

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPLICATION NO. 60 OF 2023

*(Appeal from the Judgment and decree in Land Application No. 42 of 2019 before
District Land and Housing Tribunal for Iramba at Kiomboi)*

ELIZABETH SHUMBI.....APPLICANT

VERSUS

NEEMA KINGU (as administratrix of the estate of the late

KINGU MGENDIRESPONDENT

RULING

*Date of last order: 19/10/2023
Date of Ruling: 20/11/2023*

KHALFAN, J.

The applicant preferred an application in this court by way of chamber summons, under section 41 (2) of the Land Disputes Court Act [CAP 216 R.E 2019], (hereinafter referred to as the Act), seeking for the following reliefs namely:

- i) That, this honourable court be pleased to extend time
for filing an appeal emanating from land case no. 42 of*



*2019 at the District Land and Housing Tribunal for
Iramba at Kiomboi.*

- ii) Costs of this application be provided for.*
- iii) That, this honourable court be at liberty to grant any
other relief(s) that it will deem fit and just to grant.*

The application is being supported by an affidavit sworn by Denis Odhiambo, learned advocate for the applicant. On the other hand, the respondent filed a counter affidavit to contest the application.

By the parties' consensus, the application was disposed of by way of written submissions in which Ms. Irene Ishengoma, learned advocate, represented the applicant while Mr. David Malugu, learned advocate, represented the respondent.

In his submission in support of the application, Mr. Denis having adopted the affidavit in support of the application urged the court to grant the prayers sought because the applicant has advanced reasons for the delay. To buttress his arguments, he referred to the decision in the case of **Elius Mwakalinga vs. Domina Kagaruka & 5 others**, Civil Application No. 120 of 2018 in which four principles for determination in application for



extension of time were expounded. Those principles are, length of delay, the reason for the delay, whether there is an illegality in the decision sought to be challenged and the degree of prejudice to the defendant if the application is granted.

He argued that the reason for the delay was attributed to the fact that the impugned decision was not supplied to the parties and the applicant sustained an accident which caused her to be hospitalized at Mkalama hospital and then was admitted as OPD attending clinic at Mkalama District hospital up today. He submitted that the applicant was unable to do any activity and when she recovered, she realized the time to appeal had already expired.

The learned advocate for the applicant maintained that there is an illegality regarding the omission for one of the assessors to give his opinion. He submitted further that there are contradictions regarding to the size and boundaries hence it was necessary for the trial tribunal to visit the *locus in quo* in order to ascertain who is the real owner.

As to the prejudice if any to the respondent should the court grant the instant application, the applicant argued that she has invested on the suit land



including construction of a house thereon while the respondent has not done anything on the suit land. She, therefore, urged the court to grant the reliefs sought in this application.

On reply, the respondent had it that it is settled law that in an application for extension of time, good cause must be shown in order for the court to exercise its discretion. He argued that the decision in Land Case No. 42 of 2019 was pronounced on 18/11/2020. Thus, counting from that date to the date the instant application was filed, there is a delay of about 1003 days. He argued that the applicant was required to account for each day of the delay as it was held in the case of **Bahati M. Ngowi vs. Paul Aidan Ulungi** Misc. Application No. 490/13 of 2020 (unreported) in which it was observed that delay of even a single day has to be accounted for. The respondent, therefore, urged the court to dismiss the application for lack of merits. The applicant did not file any rejoinder.

Having gone through the parties' rival submissions, the sole issue for my determination is whether the applicant has advanced sufficient reason for the court to exercise its discretion in favour of granting the extension of time.

A handwritten signature in blue ink, appearing to be 'H. N. Ngowi', is written over a faint, circular official stamp.

It is settled law that in terms of section 41(1) of the Act, any party aggrieved by the decision of the District Land and Housing Tribunal in the exercise of its original jurisdiction is required to lodge an appeal in this court within 45 days. This court has powers to grant an extension of time after expiry of the 45 days period as provided for under the proviso to section 41 (2) of the Act. The said provision provides that:

*(2) 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]*

From the foregoing provision, before the court can exercise its discretion for extension of time, it is imperative for the applicant to show good cause. But the provision of the law quoted above does not state what amounts to good cause.

In **Oswald Masatu Mwizarubi vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal stated that:



"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 the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."

It follows therefore, that what constitutes good cause depends on the circumstance of each case. However, from decided cases, certain factors provide guidance on whether or not the applicant has shown good cause. Amongst the factors to be taken into account were succinctly stated in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, (supra) as follows:

"(a) The applicant must account for all the period for delay;

(b) The delay should not be inordinate;

(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and



(d) 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."

The applicant has argued that, failure to lodge the appeal in time was attributed by the accident she sustained. Hence the reason for her failure to lodge the appeal was due to sickness caused by the said accident. Along with sickness the applicant argued that there are serious illegalities in the decision sought to be challenged. In the case of **Sabena Technics Limited vs. Michael J. Luwungu**, Civil Application No. 451/18 of 2020, the Court of Appeal reiterated its stance holding that to amount to a good cause for the delay, there must be evidence that sickness had a bearing on the delay. In the instant matter there is evidence that the applicant sustained road accident which kept her attending treatment as stated on annexure DO-2 which indicated that the applicant had a broken bone of the right leg.

As to the illegality complained of by the applicant, in the case of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) the Court of Appeal observed that:



"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."

In the case of **VIP Engineering and Marketing Limited and Three Others vs. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported) the Court of Appeal reaffirmed the above position wherein it 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."

Hence, going by the above reasons, I find that the applicant has advanced good cause for the court to grant her extension of time. The appeal



should be filed within 30 days from the date of this ruling. In the circumstance, I will not make an order as to costs.

It is so ordered.

Dated at DODOMA this 20th day of November, 2023.




F. R. KHALFAN,

JUDGE