

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB REGISTRY**

**AT DODOMA**

**MISCELLANEOUS LAND APPLICATION NO. 28152 OF 2023**

*(Originating from the decision of the High Court of Tanzania Dodoma District Registry dated 9<sup>th</sup> May 2023 in Land Appeal No. 40 of 2022)*

**MWAJUMA NGWEBE AND OTHERS ..... APPLICANTS**

**VERSUS**

**ILLUMINATA ALLY TUKAI..... RESPONDENT**

**RULING**

*Date of last order: 02/04/2024*

*Date of Ruling: 08/04/2024*

**LONGOPA, J.:**

This is an application for extension of time to file a notice of intention to appeal out of time. The Applicants filed this application before this Court to challenge a decision of this Court in Land Appeal No. 40 of 2022 which set aside the decision of the District Land and Housing Tribunal for Kondoia and entered judgement in favour of the respondent. It declared that the respondent was a rightful owner of the disputed land. The judgment of this Court was delivered on 9<sup>th</sup> May 2023.



The Applicants were dissatisfied with the judgement and decree thus intends to challenge the same to Court of Appeal of Tanzania. According to the Chamber Summons, the Applicants' prayer is on a single order, namely:

*(a) that this Honourable Court be pleased to order extension of time within which the Applicant may give notice of intention to appeal from a judgement of the High Court in Land Appeal Case No. 40 of 2022 on grounds among other that:*

*(i) there are illegalities in the decision sought to be challenged to warrant extension of time before the Honourable Court.*

The application is supported by a joint Affidavit of Mwajuma Ngwebe, Mwanahamisi Ngwebe, Agripina Atanasi, Keneth Makunga, Halili Yusuph and Adam Rashid Salum, the Applicants. The applicants being dissatisfied with the decision of this Court requested for copies of the judgment, decree, and proceedings to appeal. However, copies of the same were not supplied timely thus the applicants failed to file notice of intention to appeal timeously.

It is the Applicants' statement that being aggrieved by the decision of High Court, they intended to appeal against such decision. However, upon request for the copies of judgment, decree and proceedings from this Court was not honoured timely. As such, when the same were supplied, it was

realized that time for issuing a notice to appeal had lapsed thus this application. Paragraphs 4, 5, 6 and 7 of the joint Affidavit state as follows:

*4. That, being aggrieved by the said decision of the appeal the applicants requested the copies of judgement, decree and proceedings in order to appeal on time.*

*5. That, time was inadvertently wasted in not being supplied with judgement, decree and proceedings of appeal on time which was in fact supplied to us on 03/11/2023 and immediately we took time to make preparation for pleadings and hence this application. Copy of the judgement and decree issued on 03/11/2023 is attached herein to form part hereof.*

*6. That, the applicants have been aggrieved by and are dissatisfied with the decision of the High Court and it intends (sic) to appeal to the Court of Appeal of Tanzania if this application is allowed for it to consider, inter alia, that the first appellate court erred in not considering illegalities regarding the locus of the respondent and irregularities of the proceedings of the trial tribunal which are manifest errors.*

*7. That, it is for the interest of justice for this application to be heard on merits, if this application will not be allowed the applicants will suffer an irreparable loss of their basic*

*rights to appeal, being heard and determined of their rights by the Court of Appeal.*

It is Applicants' view that delay in filing the notice of intention to appeal was not deliberately caused by negligence but caused by circumstances beyond applicants' control. They prayed that it is in the interest of justice that this application be granted as the applicants' basic rights to appeal, being heard and determined of their rights by the Court of Appeal.

On the other hand, the respondent in her counter affidavit disputed evasively all the averments by the applicants and reiterated that applicants be put to strict proof of the assertions.

On 02/04/2024, the parties appeared before me for oral submissions on the application. The applicants enjoyed the legal services of Mr. Samwel Mcharo while the respondent enjoyed the legal services of Mr. Mohamed Chondo, both learned advocates.

It was applicants' submission that delay in filing the notice to appeal has been caused by the delay in obtaining the copies of the judgment and decree from this Court. It was argued that this Court be pleased to exclude all the time from 9<sup>th</sup> May 2023 to 24<sup>th</sup> November 2023 as the applicant spent that time making follow ups of the decision -judgment and decree of the first appellate court and preparation of the instant application.

