

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

**IN THE SUB- REGISTRY OF MBEYA**

**AT MBEYA**

**MISC. LAND CASE APPLICATION No. 53 OF 2023**

(Originating from, Application No. 25 of 2023 Mbeya District Land and Housing  
Tribunal for Mbeya at Mbeya)

**MARIA KYANDO.....APPLICANT**

**VERSUS**

**CHARLES NDAMBO.....RESPONDENT**

**RULING**

*23<sup>d</sup> & 27<sup>th</sup> October, 2023*

**MPAZE, J.:**

This ruling is in respect of an application for an extension of time to lodge an appeal out of time against the Judgement of the District Land and Housing Tribunal for Mbeya (hereinafter the trial tribunal).

The application has been preferred under section 41(2) of the Land Dispute Courts Act, [Cap 216 R.E 2019]. The impugned judgment was delivered on 25/05/2023. An aggrieved party was required to file an appeal within 45 days from the date on which the judgment was delivered. However, the applicant did not file her appeal timely to challenge the said decision. Thus, on 25/08/2023 she filed this application for an extension of time by way of a chamber summons supported by her affidavit seeking the following orders;

- (i) That this honourable court be pleased to grant an order for an extension of time to file an appeal.
- (ii) Costs of this application
- (iii) Any other relief(s) as the Court deems just to grant

The respondent contested the application through a counter affidavit sworn by Mr. Sambwee Mwalyego Shitambala, learned Advocate.

At the hearing of this application, the applicant was represented by Mr. Good Mgimba learned Advocate, whereas the respondent enjoyed the service of Mr. Sambwe Shitambala learned Advocate.

Submitting in support of this application, Mr. Mgimba in the first place sought to adopt the affidavit of the applicant and went on to argue that, the applicant herein was the 2<sup>nd</sup> respondent whereas the respondent herein was the 1<sup>st</sup> respondent in Land Application No. 25 of 2023, in which the judgment was delivered in favour of the respondent herein.

The copy of the judgment according to Mr. Mgimba was supplied to the applicant on 27/06/2023. By this time, the applicant was still within time to file her appeal. However, it was the submission of Mr. Mgimba that the applicant failed to lodge the appeal due to the illness of her daughter and the applicant was to nurse her.

In convincing the court that there are sufficient reasons for the court to allow this application, Mr. Mgimba raised two grounds; one was tending

to her sick child and two was the illegality of the impugned decision. The two grounds are reflected in paragraphs 6 and 7 of the affidavit which read;

6." *That, soon after collecting the copy of the decision my child (Ester Charles) began to sick(sic) and it was advised that she be sent to Chimala hospital at Mbeya where she was found suffering(sic) and after that, her health became worse where I escorted her again at Rufaa hospital in Mbeya on June 2023 up to august 2023."*

7." *That, this Misc. Land Application is pegged among others on the ground that: -*

*(i) The trial tribunal erred in law and fact by deciding in favour of the respondent based on the point that both applicant and the 1st respondent agreed that the house in dispute was owned by the 2nd respondent while it's matrimonial property.*

*(ii) That the trial tribunal erred in law and fact by deciding in favour of the 2nd respondent based on procedural irregularities*

*(iii) That the tribunal erred in law by hearing the matter while had no jurisdiction.*

Addressing the first ground, Mr. Mgimba asserted that, the applicant having been supplied with a copy of judgment on 27/6/2023, was

informed that her child who lives at Chimala was sick, so she had to go to tend her.

The counsel went on arguing that, the applicant after seeing the child was not improving, took her to the referral hospital Mbeya where she continued with her treatment to date. He added that, from June 2023 to August 2023, the applicant was busy taking care of her sick child, which made her fail to appeal within time.

On the issue of illegality, the applicant's counsel contended that it was wrong and improper for the trial tribunal to enter consent judgment between the parties who were spouses, and their dispute involved matrimonial property, in which the tribunal had no jurisdiction to determine it.

He further argued that the applicant in the impugned decision and the 2<sup>nd</sup> respondent (applicant in this matter) were co-wives of the respondent in this matter, who was the 1<sup>st</sup> respondent in the impugned decision.

Mr. Mgimba contended that, as the dispute involved matrimonial property, it was illegal for the tribunal to determine the same despite the parties consenting to settle the matter. To bolster his argument, he cited the case of **Wilson Sirikiwa v. Mikael Mollel**, Civil Application No. 544/02 of 2021, CAT (unreported) where the Court stated;

*"...I hold that because the judgment of the High Court, is blemished and tainted with illegalities, I extend time on that basis. True, if counsel is right, I agree with him that the presence of an illegality is a ground of the extension of time whether good cause has been shown to explain delay or not..."*

Based on this decision Mr. Mgimba submitted that, where illegality is put forth as a ground for extension of time, the Court has to extend the time to lodge the appeal so that the issue of illegality can be addressed and not let the illegal decision stand. For these reasons, he prayed the application be granted.

