

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 134 OF 2022

(High Court Misc. Application No 15 of 2021, Land Appeal No 174 of 2014, Land Appeal No 1 of 2019, Application No. 174 at the District Land and Housing Tribunal for Arusha at Arusha)

LONING'O LUKUMAI APPLICANT

VERSUS

VALERIAN MARTINE1ST RESPONDENT

DACHI LUKINDO2ND RESPONDENT

RULING

30th October & 11th December, 2023

KAMUZORA, J.

By way of chamber summons, the Applicant Loning'o Lukumai applied to this court for an order to extend time to file an appeal to this court out of time. The Applicant intends to challenge the decision of the District and Land Housing Tribunal for Arusha at Arusha (the trial tribunal) in Land Application No 174 of 2014. The application was brought under section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019 supported by the affidavit sworn by the Applicant himself. The

application was contested by the 1st Respondent through his counter affidavit and the matter proceeded ex-parte against the 2nd Respondent.

The brief background of the matter is that, the 1st Respondent herein instituted Land Application before the district land and housing tribunal against the Applicant herein and the 2nd Respondent herein. After full trial, the matter was decided in favour of the 1st Respondent herein and the Applicant was condemned to pay the costs of the suit. As the Applicant delayed in filing his appeal, he preferred the current application seeking for time enlargement within which he would lodge his appeal before this court.

When the matter came for hearing, Ms. Edna Mdeme, learned advocate appeared for the Applicant while Mr. Ombeni C. Kimaro appeared for the 1st Respondent. Counsel for the parties opted to argued the application by way of written submissions and they both filed their submission save for the rejoinder.

In her submission in chief Ms. Mdeme adopted the contents of the affidavit and the supplementary affidavit to form part of her submission and stated that, there are sufficient grounds for granting the application as depicted under the affidavit and the supplementary affidavit. Pointing at paragraph 3 of the Applicant's affidavit Ms. Mdeme argued that, being dissatisfied with the decision of the trial tribunal in Application No 174 of

2014 the Applicant lodged Appeal No. 1 of 2019 which was struck out for non-joinder of parties. That, the Applicant decided to file application 15/2021 to restore the appeal that was struck off but again, it was struck out for the non-joinder of parties. That, in all those applications the Applicants enjoyed the service of Advocate Jacob Maliki and in an attempt for the Applicant to show seriousness in pursuing his rights, he terminated the advocate.

Pointing at paragraph 6 and 7 of the affidavit, the counsel for the Applicant submitted that, the Applicant as an old and sick man he was not accorded an opportunity to be heard in Application No. 174 of 2014 before the trial tribunal as per the wording of Regulation 12 (1) (2) of the Land disputes Courts (The District Land and Housing Tribunal regulation, which requires the chairman to read and explain the content of the application to the Respondent and thereafter, require him to admit or deny the claim. It is the counsel for Applicants claim that, since the same was not done then there was a fatal irregularity.

The Applicants counsel pointed at paragraph 4 of the supplementary affidavit and submitted on the irregularity of failure to read opinion of assessors to the parties as required by the law. He referred the cases of **Edna Adam Kibona Vs. Absolom Swebe**, Civil Appeal No 286 of 2017, **Laurent Simon Assenga Vs. Joseph**

Magogo, Seleman Mohamed Namboto & Msolopa Investment Company Ltd, Civil Application No 50 of 2016 CAT at Dar es Salaam, **Principle secretary, Ministry of defence and national Service Vs. Devram Valambia** (1992) TLR 185, **VIP Engineering and Marketing Ltd and Two Others Vs. Citi Bank Tanzania Ltd**, Consolidated, Civil Reference No 6,7 and 8 of 2006 (Unreported), and insisted that irregularities is a good cause for extension of time.

Responding to the Applicants submission, the counsel for the Respondent submitted that it is a trite law that the one seeking for extension of time has to adduce sufficient cause for the failure to file the appeal on time. That, since the decision in Application No. 172 of 2014 was delivered on 30/11/2017 an appeal was supposed to be filed in this court on 14/01/2015, within 45 days as per the law. He claimed that the current application was lodged on 14/09/2022 after lapse of 7 years and 11 months and the Applicant failed to account for each day of the delay. To support this stance, reference was made to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered trustees of Young Woman Christian Association of Tanzania**, Civil Application No. 2 of 2012, **Praygod Mbagu Vs. Government of Kenya, Criminal Investigation Department and another**, Civil Application No 484/01

of 2012, **Bank of Tanzania vs Magreth Kumaliya and 4 others**, Civil Application No 11 of 2013 (unreported).

