onto his land measuring 6 acres. The Ward Tribunal found in favor of Nyerere Lagwen. Aggrieved Amsi appealed to the District Land and Housing Tribunal (The DHLT) where he lost. The DHLT delivered its judgment on 24.5.2021 in the presence of both parties. Unfortunately, Amsi did not appeal on time. He instituted the application for extension of time, which is under review.

Amsi, the applicant depends in the affidavit that he delayed to appeal because he was pre-occupied with an application for execution filed by the respondent. He also averred that he was praying for extension of time as the impugned judgment is tainted with illegalities.

Nyerere Lagwen, the respondent's advocate vehemently opposed the application for extension of time. He deposed that the applicant was negligent.

He prayed the court to take into consideration that the applicant's negligence and the decree of lateness. He deposed that the judgment and decree were certified and ready for collection on 03.06.2021. He added that the applicant filed an application for extension of time after one year and ten months, that is on 11.04.2023. the respondent deponed further that the applicant had not accounted for time from 03.06.2021 to 11.04.2023. He averred that the application was an abuse of court process as the decision of Mtuka Ward Tribunal had been executed.

Amsi Tluway and Nyerere Lagwen enjoyed services of learned advocate. Mr. Asante appeared for Amsi, whereas Mr. John Shirima

represented Nyerere. I will refer to their submissions while replying to the issues raised.

Is a fact that the applicant was pre-occupied by legal process after the delivered of the judgment a sufficient ground for delay?

The applicant deposed that after the judgement was delivered the respondent engaged him with legal processes so much that he delayed to appeal. He specifically deponed that he had to defend an application for execution and that being a lay person he could not commence the appeal process on time. The respondent's advocate refuted the allegation that, the applicant was delayed to appeal because he was defending an application for execution, he (the respondent) had instituted. He attributed the applicant's delay to negligence. He prayed the court to take into account the length of the delay and the applicant's negligence. He submitted that the applicant delayed for more than one year and ten months.

I am in total agreement with the respondent's advocate that the fact that the applicant was defending the application for execution is not a sufficient ground for extension of time. The applicant would have lodged his appeal while defending an application for execution. Not only that but also,

the applicant did not explain how the act of defending the application for execution caused his delay of over 24 months. I am not able to buy the applicant's argument that he delayed because the respondent preoccupied him with an application for execution of time or any other legal processes.

Did the applicant justify illegality as a ground for extension of time?

The applicant's advocate submitted that illegality was a sufficient ground for extension of time. To support his contention, the applicant's advocate cited the case of **R. v. Yona Kaponda and 9 Others** [1985] TLR 84. He added that the judgments of both the ward tribunal and the district land and housing tribunal were tainted with illegality, which he prayed for time to be extended so that the illegality may be considered. To start with he argued that the ward tribunal's judgment was tainted with illegality as; one, the judgement of the ward tribunal does not show names of witnesses; and two, the ward tribunal did not include the evidence of witnesses No. 3 and No. 4 in its judgment. It simply indicated that the witnesses No. 1 to No.3 gave similar evidence. As to the judgment of the district land and housing tribunal, the applicant's advocate argued that it was tainted with illegality as the tribunal failed to resolve the issue, which was raised before

it, that, the ward tribunal's judgment was illegal as the secretary of the ward tribunal took part in the decision against the section 5(3) of the **Ward Tribunal Act,** [Cap. 206 R.E. 2019]. He concluded that basing on the above named illegality, he was praying for extension of time. To support his contention, the applicant's advocate cited the case of in **Principal Secretary Ministry of Defence and National Service v. Devram P. Valambhia** [1992] T.L.R. 387.

The respondent's advocate submitted that the applicant did not account for the period of delay and that the applicant did not point out the alleged illegality in the affidavit. He argued that the applicant was required to append the grounds of appeal to the affidavit to disclose the alleged illegality. Thus, the applicant's advocate argued illegality from the vacuum.