On his part, Mr. Shitambala after having adopted the counter affidavit, it was his contention that; for application of extension of time to succeed, the applicant must show sufficient reason. He added that it is not only for the applicant to show sufficient reason, but also to prove the same.

Regarding the first ground, Mr. Shitambala pointed out in paragraph 6 of the applicant's affidavit that, soon after collection of the impugned decision, her child became sick. From the period of June to August, 2023 the applicant was supposed to account for each day of delay.

It was his submission that, since the applicant has failed to account for each day's delay, it cannot be said there were sufficient reasons

adduced for her prayers to be granted.

On the ground of illegality, the counsel for the applicant countered that there was no illegality in the decision of the trial tribunal. He pointed out that, the dispute was based on matrimonial property, but it was not precise the dispute between parties. He said since the dispute was over ownership of the house which was a land matter, then the tribunal had jurisdiction to determine it.

In addition, the counsel for the respondent argued that it was proper for the tribunal to enter consent judgment upon admission by the parties that the house in dispute is the property of the respondent in this matter.

Referring to the decision cited by Mr. Mgimba concerning illegality, Mr. Shitambala was firm that the said case is distinguishable from the present case. Thus, this court is not bound to rely on it.

All in all, Mr. Shitambala maintained her argument that the applicant had failed to advance sufficient reasons for this court to grant his prayers. He therefore prayed the application be struck out, considering the parties were spouses he urged the court not to award costs of this matter.

In his rejoinder, Mr. Mgimba reiterated his arguments made in his submission in chief, further stressing the decision of the trial tribunal was tainted with illegalities and the same cannot be left to stand.



Having summarized the rival arguments of learned counsel, I discern the issue for determination is, whether the applicant has sufficiently advanced good cause for the Court to extend the time to file an appeal out of time.

The power of the court to enlarge the time for extension of time as stated by the applicant is derived from section 41 (1) of The Land Disputes Courts Act (supra) which provides:

*"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."*

Going by the said provision of law above and as correctly submitted by both counsels, it is with no doubt that in an application for an extension of time, the applicant has to advance sufficient reason for the court to exercise its discretionary power. What amount to a sufficient reason and good cause will depend on the fact of each case.

Even though there is no clear definition of sufficient cause, there are however some factors which the court may consider in determining if good cause has been shown. This has been stated in several cases, to mention just a few in the case of **Henry Muyaga v. TTCL**, Application

No. 8 of 2011, there the Court stated;

*"...In considering an application under the rule, the courts may take into consideration, such factors as, the length of delay, the reason for the delay, the chance of success of the intended appeal, and the degree of prejudice that the respondent may suffer if the application is not granted".*

Other factors are, whether the applicant was diligent and whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged. See the cases of **Elia Anderson v. Republic**, Criminal appeal No. 2 of 2013, and **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010.

In the instant application, the reasons for the delay in lodging the intended appeal in time were said to be based on the applicant attending to her terminal sick child and irregularities in the impugned judgment, the allegations which were strongly opposed by the respondent counsel.

I am aware that sickness if well-established can be a ground for an extension of time to file an appeal out of time. In the case at hand the alleged sickness was not on the part of the applicant, but her child whom the applicant was to nurse from June to August, 2023. Nonetheless, the



applicant was required to give proof by attaching a medical report from the hospital for this court to gauge the reason if was sufficient.

In the case of **Shembilu Shefaya v. Omary Ally** [1992] TLR. 245 the applicant sought for extension of time on the ground of sickness without giving any elaborate explanation on how the illness restrained him from pursuing the intended cause. The Court of Appeal held thus;

*"Applicant has come to this Court with the same prayer for extending time to file a notice of appeal. His affidavit in support of this application does not provide the elaboration which was wanting ... Even at the hearing he merely insisted that the disease he had was not one for hospital treatment and that the local doctors could not be available to bear witness to that fact. Now, that, as properly pointed out by the respondent in his counter-affidavit, could be alleged by anybody with impunity. For Court work we need something more than excuses... as such I cannot see any reason for enlarging time".*

In the current case, as alluded above, it is not the applicant who was sick but rather her child, a fact which was disputed by the respondent, who said he is also the father of the said child, he has no information regarding the illness of their daughter, as such he finds this fact has not been proved to amount sufficient cause.