On the blame passed to the prior advocate for the Applicant, the counsel for the Respondent responded that negligence has never been a good ground for extension of time. He referred the cases of **Lyamuya construction company Ltd and Paul Martine Vs. Bertha Andersonc, Ar**, Civil Application No 7 of 2005 (unreported), **Selina Jahangir & 4 others Vs. Nakutonya N.P.F Company limited**, Civil Application No 47/08 of 2020 (Unreported), **William Shija Vs. Fortunatus Masha** (1997) TLR 2013, **Transport Equipment Ltd Vs. D.P. Valambhia** TLR (1993) TLR 91, **Inspector Sadiki and another Vs. Gerald Nkya**, (1997) TLR 290.

Responding to the ground of illegality, the Counsel for the Respondent submitted that the Applicant failed to attach in the affidavit and the supplementary affidavit the intended memorandum of appeal which revealed the alleged illegality. Referring the case of **Mtengeti Mohamed Vs. Blandina Macha**, Civil Application No 334/17 of 2022 the Respondent counsel insisted that, it is a trite law that illegality cannot stand as the only ground for extension of time as the law requires the Applicant to substantiate the time used to discover the alleged illegality of which, the Applicant has failed to state in this matter.

The counsel for the Respondent further submitted that, it is settled law that not any error on a point of law constitutes illegality. That, the error mentioned under paragraph 2 to 5 of the supplementary affidavits does not constitute illegality alleged. Reference was made to the case of **Charles Richard Kombe Vs. Kinondoni Municipal Council**, Civil Reference No 13 of 2019 where the court held that, what amount to illegality is jurisdiction and the right to be heard. He was of the view that in this case, the tribunal was clothed with jurisdiction and the parties were given the right to be heard as the Applicant was represented by an advocate.

On the claim the application was not read over to the Applicant, the counsel for the Respondent responded that, the claim was misconceived as the Applicant filed his WSD and brought witness to testify hence, he was aware of the claim and defended herself. The Respondent counsel also distinguished the case of **Edna Adam Kibona and Simon Assenga and principal Secretary** on claim that those cases are does not relate to the case at hand.

Responding on the reason of sickness, the counsel for the Respondent submitted that there is no medical report to the alleged sickness. On the claim that the Applicant was a lay man, the Respondent submitted that, ignorance of law is not a defence. In concluding, the

Respondent's counsel maintained that the Applicants have failed to give sufficient reasons for this court to exercise its discretion in his favour.

It is a requirement of the law that any person aggrieved by the decision of the trial tribunal has to appeal to this court within a period of 45 days from the date of the decision or order to be challenged. For reasons to be accepted by the court, a party may apply for an extension of time after the expiration of forty-five days. For this see section 41 (1) and 41 (2) of the Land disputes Courts Act, Cap 216 R.E 2019. Section 41(2) of the Land Disputes Courts Act, Cap 216 RE 2019 reads: -

"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."

I have given careful consideration to the arguments for and against this application as advanced by the Applicant as well as the Respondent. the issue for determination is whether sufficient reason has been advanced to warrant the extension of time sought by the Applicant.

It is established principle of law that the decision to grant or not to grant an order for extension of time is within court's discretion and that discretion should be exercised judiciously. The court's discretion may be

exercised upon sufficient cause/good cause being shown by the Applicant on what prevented him/her from lodging an appeal or application on time. For this see the case of **Benedict Mumelo vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002, where it was held that

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause"

I have revisited the Applicant's affidavit, supplementary affidavit and submissions in support of the application. The Applicant advanced the following reasons for extension of time; technical delay, illness, withdraw by the advocate, irregularity and illegality of the impugned decision.

Starting with reason for illness, I agree with the counsel for the Respondent that the Applicant although pleaded illness, he was unable to demonstrate how he was hindered by illness from filing an appeal on time. There is no any medical record showing that the Applicant was sick and unable to attend his case. he did not account for the period to which he claimed to be sick thus, illness in my view, cannot stand as good ground for extension of time.

