

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

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

**SHARUTIEL ARON & VENERANDA FRANCIS  
(AS ADMINISTRATORS OF THE ESTATE OF  
THE LATE ARON BURUSHI).....APPLICANTS**

**VERSUS**

**MWENYEKITI WA KIJIKI CHA NYARUBANDA.....RESPONDENT**

(From the decision of the District Land & Housing Tribunal for Kigoma Region, at  
Kigoma)

(Waziri, Chairman)

dated 17<sup>th</sup> August 2022

in

Application for execution No. 154 of 2021

**RULING**

26<sup>th</sup> October & 2<sup>nd</sup> November 2023

**Rwizile, J.**

The applicants are before this court with the following prayers;

- i. That this court be pleased to extend the time for the applicants to file a reference from the decision of the tribunal.*
- ii. Costs of the application and*
- iii. Any other order that this court may deem fit and just to grant.*

Mr. Kagashe learned advocate who represented the applicants has argued that this application may be granted because the tribunal traded

on illegality when dismissing the application on the grounds of the respondent's capacity to be sued.

He was clear that when illegality is pleaded, it constitutes a sufficient ground for extension of time as held in the case of **Karunga and Co-advocates vs NBC Ltd** [2006] TLR. 235. The learned counsel argued further that in execution proceedings, the trial tribunal had no jurisdiction to venture into the capacity of the respondent to be sued because the matter had been determined by in Appeal No.58 of 2008. His decision, the learned counsel held the view, nullified all judgments made by different courts.

The second limb of his argument was that the applicants being laymen were not given a right to be heard. Instead of enforcing orders that were duly made, the tribunal entertained a point that was raised. He said the same exceeded its mandate.

Mr. Onyango learned State Attorney on his party was of the view that the application should be dismissed because it was baseless. He said the applicants did not show sufficient cause for the delay. He said, the same only dwelt on the one issue of illegality. It was his argument further that upon showing good cause under section 14 of the Law of Limitation Act, an extension may be granted, he cited the case of **Ramadhan Rashid**



**Kitime vs Annah Ally Sennyagwa**, Misc. Application No. 3 of 2023.

According to him, the tribunal had the duty to satisfy itself on the propriety of the proceedings before it. I was asked to dismiss this application.

In my view, granting or rejecting an application for an extension of time is at the absolute discretion of the court. However, such discretion has to be exercised along the principles consistently applied by courts in case laws. In the leading case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010. The court laid down principles to apply when granting or refusing an extension of time. It was held that: -

- i. The delay should not be inordinate*
- ii. The applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- iii. If the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

Deducting from the principles laid down above, it is clear to me, that the applicants did not show how long was the delay and the reasons for the

same. He at times pleaded a kind of ignorance which I think does not count since it has never been a defence. But much as I agree with the respondent that he did not show any sufficient cause for delay, still I have to consider if there are traces of illegibility.

The applicant's counsel argued that there were two points of illegality such as failure for the tribunal to afford a chance of hearing the applicants and that it was not proper at the execution stage, to question if the respondent was properly sued. On the right to be heard, I think this point is lame. The ruling of the tribunal traversed what transpired before it on pages 3 to 4. It was shown that the argument was raised by the respondent's advocate and addressed to the applicants who made a reply. Like, the respondent's advocate I hold the view, that this point is neither here nor there. It is not backed by any evidence.

On illegality, the Court has held in the case of **Finca (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, that: -


*"... illegality is a good ground for extension of time. But to plead illegality successfully, it must be glaringly apparent on the face of the record"*

From the record, illegality stated is if, at the execution stage, the executing court has powers to nullify all the proceedings and judgments



to be executed. It is clear to me that this is a point of sufficient importance to be determined by the court since it is indeed apparent. As submitted by the applicant's counsel, illegality is a sufficient ground for extension of time. Therefore, this application is granted. the applicants are given at least 21 days to file an intended application. That is on or about 22<sup>nd</sup> November 2023. This is I think a fit case to make no order as to costs.



  
**ACK. RWIZILE**  
**JUDGE**  
**02.11.2023**