

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(KIGOMA SUB – REGISTRY)**

AT KIGOMA

MISC. LAND APPLICATION NO. 23 OF 2023

KECHEGWA KITSINA..... APPLICANT

VERSUS

EMANUEL KECHGWA.....RESPONDENT

(Arising from the District Land and Housing Tribunal for Kigoma)

(Chinuku-Chairperson)

dated 22nd day of November 2021

in

Land appeal No. 73 of 2021

=====

RULING

28th Nov 2023 & 29rd Feb 2024

Rwizile, J.

This is an application for extension of time within which to file an appeal to this court against land appeal No. 73 of 2021 of the District Land and Housing Tribunal. It should be noted that the original case is land case No. 2 of 2021 of the Kajana Ward Tribunal, where the applicant was successful, but lost an appeal before the District Land and Housing Tribunal. This application therefore is an attempt to challenge that decision. But unfortunately, he could not file an appeal on time.

The reasons for the delay have well been deposed in the applicant's affidavit that supports this application. The main reasons for the delay according to the affidavit are that, he was late to receive the copy of the judgment and that the moment he obtained the relevant copy, he fell sick. Further, it is averred that after recovering, he was looking for legal advice on how he could pursue his appeal. According to the affidavit, the judgment was pronounced on 22nd November 2021, but because of old age, sickness, and the distance from the tribunal was a huddle towards getting a copy of the judgment. A copy of the judgment it was further averred was obtained on 9th February 2022,

During the hearing, the appellant was under the legal service of MS Victoria Nyambea, a learned advocate, while the respondent was unrepresented. It was agreed that the appeal be heard by way of written submission.

In his submission, the applicant stated that section 14(1) of the Law of Limitation Act provides for the extension if sufficient or reasonable cause is shown, and referred to the case of **Goerge Thomas Mwaijuka vs. National Microfinance Bank PLC**, Misc. Civil Application No. 141 of 2020 (HC) to support his application.

Apart from the reasons stated in their affidavit, the applicant argued about the illegality of the decision of the appellate tribunal, which based its decision on adverse possession which was not at issue at the trial. To strengthen his submission on illegality, he cited the cases of **TanESCO vs Mufungo Leonard Majura & 15 others**, (CAT), Civil Application No. 94 of 2016, and **The Principal Secretary, Minister of Defence and National Defence vs Derham Valambhia**, (1992) TLR 387.

It was added that the matter was supposed to be heard by "Baraza la Kata" and not "Baraza la Ardhi la Kata". On this, he asked the court to refer the case of **Juliene Bakenda Mtabilwa vs. Zuberi Kasigiye**, Misc. Land Application No. 5/2020. He finally prayed the application be allowed.

Responding to the submission, the respondent contended that the delay in collecting the copy of the judgment was uncalled for. He submitted that it is not a sufficient cause because the judgment was provided to the parties on the same date, i.e 21st November 2021, in the presence of both parties and this is why the applicant failed to bring a letter requesting a copy of the judgment.

He added that extension of time is the discretion of the court and ought to be exercised judiciously and there must be a sufficient cause. To reinforce this, he cited the cases of **Mumello vs. Bank of Tanzania** (2006) EACA 227 and **Administrator General vs. Mwanaarabu Rajabu and others**, (1990) T.R.L 303. He also submitted sufficient cause as stated under section 14(1) of the Law of Limitation Act, and as defined in the Law Concise Dictionary 1977. That it implies the presence of legal and adequate reasons.

It was further submitted that in seeking the extension of time, each day of delay must be accounted for. This submission was supported by the cases of **Finca (T) Limited and others Boniface Mwalukisa**, (CAT), Civil application No. 589/12 of 2019, and **Wambele Mtumwa Shahame vs. Mohamed Hamis**, civil application No. 138 of 2016 which cited the case of **Bushfire Hassan vs Latina Lucia Masaya**, Civil application No. 3 of 2001.

He then insisted that the affidavit of the appellant did not account for each day of delay. He added that the applicant's delay of almost four months was due to his negligence. He asked this court to dismiss the application.

Having gone through the submissions, it can be stated that, it was not proved that the copy of the judgment was supplied late to the applicant. He was under a duty to prove. Apart from that, on the issue of the search for legal advice, the applicant did not show how searching for legal advice was a cause of delay in filing an appeal in time.

This appeal originated from the Ward Tribunal, it is governed by section 38 of the Land Disputes Courts Act, [Cap 216 2019]. Subsection 2 of the section provides that;

(2) Every appeal to the High Court shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision, or order of which the appeal is brought.

It is clear from the above that attachment of the copy of the judgment is not a legal requirement when instituting an appeal originating from the ward tribunal.

On illegality, it can be stated that, if proven, illegality is a sufficient ground to constitute extension time but not always. In the case of **Khalid Hussein Muccadam vs. Ngulo Mtiga** (as a Legal personal representative of the estate of Abubakar Omar Said Mtiga), **(CAT)**, Civil Application No. 234/17 of 2019 on page 10, it was held; -

*"Much as I am in agreement with Mr. Shayo that, illegality can, in view of the principle in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambia** [1992] T.L.R 185. by itself suffice as a good cause, it is my humble opinion that, the said*

principle applies as a matter of necessity to enable the higher to correct the illegality. It cannot apply in a situation where the avenue for addressing the illegality at the lower court are not blocked”.

Therefore, for the illegality to be applied as the reason for the extension of time to file an appeal out of time, it must be backed by evidence that at the lower court the same was blocked from being challenged. The illegality concern was that the Ward Tribunal was addressed as “Baraza la Ardhi la Kata” instead of “Baraza la Kata”, the same was not challenged at the Ward Tribunal itself and at the DLHT. There was no evidence to show that the same was blocked as well. It is a trite law that illness, if proven, is a good cause for extension of time. In the case of **Azizi Mohamed vs. R**, (CAT), Criminal Application No. 84/07 of 2019 page 8, the issue of illness as a cause for an extension of time was stated;

“To succeed on that, the applicant should have furnished proof of the illness about the period of the delay.”

There is no proof that the applicant was sick immediately after receiving the copy of the judgment which caused him not to appeal on time. Going through the affidavit supporting this application and submissions, I find no sufficient reasons to justify the extension of time. I therefore dismiss this application with no order as to the costs.



A handwritten signature in black ink, appearing to be "ACK. RWIZILE", is written over a horizontal line.

ACK. RWIZILE
JUDGE
29.2.2024