

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT – LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA

Misc. LAND APPLICATION No. 39 OF 2023

*(Arising from the District Land and Housing Tribunal for Mara at
Tarime in Misc. Land Application No. 62 of 2022; originating from
Kitembe Ward Tribunal (Tarime) in Land Dispute No. 5 of 2019)*

ODHIAMBO ONGONG'A APPLICANT

Versus

JENIFA JOHN OYUNGU RESPONDENT

RULING

14.08.2023 & 14.08.2023
Mtulya, J.:

Odhiambo Ongong'a (the appellant) had filed the present application seeking for enlargement of time to lodge an appeal out of time in this court to dispute the decision of the **District Land and Housing Tribunal for Tarime** (the district tribunal) in **Misc. Land Application No. 62 of 2022** (the application), which was rendered down on **10th March 2023**. Today morning the application was scheduled for hearing and the applicant had invited the legal services of **Ms. Florida Makaya**, learned counsel, to argue the application in his favor.

According to Ms. Florida, the district tribunal had resolved the application on **10th March 2023**, but had declined to issue necessary copies of the decision to the applicant for appeal

purposes until **15th May 2022**, without any good reasons for the delay. To Ms. Makaya, the delay has caused the applicant to find himself out of time to file an appeal in this court to dispute the decision of the tribunal in the application. Ms. Makaya submitted further that the applicant's learned counsel spent four (4) days only to draft, prepare and lodge the present application in this court. In her opinion, the applicant was vigilant in following up his dispute in the tribunal and this court.

Regarding the reason of delay, Ms. Makaya submitted that there is illegality displayed on record which was committed by **Kitembe Ward Tribunal** (the ward tribunal) in **Land Dispute No. 5 of 2019** (the dispute), but the district tribunal had declined to consider the same in its decision hence had refused the applicant leave to lodge an appeal out of time at the district tribunal. According to Ms. Makaya, there are two points of illegality which need to be rectified on record, namely: first, improper constitution of the ward tribunal which declining woman members; and second, *locus stand* of the respondent in the dispute at the ward tribunal.

In her opinion, when an issue of illegality is raised in application for enlargement of time to file appeal, courts of law may not consider other requirements of the law, such as the four (4) days of the delay. In order to persuade this court to prefer the course, Ms. Makaya had cited the decision of this court in **Ally**

Salum Said v. Iddi Athumani Ndaki, Misc. Land Case Application No. 718 of 2000.

The move and cited precedent were protested by **Mr. Johanes Adundo**, holding a Special Power of Attorney for **Ms. Jenifa John Oyungu** (the respondent). In his opinion, the applicant did not account on every day of the delay, and that even the four (4) days of the delay have to be accounted for. In support of the submission, Mr. Adundo cited the precedent of **William B. Nusu v. Respurces International (T) Limited**, Misc. Application No. 178 of 2019.

According to Mr. Adundo, this dispute has taken almost three years (3) without finality of the matter and the applicant has been using his pecuniary muscles to hire learned minds to disturb the respondent from enjoying her land. In brief rejoinder, Ms. Makaya insisted her earlier submission that when an issue of illegality is raised, the court has to grant enlargement of time for the illegality to be addressed and not to let the illegal decision to stand on record.

I have perused the record, and found that the applicant had delayed only for four (4) days after receipt of the necessary copies for appeal purposes to approach this court. To my considered opinion, the applicant was vigilant in following up his dispute and approached this court in search of his right (see: **Florentina**

Philbert v. Verdiana Protace Mujwahuzi, Misc. Land Application No. 75 of 2020; **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017; **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019; and **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008).

I have also scanned the precedents in the indicated Rulings of this court in **Ally Salum Said v. Iddi Athumani Ndaki** (supra) and **William B. Nusu v. Respurces International (T) Limited** cited by the parties. It is fortunate that both decisions found support of the Court of Appeal in **VIP Engineering and Marketing Ltd & Two Others v. Citibank Tanzania Ltd**, Civil Reference Nos. 6, 7, and 8 of 2006 and **Attorney General v. Mkongo Building and Civil Works & Another**, Civil Application No. 266/16 of 2019, respectively.