As that was not enough, the applicant was required to account for each day of delay, apart from just mentioning that she was nursing her sick child from June to August, 2023. The need to account for each day of delay was emphasized in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No 3 of 2007 where the Court stated;

*"Delay, even of the single day had to be accounted for otherwise there would be no point of having rules prescribing period within which certain steps have to be taken".*

The applicant neither in her affidavit in support of the application nor in the submissions by his advocate has given any explanation on what transpired on the date between the date of pronouncement of judgment and the date she started attending her sick child. The applicant should have explained as to when exactly the said child became fit giving her a chance to work on filing her appeal and account for each and every day of the delay.

Given the prevailing circumstances, I find the applicant's first ground is unfounded.

Now, turning to the second ground of illegality/irregularity is as well considered. I understand that illegality or irregularity may in itself suffice to move the court to grant an extension of time so that the illegality to be addressed and not to let an illegal decision stand.

There is a plethora of decisions directing that, a party can raise a ground of illegality for obtaining an extension of time to file an appeal, and if the same is proved the application will be granted.

Once such ground is raised and points out an illegality that is apparent on the face of the record, then it is of sufficient importance to be considered as sufficient reason to grant the extension of time regardless of the time of the delay being advanced by the applicant. In the case of **Jehangir Aziz Abdulrasul v. Balozi Ibrahim Abubakar & Bibi Sophia Ibrahim**, Civil Application No 79 of 2016, the Court stated;

*“The court has a duty even if it means extending the time for the purpose of ascertaining the point and to take appropriate measures”.*

In the current application, the illegality complained by the applicant is regarding the jurisdiction of the trial tribunal to entertain the matter in which it had no jurisdiction, resulting in the impugned judgment.

I had ample time to go through the tribunal proceedings and submission made by counsel for the parties on this issue that the tribunal entertained the case in which it had no jurisdiction on the ground that the dispute involved a matrimonial dispute. However, the record indicates the contrary; first, the applicant in Land Application No. 25 of 2023 Maria Charles Ndambo (who is not a party to this application) lodged the matter

not as a matrimonial suit, but was claiming ownership of the disputed house against the respondents Charles Ndambo (respondent in this application) and Maria Kyando (Applicant in this application).

The proceedings reveal that, on 03/05/2023 the matter was called for hearing, Good Mgimba appeared before the tribunal as counsel for the 2<sup>nd</sup> respondent, who is the applicant in this matter where Mr. Mgimba appeared for the applicant.

The records further reveal that, Mr. Mgimba addressed the tribunal as follows;

*"Shauri limekuja kwa ajili ya kusikilizwa, lakini tumeona hakuna mgogoro wowote wa kuamriwa, Nyumba bishaniwa ni mali ya Mdaiwa wa kwanza Charles Ndambo, Mleta Maombi na Wajibu Maombi wote wanakubaliana hivyo. Tunaomba baraza litoe hukumu kwa kuzingatia makubaliano hayo.*

The records further reveal that;

*Majibu ya Mdaiwa wa Kwanza*

*Ni kweli nyumba bishaniwa ni yangu..*

*Mdai Maria Charles*

*Nakubaliana na alichosema wakili wangu. Nyumba ni mali ya*

*Charles Ndambo*

*Mdaiwa wa Pili*

*Nakubaliana na maelezo ya wakili wangu. Nyumba ni Mali ya mume wetu Charles Ndambo."*

Looking at what transpired through the records on 03/05/2023, I am not convinced that the matter before the trial tribunal was a matrimonial issue. As correctly submitted by Mr. Shitambala, the matter before the trial tribunal involved a claim of ownership of the disputed house. Therefore, the ground of illegality as raised by the applicant has not been established, the reason behind the alleged illegality is not apparent in the face of record and therefore it does not meet the settled threshold that, irregularity must be apparent on the face of record. This ground also is unsubstantiated.

In the upshot, taking into consideration the circumstances pertaining to this application, it is my finding that the applicant has failed to advance sufficient reasons for the court to exercise its discretionary power to grant the extension of time. Thus, this application is devoid of any merit and the same is dismissed. Following the nature of the application each party shall bear his/her own costs.

It is so ordered.

**Dated at Mbeya this 27<sup>th</sup> October, 2023.**



**M.B. MPAZE**

**JUDGE**

**Court:** Ruling delivered in Mbeya on this 27<sup>th</sup> day of October, 2023 in the presence of both parties and Ms. Neema Siwingwa holding brief of Mr. Sambwee Shitambala for respondent and Mr. Good Mgimba for applicant.



**M.B. MPAZE**  
**JUDGE**  
**27/10/2023**