

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 34 OF 2023**

(C/F Arusha District Land and Housing Tribunal, Land Appeal No. 65 of 2020,

Originated from Oloirien Ward Tribunal, Complaint No. 18 of 2020)

**JULIUS MASHARUBU..... APPLICANT**

**VERSUS**

**NESERIAN EDWARD ..... RESPONDENT**

**RULING**

4/9/2023 & 26/9/2023

**MWASEBA, J.**

The applicant **JULIUS MASHARUBU** is seeking for orders of extension of time within which to file an appeal against the decision of Arusha District Land and Housing Tribunal (the Tribunal) in Land Appeal No. 65 of 2020.

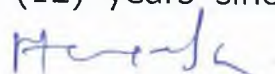
The application has been made under **Section 41 (2) of the Land Disputes Court Act**, Cap 216 R.E 2019 and is supported by the affidavit of the Applicant herein. The 1<sup>st</sup> respondent filed a counter-affidavit to oppose the application.



The application was argued orally, Ms. Sarah Lawena, Advocate, represented the applicant while the respondent appeared in person, unrepresented.

Submitting in support of the application, Ms. Lawena prayed to adopt the affidavit supporting the application to be part of her submission. She stated further that the applicant advanced two reasons for being late to file his appeal, firstly, that the applicant fell sick and second that there was illegality on the decision of the tribunal. Regarding the issue of sickness, Ms. Lawena submitted that the decision of the tribunal was delivered on 28/1/2022. Before he fell sick, the applicant tried to file an appeal on 11/3/2023 and he was given a control number. She attached hospital documents to support her argument (Annexure JM 3 & 4). It was her further submission that, the applicant underwent surgery on 9/3/2023 there after he proceeded with treatment and Clinic at Mount Meru Hospital.

Ms. Lawena also stated that there was illegality on the decision of the tribunal. The said illegality was that the respondent had no locus stand to institute a case as she was not an administrator of the estate of her late husband. More to that, Ms. Lawena stated that the matter was time bared as it was filed after the lapse of twelve (12) years since the



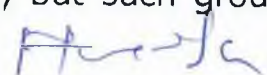
applicant started using the land peacefully. Lastly, the applicant was not given right to be heard as he raised points of objection and the ward tribunal did not determine them. Thus, she prayed for the application to be granted based on the stated reasons.

Opposing the application, the respondent stated that he had already filed an execution at the tribunal which had already been completed. He submitted further that the applicant was not sick as they were struggling with other cases together at Emaoi Primary Court. At the ward tribunal he did not have any case against the applicant that's why they did not hear him. *He prayed for the application to be dismissed.*

In brief rejoinder, Ms. Lawena added that they filed stay of execution at DLHT, but the decision of execution is out. Regarding the issue of a case at Emaoi Primary Court it was a probate case and the same was not deponed in his counter affidavit. She maintained her prayer for the application to be granted.

Having considered the affidavit, the counter affidavit, the submissions by the parties and the record of this application, the main issue to be determined by this court is whether or not this application is meritorious.

It is a trite law that, in this kind of applications the applicant is not only obliged to adduce grounds for enlargement of time, but such grounds



must also be coated with merits. As it is stipulated under **Section 41 (2)** of Cap 216 that:

*"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:*

*Provided that, the **High Court may, for the good cause, extend the time for filing an appeal** either before or after the expiration of such period of forty five days."* (Emphasis added)

In our application the applicant adduced two reasons for the court to enlarge the time which are Sickness of the applicant and illegality on the impugned decision. Starting with the issue of sickness, although the applicant submitted hospital documents but the same shows he was discharged since 18/3/2022 and the current application was filed on 14/03/2023, that means one year after his discharge. Thus, the issue of sickness cannot stand as a sufficient reason for extension of time.

Coming to the issue of illegality, I wish to be guided by the laid down principle as enunciated in the case of **The Principal Secretary Ministry of Defence and National Service v. Devram Valambia** [1992] TLR 185, in which it was settled that for illegality to be one of the





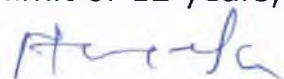
reasons for the grant, it must be apparent on the face of the record and of significant importance to deserve the attention of the court.

The same was insisted in the case of **Kashinde Machibya v. Hafidhi Said**, Civil Application No. 48 of 2009 (Unreported) that: -

*"Bearing in mind that it is now established law in this country that where a point of law involves the illegality of the decision, that by itself constitutes sufficient reason to grant an extension of time...even if the appellant's appeal is out of time, there is no other option but to grant extension of time."*

Thus, in the present case, the applicant did not account for all days of delay as it was held in the case of **Bruno Wenceslaus v. the Permanent Secretary, Ministry of Home Affairs and Another**, Civil Appel No. 82 of 2017 (CAT-Unreported) that a delay of even a single day has to be accounted. However, the applicant raised the issue of illegalities on the impugned decision that need to be revised.

This court being guided by the cited authority is of the firm view that the illegalities raised by the Applicant such as that touching the issue of the respondents locus stand to institute the matter while she was not an appointed administrator of her deceased husband's estate; and the issue that the matter was filed out of the prescribed time limit of 12 years; the




fact that the applicants was not accorded an opportunity to argue on her PO hence denial of right to be heard are factors that this court regards to be and to constitute sufficient reason to warrant this court to exercise its discretion of extending the time.

For the foregoing reasons, this court is satisfied that the issue of illegalities raised by the Applicant as above stated are sufficient reasons for this court to determine and grant the order sought. The application is hereby granted. The Applicant is given 21 days from today to file his revision before this court.

It is so ordered.

**DATED** at **ARUSHA** this 26<sup>th</sup> day of September, 2023.



  
**N.R. MWASEBA**

**JUDGE**