It is trite law that illegality is a sufficient ground for extension of time as the Court of Appeal held in **Principal Secretary Ministry of Defence and National Service v. Devram P. Valambhia** [1992] T.L.R. 387. However, to amount to a sufficient ground for extension of time, illegality must; one, manifest itself on the face record of the impugned decision. It must not be something, has to be proved by long argument and submission. See the case **Ngao Godwin Losero vs Julius Mwarabu** (Civil Application

No. 10 of 2015) [2016] TZCA 302 (13 October 2016); two, be that of sufficient importance. See the case of **Lyamuya Construction Co. Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania,** Civil Application No. 20 of 2010 (CAT-unreported). In the **Jeremia Mugonya Eyembe vs Hamisi Selemani,** (Civil Application 440 of 2020) [2021] TZCA 695 (29 November 2021) the Court of Appeal held that-

> *"Admittedly, illegality or otherwise in the impugned decision can by itself constitute a sufficient ground for an extension of time. This is in accordance with the principle in the Principal Secretary Ministry of Defence and National Service vs. Devram Valambia, (1992) TLR 185. However, for illegality to be the basis of the grant, it is now settled, it must be apparent on the face of the record and of significant importance to deserve the attention of the appellate court".*

The applicant had a duty to indicate that the alleged illegalities are on apparent on the face of record and of significant importance to deserve the attention of the Court of Appeal. Once a party applying for extension of time proves the above factors, a court ought to extend time regardless of the length of delay as pointed out in **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited,** Consolidated

Civil Reference No. 6, 7 and 8 of 2006 (unreported) wherein it was clearly stated that-

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

It is a task of this Court to find out if the alleged illegality is on the face of record of the impugned judgment and whether they are significant to deserve the attention of the appellate court. The applicant's advocate pointed out the illegalities in the judgment of the ward tribunal. The irregularities in relation to the judgment of the ward tribunal do not pass the test as they are not on the face of record of the judgment the appellant wishes to challenge to this Court. The applicant intends to appeal against the decision of the district land and housing tribunal and not the decision of the ward tribunal. Thus, the illegality in the judgment of the was d tribunal, if they exist, do not meet the test in the case of **Jeremia Mugonya Eyembe vs Hamisi Selemani,** (supra). I am of the firm view that the illegality in the ward tribunal's judgment cannot support an application for extension of time.

In addition, that the applicant's advocate submitted that the judgment of the district land and housing tribunal was tainted with illegality for its failure to determine the issue raised before it, the ward tribunal's judgment was nullity for allowing its secretary to participate in the decision making. He argued that the secretary of the ward tribunal was barred by section 5(3) of the **Ward Tribunal Act.** The respondent's advocate submitted that the district considered the issue and determined it.

It has been pointed out that illegality to amount to sufficient reason for extension of time it must manifest itself on the face record of the impugned decision and must not be something, which has to be proved by long argument and submission. The argument that the district land and housing tribunal failed to consider the argument raised before it is not apparent of the face of record. It is can be discerned after long argument and submissions. It is an illegality which does not qualify to support an application for extension of time.

It ought to be noted that there is a difference between illegality as a ground to support an application for extension of time and a ground of appeal based on law or on illegality. The latter may be proved by long-drawn argument and submissions while the former must be on the face of record,

that is it must be so apparent that it is disgusting to retain it as part of the record of any court. I am fortified in my position by the decision in **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application No. 2 of 2010) [2011] TZCA 4 (3 October 2011) where the Court of Appeal held that-

> *"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates 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 am of the decided view that the alleged illegalities in the present application, do not pass the test as they are not apparent on the face of record of the impugned decision and are not of any significance importance to be considered by the Court of Appeal. Hence, they cannot support an application for extension of time.

In the end, it is my considered view that the applicant has not adduced sufficient reason to support an application for extension of time. Consequently, I dismiss the application for extension of time with costs.

It is ordered accordingly.

Dated at **Babati** this 7th day of **August**, 2023.

John R. Kahyoza,

Judge

Court: Ruling delivered in the presence of the applicant and respondent. Ms Fatina (RMA) is present.

John R. Kahyoza,

Judge

7. 08.2023