It is a trite a party seeking extension ought to demonstrate the reason for delay and account for each day of delay. This has been said in

number of cases including the case of **Juma Shomari Vs Kabwere Mambo**, Civil Application No 330/17 of 2020 CAT at Dr es Salaam where it was held that:

"It is settled law that in an application for extension of time to do a certain act, the Applicant should account for each day of delay and failure to do so would result in the dismissal of the application."

I have revisited the record and it is clear that the decision in Application No. 174 of 2014 was delivered on 03/10/2017 in favor of the 1st Respondent herein and the Applicant herein was condemned to pay costs. The Applicant herein was aggrieved and filed appeal No. 1 of 2019 but the same was struck out on 10/12/2020 for being incompetent. He filed an application for extension of time, Application No 15 of 2021 intending and the same was also struck out on 09th August, 2022 for being incompetent. He then preferred the current application seeking for extension of time and the same was filed in court on 14th September, 2022. Now the question is whether, the Applicant was able to account for delay or show diligence in making follow up of his case.

From the above analysis, there is no doubt that until 09th August, 2022 when Misc. Application No 15 of 2021 was struck out, the Applicant had shown his eagerness in making follow up of his right.

What need to be accounted is the period of 35 days counted from 09th August 2022 when the last application was struck out to 14th September, 2022 when the current application was lodged in court. The Applicant has shown that after his two cases; Appeal No 1 of 2019 and Misc. Application No. 15 of 2021 were struck out for the same mistake, his advocate also withdrew from the case while he had already paid him thus, he had to look for money and engage another advocate to assist him in pursuing his right. In my view, the period of 35 days in the circumstance under which a lay person had to look for money and engage another advocate for legal assistance, was not inordinate delay. The Applicant had shown persistence in following up of his case which is evidenced by the appeal and application filed after the impugned decision was made.

On the argument by the counsel for the Respondent that ignorance of law is not excuse, in the circumstance of this case ignorance of law is not a factor raised. What I saw is the position the Applicant was put after his advocate withdrew from the conduct of his case. An ordinary man who had already paid advocate's fees was forced to raise new fund to pay a new advocate to defend his right after his advocate withdrew from the conduct of the case. To me 35 days spent for that purpose was reasonable and could not be termed as excessive delay.

The Applicant also raised issue of illegality as ground for extension of time. He attached the tribunal proceedings intending to show that he was not addressed over the claim and that there was no opinion of assessors which was recorded by the trial tribunal.

I agree with the Respondent's counsel that the claim that the Applicant was not addressed on the claim cannot stand as there is clear record that he filed defense over the matter and presented witnesses defend his case. This means that he was made to understand the claim and that is why he was able to file defense.

On the claim that no assessors' opinion, I also agree with the Respondent's counsel that the intended grounds of appeal was not attached to show that it is among the issue intended to be adjudicate upon on appeal. However, the Applicant attached the proceedings and judgment of the tribunal with intention to show that opinion of assessors was not considered. It was contended by the Respondent that opinion of assessor does not even fall under the illegality which can enforce the court to extend time.

I understand that illegality to be considered in extending time must be in face of record and must be that which address the jurisdiction of the court or right to be heard for the parties. In this see the case of **Charles Richard Kombe Vs. Kinondoni Municipal Council,**

(supra)y. The issue over opinion of assessors in my view, touches jurisdiction of the tribunal as the tribunal is properly constituted where it sits with assessors. That is legal requirement and it therefore becomes obvious that issue of assessors is a kind of illegality which can be considered in granting extension of time.

In the case of **VIP Engineering and Marketing Limited and Two Others vs Citibank Tanzania limited**, Consolidated Civil Reference No.6, 7 and 8 of 2006, it was held that,

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 (now Rule 10) of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the Applicant under the Rules to account for the delay."

Since the Applicant attached the records intending to show that opinion of assessors was not considered and such argument was not countered by the Respondent to show a different position, this court find that this reason support the grant of extension of time. Since this court was also satisfied that that the Applicant was able to account for the delay, I find the application to have merit.

The application is therefore granted. The Applicant is allowed to file his appeal within 21 days from the date of this ruling. No order for costs is made.

DATED at **ARUSHA** this 11th day of December, 2023.



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora".

D.C. KAMUZORA

JUDGE