It was further reiterated that the decision of this Court is tainted with illegalities that can only be addressed by the Court of Appeal of Tanzania. The applicants pointed out that illegalities are based on locus standi of the respondent to initiate the proceedings at the District Land and Housing Tribunal for Kondo. It was submitted that the first appellate court did not bother to thoroughly consider and determine properly the fundamental issue of locus standi that goes to the root of the case.

The applicants cited case of the **Transport Equipment Ltd versus D.P. Valambhia** [1993] TLR 91, as illustrative on the powers of the Court to extend time where the point at issue is one alleging illegalities of the decision to be challenged to the superior Court. It was reiterated that this Court being the one determined that appeal has a duty to ensure that the illegalities alleged are addressed by the Court of Appeal to ascertain existence or otherwise of such point in the decision of this Court even if it means extending time.

According to the applicants, the respondent initiated the proceedings at a representative capacity of administratrix of the estate of the late Ally Hassan Tukai. At the hearing of the matter before the District Land and Housing Tribunal at Kondo, the respondent delegated the conduct of the matter including adducing evidence to one Abuyasiri Salum Issa who is neither the administrator nor his relationship to the deceased estate was established.

It was submitted by the applicant that the respondent being a representative of the estate of the late Ally Hassan Tukai had no powers to delegate the administration powers to any other person as the delegate of the estate of the late Ally Hassan Tukai. It is a settled principle of law that you cannot delegate what you have been delegated, that is delegatus non potest delegare. To cement this point, the applicants cited the case of the **National Agricultural and Food Corporation (NAFCO) vs Mulbadaw Village Council and Others** [1985] TLR 88; and **Gozibert Rwamulelwa vs Prisca Rwamulelwa** [2005] TLR 417 which essentially state that there is no law that allows a person to testify in place of another. The person who testifies on the evidence of another person is hearsay evidence.

Further, the applicants cited **Holin Andendekisye Mwantila Tabibu versus Pride Tanzania Limited and Yono Auction Mart**, Land Appeal No. 23 OF 2011 High Court of Tanzania at Mbeya District Registry (Unreported) to illustrate that when a person testified in place of another person through power of attorney such testimony is a nullity thus superior court should revise and quash such decision erroneously reached.

Also, it was argued that in the case of **Lujuna Shubi Balonzi Senior vs Registered Trustees of the Chama cha Mapinduzi (CCM)** [1996] TLR 203; and **Gervas Masome Kulwa vs the Returning Officer and Another** [1996] TLR 320 provide for importance of the locus standi to be demonstrated by anyone who institutes a case. The cases reiterated that principle of locus standi is the one that carries the whole case.

Finally, the applicants attacked two aspects in the proceedings before the District Land and Housing Tribunal. First, they argued that the powers of attorney lacked the stamp duty contrary to the requirements of the section 47 of the Stamp Duty Act, Cap 189 R.E. 2019 that require the powers of attorney to have stamp duty. Second, the administration of estate had already expired as the respondent Illuminata Ally Tukai was appointed on 29/04/2014 and the land application whose instant application relates to was filed long time after expiry of the administration of the estate as per section 107(1) of the Probate and Administration of Estates Act, Cap 352 that requires that administration of estates must be concluded within six (6) months of the appointment.

On strengths of these submissions, the applicants prayed for this Court to grant the application for extension of time to file a notice of intention to appeal.

On the other hand, the respondent opposed that submission on the following reasons. First, there was amendment of the application before the District Land and Housing Tribunal through an order dated 21/04/2021 permitting an amendment of pleadings thus the original application was amended. In the new application the question of administration of estates was not included and the respondent one Illuminata Ally Tukai appeared as the owner of the land in dispute. The lamentation on the delegation therefore lacks merits. Second, the applicants had different causes of action against the decision of the District Land and Housing Tribunal as the

3<sup>rd</sup> and 4<sup>th</sup> applicants did not appear thus the hearing proceeded ex parte against them thus can not be joined in the intended appeal as the only cause of action for the duo is to challenge that decision by way of application to set aside the ex parte judgment against them. Third, respondent challenged the genuineness of the 3<sup>rd</sup> and 4<sup>th</sup> applicants signatures in the joint affidavit in support of the application.

