

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

MISC. LAND APPLICATION No. 72 OF 2023

*(Arising from the judgment of the DLHT for Ukerewe at Nansio in Execution Application No. 96 of 2022
originating from Land Case No. 10 of 2015.)*

BUNANA MASAMI----- APPLICANT

VERSUS

PILI MABAGALA----- RESPONDENT

RULING

5th October & 10th November 2023.

ITEMBA, J.

By way of chamber summons, the applicant, applied to this court for an order of extension of time to file a revision application out of time, from the decision of the District Land and Housing Tribunal for Ukerewe at Nansio (herein the Tribunal) in execution Application No. 96 of 2022. The application is supported by an affidavit deposed by Bunana Msami, the applicant.

On the date when the matter was scheduled for hearing the respondent could not enter appearance. The applicant who appeared in person unrepresented, prayed this court to proceed ex-parte, because the respondent has declined to appear. The prayer was granted after the proof of service was established before the court.



In his brief submissions, the applicant prayed this court to adopt his affidavit to form part of his submissions. He prayed this court to allow the application for the reasons stated in his affidavit.

In the determination of this application which is the application for extension of time, it is an established principle that, a party seeking an order for extension of time has to adduce sufficient reason(s) which prevented him to act within time. See **Regional Manager Tanroads Kagera vs Ruaha Concrete Company Ltd**, Civil Application No .96 of 2007 CAT.

The other factor that the court can exercise its discretion to extend time is the existence of illegality apparent on the face of records of the impugned decision which cannot be left un-interfered. See **Wambura N. J. Waryuba vs The Principal Secretary Ministry Of Finance & Another**, Civil Application No. 320/01 of 2020. Again, a person applying for extension, despite giving sufficient reasons, must also account for each day of delay. See **Omari R. Ibrahim Vs Ndege Commercial Services Ltd**, Civil Application No. 83/01 Of 2020.

In the application at hand, the applicant's affidavit gave reasons for his delay which can be traced from paragraph 4. The applicant filed this application on 22.07.2023 against the decision of the DLHT which was delivered on 27.01.2023. The law requires that a person aggrieved by the

decision of DLHT to appeal before this court within 45 days. In his affidavit, he gave reasons that he was making follow-up to be supplied with the copies of judgment and orders for him to file his appeal and he was supplied on 30.06.2023.

Again, on paragraph 4 of his affidavit, he raised the issue of illegality which which was the subject of the decision by the DLHT. He claims that there was a material irregularities in execution of decree which was executed by the court broker in which was excessive and contrary to the court orders. He also attached copies of proceedings and the execution report and crave leave for it to form part of this affidavit.

The law is settled that, where illegality is raised as a ground for seeking an extension of time, such ground amounts to sufficient cause. The Court of Appeal in **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015, observed as follows when the issue of illegality was raised:-

"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 straight"

The Court has further reaffirmed the stated stance 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: -



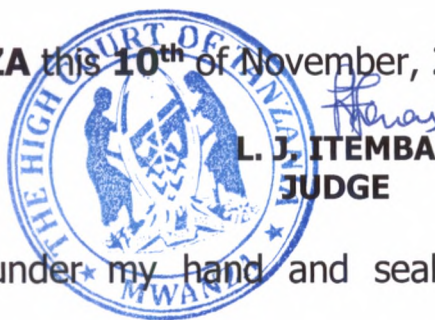
"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay"

Guided by the above principles, I perused the court records and go through paragraph 4 of the applicant's affidavit. It is apparent that, the execution beyond the orders of the court amounts to illegality and that need to be proved in a just cause. Based on the fact that this court is only called upon to extend time, what I have also endeavoured above, the claim of illegality will be addressed when the applicant will lodge the revision application.

In the final result, this application is merited and I proceed to grant the extension of time as applied. The applicant has to file his revisison within 30 days from the day of the decision. No orders as to costs.

It is so ordered.

DATED at **MWANZA** this **10th** of November, 2023.



**L. J. ITEMBA
JUDGE**

Ruling delivered under my hand and seal of the court via audio conference, in the presence of Mr. Bunana Masami the applicant, Ms. G. Mnjari, RMA, and in the absence of the respondent.

A handwritten signature in blue ink, which appears to be 'L.J. Itemba'.

**L.J. ITEMBA
JUDGE**