

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA  
(MOSHI DISTRICT REGISTRY)**

**AT MOSHI**

**MISC. LAND APPLICATION NO. 24 OF 2022**

(Arising from the decision of the District Land and Housing Tribunal for Moshi in Application No.  
65 of 2015)

**LUCAS JOSEPH MIREMI.....APPLICANT**

**VERSUS**

**JOSEPH JOHN MASSAWE..... RESPONDENT**

**RULING**

Date of Last Order: 14.02.2023

Date of Ruling: 17.2.2023

**MASABO, J.:-**

Lucas Joseph Miremi is dissatisfied by a ruling of the District Land and Housing Tribunal (DLHT) for Moshi which dismissed his application, Application No. 65 of 2015 for want of prosecution. He wants to appeal to this court but the duration within which to file the appeal has lapsed hence this application filed under section 41(2) of the Land Disputes Courts Act [Cap 216 RE 2019]. He is praying for an extension of time within which to file his appeal out of time. Accompanying the Application is his affidavit in which he has deponed that his application was wrongly dismissed as, on the material day, the advocate who was representing him in court had filed a notice of absence notifying the court that he was appearing before the Court of Appeal in Arusha. He has thus prayed that the dismissal constituted an

illegality which suffices as a good cause for extension of time. The application was ardently disputed by the respondent.

Hearing of the application proceeded in writing. The applicant who was self-represented argued that the dismissal order was marred by illegalities and cited, in fortification, the decision of the Court of Appeal in **Zahara Kitindi & Another v Juma Salehe & 9 others**, Civil Application No. 4/5/2017 and **Kambona Charles (as Administrator of the Estate of the late Charles Pangani) v Elizabeth Charles**, Civil Application No. 529 of 2019, where the Court held that a point of illegality suffices as a good cause for extension of time. Based on these authorities he prayed that the application be granted as the dismissal order amounted to an abrogation of his right to be heard.

For the Respondent, Mr. Kilasara, learned counsel, passionately submitted against the application. He argued that the applicant's delay is inordinate considering that the dismissal order was dated 16/2/2016 and the appeal ought to have been filed in 45 days which lapsed on 30/3/2016. The delay, he argued, is inexcusable unless the days of delay are fully accounted for which is not the case herein. Contrary to the law, the applicant has not accounted for the days of delay which has accumulated to five years and three month (equivalent to 2280 days) reckoned from the date of the impugned decision on 16/2/2016 to 24/5/2022 when he filed this appeal. He reasoned that the omission to account for the delay contravened the principle in **Lyamuya Construction Co. Ltd v Registered Trustees of the YWCA of Tanzania**, Civil Application No. 2 of 2010, CAT. It was argued

further that, the right to be heard is not free from responsibilities. A person seeking to exercise and enjoy his right to be heard is obliged to adhere to the law, including those on time limitation. The case of **Puma Energy Tanzania v Spec-Check Enterprises Ltd**, Consolidated Misc. Commercial Cause Nos. 233 & 252, HC (Commercial Division), was cited in fortification. In his rejoinder the applicant reiterated the authorities cited in his submission in chief and argued that, there exist a point of law which suffices as a good cause.

I have considered the application and all its supporting documents, the counter affidavit and the submissions advanced in support and in opposition of the application and I am now set to determine the application starting with the applicable law. Section 41 of the Land Dispute Courts Act under which the present application has been lodged states as follows:

41.-(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(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.

Therefore, as correctly argued by Mr. Kilasara, since the dismissal order against which the intended appeal is intended in the present case was pronounced on 16/2/2016, the duration within which to lodge the appeal lapsed 30/3/2016. This, time may be extended upon the applicant demonstrating a good cause as per the requirement under section 41(2) above. The question pending determination is whether a good cause warranting an extension of time has been demonstrated.

It is a trite principle in our jurisdiction that, in determining whether a good cause has been demonstrated, courts should consider a variety of factors including, the length of delay, ie whether or not the application has been brought promptly; whether the Applicant acted with diligence, whether the Applicant has sufficiently accounted for the days of delay (see **Leornad Maeda and Another v. Ms. John Anaeli Mongi and Another**, Civil Application No. 31 of 2013, CAT; **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Limited** Civil Application No. 96 of 2007 CAT and **Tanga Cement Company Limited v Jummanne D. Massanga and Other**, Civil Application 6 of 2001, CAT).

The delay in the present case is undoubtedly inordinate and inexcusable. As shown above, more than 5 years lapsed before the applicant took any step. From his affidavit, it is crystal clear that he has miserably failed to account for this delay and this is obviously the reason why he has opted to rely upon illegality as the sole ground in support of the application. The premises, the ascending question for determination is whether the point of illegality

asserted suffices as a good cause. The law is now settled that, in applications for extension of time, an illegality of the decision sought to be appealed against suffices as a good ground for extension of time. Thus, even when the delay is inordinate and the applicant has, just like in the present case, miserably failed to fully account for the delay but has advanced illegality as the sole ground and the court is of the considered view that the alleged illegality is apparent on the face of record, the application should be deemed successful and the leave for extension of time should be granted. Accentuating this position in **TANESCO v Mufungo Leonard Majura and 15 Others**, Civil Application No. 94 of 2016 (unreported), the Court of Appeal stated that:-

"Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that there is a complaint of illegality in the decision intended to be impugned suffices to move the Court to grant extension of time so that, the alleged illegality can be addressed by the Court."

The applicant in the present application has asserted that there was an illegality in the dismissal order because on the date it was pronounced, his counsel had filed a notice of absence notifying the tribunal that he was in Arusha prosecuting an appeal before the Court of Appeal which was, in his view, a sufficient ground for an adjournment of the hearing to another date. In my scrutiny of the application and its application, I have found the alleged illegality apparent on the record. Hence, I am of the firm view that, much as

the delay is certainly inordinate and inexcusable, this is a fit case to positively exercise the discretion to extend the time so that, the alleged illegality can be interrogated and adjudicated upon. Accordingly, the application passes and leave is hereby granted to the applicant to file his appeal within 14 days from the date of this ruling.

With regard to costs, considering the duration of the delay and the applicant's failure to account for delay which shows sloppiness on his part, I refrain from awarding costs. Each party should bear its respective costs.

**DATED** and **DELIVERED** at **MOSHI** this 17<sup>th</sup> day of February 2022.

2/17/2023

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Signed by: J.L.MASABO

**J.L. MASABO**  
**JUDGE**  
**17/2/2023**