Further, the respondent attacked the application to lack merits as the ingredients of the extension of time to be granted are not disclosed at all in the joint affidavit in support of the application. It was reiterated that this court should exercise its discretion to extend time to file notice of appeal judiciously by adhering to the existence of good cause which in fact was not disclosed by the applicants. According to respondent's arguments the applicants did not manage to account on every day of delay.

More, the respondent argued that the fourth paragraph of the joint affidavit does not indicate that applicants attached even a letter indicating that they applied for the judgment and order of the Court before the Court to show that they were diligent.

It was on all these grounds that respondent prayed for the dismissal of the application with costs as the same has no merits at all.

Having heard the submissions by both applicants and respondent, I had an opportunity to peruse the record and application with joint affidavit

supporting it as well as the counter affidavit to ascertain the merits or otherwise of this application. I shall address the issues before me mainly whether the application has merits.

The law on notice of intention to appeal is straightforward. The Tanzania Court of Appeal Rules require the notice to be filed within 30 days of the decision desired to be appealed against.

*83.-(1) Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the Registrar of the High Court.*

*(2) Every notice shall, subject to the provisions of rules 91 and 93, be so lodged within thirty days of the date of the decision against which it is desired to appeal.*

*(3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision and where it is intended to appeal against part only of the decision, shall specify the part complained of, shall state the address for service of the appellant and shall state the names and addresses of all persons intended to be served with copies of the notice.*

*(4) When an appeal lies only with leave or on a certificate that a point of law is involved, it shall not be necessary to*

*obtain the leave or the certificate before lodging the notice of appeal.*

*(5) Where it is intended to appeal against a judgment or decision of the High Court, it shall not be necessary for a copy of the judgment or decision to accompany the notice of appeal.*

To succeed in this application, the Applicant is required to account for each day he had delayed in taking appropriate action. The Applicants' joint affidavit states that the applicants had waited for copy of the decision from May 2023 to November 2023 to assist them to determine whether appeal should be preferred for whole of the decision or part of the decision.

Extension of time for filing a matter out of time calls for exercise of discretion of the Court. It is a trite law that the applicant must put material evidence before the Court which will persuade it to exercise its discretion in favour of an extension of time. He must show a good and sufficient cause for the Court to enlarge time to file a notice of intention to appeal.

This position was demonstrated in the case of **Juma Shomari versus Kabwere Mambo**, Civil Application 330 of 2020) [2021] TZCA 63 (4 March 2021) (TANZLII), where the Court of Appeal observed at page 3 that:

*Many time, in its pronouncements, this Court had occasions to interpret this provision of the law and insisted that the*

*applicant should show a good cause before time can be extended for doing a certain act. Few of the decisions are; **Abdallah Salanga and 63 Others v. Tanzania Harbours Authority**, Civil Reference No.08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014 (both unreported). However, what constitutes good cause has not been codified although the Court has, in various instances, stated a number of factors to be considered. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant.*

Further, the Court of Appeal in **Laurent Simon Assenga versus Joseph Magoso, Seleman Mohamed Namboto and Msolopa Investment Company Limited**, (Civil Application No. 50 of 2016) [2016] TZCA 330 (30 May 2016) (TANZLII) regarding extension of time stated that:

*...the issue to be resolved is always, whether the applicant has shown good cause for extension of time. What is a good cause is a question of fact, depending on the facts of each case. For that reason, many and varies circumstances could constitute a good cause in any particular case.*

It is on record that decision against which the Applicant intend to challenge thus calling for the Court to invoke its discretion to enlarge time

to appeal was delivered on 9<sup>th</sup> May 2023. However, the Applicant preferred the institution of the matter to this Honourable Court on 24<sup>th</sup> November 2023 having received the copies of judgement and decree on 03/11/2023. This application for extension of time to file notice of intention to appeal was made some 20 days later since the Court supplied the decision of the appeal to the applicants.

The reason assigned by the Applicants in their joint affidavit for the delay in preferring a notice of intention to appeal within time is that they were not supplied with the judgement and decree, among others. According to the Applicants, it is upon receipt of the copy of judgement and decree that they realized that time for filing a notice of intention to appeal against the decision of the High Court had lapsed thus this application for extension of time. They also contend existence of sufficient cause for extension based on illegalities of the decision.