The law regulating enlargement of time is enacted in section 14 (1) of the **Law of Limitation Act** [Cap. 89 R.E. 2019] and section 41 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019], which require applicants to produce good cause. However, the law is silent on the definition of good cause. According to the Court of Appeal, in the precedent of **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010:

*What constitutes **good cause cannot be laid down by any hard and fast rules.** The term good cause is a relative one and is dependent upon party seeking extension of time to provide the **relevant materials** in order to move the court to exercise its discretion.*

(Emphasis supplied).

The replies from available precedents on the subject show that there is a bunch of factors that may be considered by courts in enlarging time period for applicants to prefer their actions, such as: accountability for all period of delay; the delay should not be inordinate; the applicant must be diligent and not negligent in prosecuting their actions that he intends to take; and *any other sufficient reasons* (see: **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010). However, in all cases, applicants must be prompt in bringing their actions in court of law when they become aware that they are out of time (see: **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987).

In that case, even a delay of a day has to be accounted for by applicants (see: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007) hence applicants for enlargement of time cannot file their applications as and when they so wish (**Bank of Tanzania v. Saidi Malinda & 30 Others**, Civil Reference No. 3 of

2014). However, every case is resolved upon its peculiar facts (see: **NBC Limited & Another v. Bruno Vitus Swalo** (supra)).

Regarding a claim of illegality, the established principle is that where there is a claim of illegality of the challenged decision, the allegation constitutes a sufficient reason for enlargement of time (see: **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1992] TLR 185; **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017; and **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016).

In the decision of **Attorney General v. Tanzania Ports Authority & Another** (supra), the Court of Appeal had resolved 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.

(Emphasis supplied).

The reason of such thinking is derived from the Court of Appeal decisions in **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed** (supra) and **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** (supra). In

Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe

Mohamed (supra), the Court had resolved that:

...We wish to point out that, the Court cannot normally justifiably close its eyes on glaring illegality in any particular case because it has a duty of ensuring proper application of the laws by the subordinates courts...

Whereas in the precedent of **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** (supra), the Court had stated that:

*Indeed the refusal by the Court to extend time amounted to allowing the decision being challenged to remain on record and to be enforced.....**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.***

(Emphasis supplied)

However, the Court of Appeal in the decision of **Tanzania Harbors Authority v. Mohamed R. Mohamed [2003] TLR 77**, had

to put it clear that it did not mean that in every claim of illegality, the court must enlarge time period. In its words, the Court stated that:

This Court has said in a number of decisions that time would be extended if there is an illegality to be rectified. However, this Court has not said that time must be extended in every situation.

For an allegation of illegality to enjoy consideration of enlargement of time, it must fulfill two important conditions, *viz.* first, existence of special circumstance (a point of law) of sufficient importance; and second, the complained illegality must be obvious at the first glance of the record. There is a large bundle of precedents in support of the move (see: **The Bishop of the Roman Catholic Diocese of Tanga v. Casmir Richard Shemkai**, Civil Application No. 507/12 of 2017; **Lyamuya Construction Company Ltd v. The Board of Trustees of Young Women's Christian Association of Tanzania** (supra); **Samwel Munsuro v. Chacha Mwikwabe**, Civil Application No. 539/08 of 2019; and **Hanspaul Automechs Limited v. RSA Limited**, Civil Application No. 126/02 of 2018).

In the present application, the applicant has displayed the complained illegality in the ninth paragraph of the applicant's affidavit and during the submission in favor of the application, but

the respondent had declined to reply the complained two issues cited by Ms. Makaya. In my scanning of the record and submissions of the parties, I am satisfied that there is a point of law which is obvious on record at the first glance.

In the end, I grant the applicant fourteen (14) days leave from today to lodge an appeal in this court to contest the decision of the district tribunal in the application, without any further delay. I do so without any costs as the dispute is still on the course at this court to determine the rights of the parties.

It is so ordered.

Right of appeal explained to the parties.



F. H. Mtulya

Judge

14.08.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the applicant's learned counsel, **Ms. Florida Makaya**, and in the presence of **Mr. Johanes Adundo**, for the respondent, **Ms. Jenifa John Oyungu**.

F. H. Mtulya

Judge

14.08.2023