The main issue is whether the reasons advanced by the Applicants constitute a good cause for this Court to extend time. I have thoroughly perused the records of this Court including the joint affidavit of the Applicants to find any material evidence that constitute a sufficient reason to exercise the Court's power to extend time to file notice of intention to appeal. It is on record that the judgment and decree on appeal was supplied on 3<sup>rd</sup> November 2023 as reflected in the decree on appeal that the same was issued to the respondent on 03/11/2023. I find that in the interest of justice, the applicants took all initiatives timely to apply for

extension of time to file the notice of intention to appeal immediately upon being supplied with the judgement and proceedings.

I am of the view that the delays were not caused by the applicants as necessary records to warrant them decide whether to pursue an appeal or otherwise were not availed to them in time. The delay in accessing the records of the court should not impair the applicants from accessing justice by preferring an appeal.

Criteria for enlargement of time to file notice to appeal or appeal have been well articulated in the jurisprudence. The Court of Appeal in the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011) (TANZLII), at pages 6-7, set the following guidelines in respect of extension of time:

- (a) the Applicant must account for all the period of 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.*
- (d) If the Court feels that there are sufficient reasons such as existence of a point of law of sufficient importance, such as illegality of the decision ought to be challenged (emphasis supplied).***

The applicants are required to provide a thoroughly explanation regarding the expired time since the date of the decision. According to the joint affidavit of the applicants, they received the copies of the decision on 3<sup>rd</sup> November 2023 some six months after the delivery of the decision intended to be challenged.

It is my settled opinion that given the delays to obtain certified copies of the decision of the High Court has derailed the applicants to take necessary steps to initiate the appeal process through filing a notice of appeal. They were prevented by a reasonable cause on their part as they could not ably state with clarity whether they would challenge the whole or part of the decision.

In the application at hand, the applicants assert possibilities of illegalities. Thus, in circumstances where the decision intended to be challenges is allegedly containing issues of illegalities such application deserve to be availed opportunity to appeal to allow the Court of Appeal to address such alleged illegality. Illegality is one of matters on points of law of sufficient importance to warrant extension of time on its own despite failure to account for each day of the delay.

I am guided by the decision of the Court of Appeal in **VIP Engineering and Marketing Ltd and 2 Others vs CitiBank Tanzania Ltd** (Consolidated Civil Reference 6 of 2006) [2007] TZCA 165 (26 September 2007) (TANZLII), where the Court of Appeal stated that:

*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.*

The instant application fits squarely within the boundaries of this reasonable cause of illegality. As illegality goes to the root of the case, it is pertinent for this court to avail opportunity to the applicants to challenge such illegality to the Court of Appeal of Tanzania for the superior court of the land to address such illegality alleged to have been committed by the trial Tribunal and this Court as the first appellate Court on the matter in dispute.

I concur with the submissions by the applicants that given that illegality touch on the root of the case, this Court is enjoined to extend time for such alleged illegality to be addressed. The decision intended to be challenged is the decision of this Court. It is only the Court of Appeal that has powers to address the alleged illegality of this Court. It will be improper for this Court to deny the applicants an opportunity to challenge alleged illegality on pretext of failure to account for every day of delay. I am mindful that where a sufficient point of law exists including issues of illegality or lack of jurisdiction alone suffices to warrant this Court to grant extension of time. Failure to account for delay in my view should not be a reason to countenance illegality.

In the circumstances of this matter, I am of settled view that the applicants have demonstrated that a good cause for grant extension of time to file a notice of appeal exists, that is sufficient point of law based on illegalities of the decision of the trial Tribunal and the first appellate Court. This application therefore is a fit case to grant extension of time for the applicant to initiate appeal processes against the decision of this Court.

I have considered all the available evidence to substantiate the exercise of Court's discretion on the matter, it is the finding of this Court that this application for extension of time to file a notice of appeal out of time is meritorious thus should be granted.

I hereby grant the prayer contained in the application for extension of time to file a notice of appeal out of time for being meritorious. The applicant has been granted **a total of thirty (30) days** within which to file a notice of appeal from the date of this decision. No orders as to costs.

It is so ordered.

**DATED** at **DODOMA** this 8<sup>th</sup> day of April 2024.



*Longopa*  
**E.E. LONGOPA**  
**JUDGE**  
**08/04/2024.**