

UNITED REPUBLIC OF TANZANIA
JUDICIARY
HIGH COURT OF TANZANIA
BUKOBA SUB REGISTRY
AT BUKOBA

MISC. LAND CASE APPLICATION NO. 34 OF 2023

*(Originating from Land Appeal No. 33 of 2022 of High Court Bukoba and Misc. Land Case Application
No. 116 of 2020 of DLHT Karagwe and Bugene Ward Tribunal Land Case No. 22 of 2019)*

CHALRES FERESIAN.....APPLICANT

VERSUS

NICHORAUS KATEMA.....RESPONDENT

RULING OF THE COURT

Date of last Order: 19/02/2024

Date of Ruling: 02/04/2024

BEFORE: G.P. MALATA, J

It is a principle of equity that, *vigilantibus, non dormientibus, jura subvenient*, that is to say, equity aids the vigilant and not the indolent.

Briefly, the respondent sued the applicant at the Ward Tribunal for uprooting boundaries of the disputed land. On 31/03/2020 the Ward Tribunal delivered decision where the applicant lost. The applicant did not prefer an appeal within

the time limit of 45 days to challenge the decision of the Ward Tribunal. On 21/09/2020 the applicant filed an application for extension of time in the District Land and Housing Tribunal within which to appeal against the Ward Tribunal delivered on 31/03/2020. This was almost nine (9) months from the date of decision. The reason for delay advanced by the applicant is that, at the time of delivery of judgement by the Ward tribunal, he was in prison thus unable to take charge of the proceedings. This stated in paragraphs 3 and 4 of the applicant's affidavit in support of application before the DLHT.

On 08/11/2021, the District Land and Housing Tribunal for Karagwe District (DLHT) dismissed the application for want of sufficient reasons for the delay after failure to prove the same.

Dissatisfied thereof, on 06/12/2021 the applicant preferred an appeal to this Court challenge the decision of the DLHT denying extension of time.

On 07/06/2022 this court delivered judgement in respect to an appeal by the applicant herein and dismissed it with costs.

On 11/04/2023 the applicant lodged an application seeking extension of time within which to file notice of appeal against the decision of this court delivered on 07/06/2022. The present application was filed ten (10) months from the date of delivery of the said Judgment.

Traditionally and legally the applicant is obliged to advance sufficient reasons for the delay. In this case the delay of ten (10) months from the date of delivery of judgement sought to be appealed. In the affidavit in support of application, the applicant pleaded illegality as ground for extension of time. The illegality is pegged on two aspects; *one*, failure by the Ward Tribunal to take evidence on oath or affirmation from the witnesses which resulted into a nullity proceedings and judgement and *two*, locus standi, that the respondent had no locus standi to sue and claim the land in dispute. The reasons are stated in paragraphs 3 and 4 of the applicant's affidavit in support in support of the present application. These are reasons advanced by the applicant in support of an application for extension of time within which to file notice of appeal to appeal to the court of appeal. The applicant is late for **ten (10) clear months**.

The application is resisted by the respondent who filed counter affidavit that all what the applicant has so far pleaded is afterthought and no good cause for his failure to pursue an appeal within time. He further stated that the applicant has failed to account for the days of delay as required by law.

On the hearing date Applicant appeared through Mr. Mathias Rweyemamu learned counsel and Mr. Samwel Angelo learned counsel appeared for the respondent.

Mr. Mathias Rweyemamu learned counsel submitted that, the applicant was praying for extension of time to file notice at appeal to appeal to the Court of appeal. The reasons for delay are stated in the Affidavit of which he prayed to be adopted. That, the applicant advanced the reasons thereof in paragraph 3 based on illegality. It is on the failure by the Ward Tribunal to take evidence on oath or affirmation from the witnesses which resulted into a nullity proceedings and judgement. He submitted that, this point was not raised at the trial tribunal, DLHT and High court, however since it is point of law it can be raised at point in time. Now it is raised as ground to be determined at the court of appeal though it was not reflected in previous record.

To bolster his submission, he referred this court to the case of **Gabriel Boniface Nkakatisi vs. The Board of Trustees of NSSF**, Civil Appeal No. 237 of 2021 where the court held that,

The consequences of not administering oaths or affirmations accepted before giving evidence vitiates the proceedings and prejudices the parties' case.

He further referred to the case of **Therod Fredrick vs Abdu Samadu Salimu**, Civil Application No. 519/04/2021 where the court of appeal held that;

"Once illegality is established can pass to be sufficient cause".

He also referred to the case of **Mariam B. Mrope vs Victoria Amandus**, Misc. Land Case No. 9 of 2016 at Page 5.

Even if the applicant did not raise and appeal within time, then the mere fact that there is illegality then it is not barred from being raised.

In the case of **Rose Irene Mbwete vs Phoebe Martin Ryomo**, Civil Application No. 70/7 of 2019 on Page 16 and 20.

"It is settled position in our jurisdiction that, an alleged illegality, if established, is sufficient to move the court to extend time."

Finally, he prayed that, the application be granted on the ground of illegality.

In reply thereof, Mr. Samwel Angelo learned counsel submitted that, there is allegation of illegality but no establishment of illegality. Applicant did not pinpoint in the proceeding the illegality. Mere allegation does not suffice. There is no law claimed to have been violated if any. He cited the case of **Yacob Magoinga Gichere v Peninah Yusuph**, Civil Appeal No. 55 of 2017 to bolster his argument.

As to the cited case of **Gabriel Boniface Nkakatis** referred by Mr. Rweyemamu, the case is Labour case with specific applicable law thus in applicable to the present case.

The illegality if any must have been raised timely, one cannot just wait lapse of time without taking action just expecting to plead issue of illegality. Illegality must

as well be raised timely. He referred to the case of **Mtengeti Mohamed vs Blantina Macha**, Civil Application No. 344/17/2022 where the court held that;

*"However, it is to be observed that, being in the discretion of the Court as it is, an order for extension of time like the one which is sought by the applicant in the instant case, is an equitable right. It is a principle of equity that, **vigilantibus, non dormientibus, jura subveniunt**, that is to say, equity aids the vigilant and not the indolent. By way of explanation, suffice it to say that, as a general rule, the law favours those who exercise vigilance in pursuing their rights and disfavors those who rest on their legal rights by failing to act to protect their rights in a reasonable period of time.*

*As stated earlier, the decision of the High Court against which an application for revision is ultimately sought, was pronounced on 7th March, 2013. It is needless to say that, by any standard, the present application has been brought after a considerable delay which has not been accounted for. In view of this, I would but reiterate here what this Court held in the case of **William Kasian Nchimbi and three others v. Abas Mfaume Sekapala and Two Others**, Civil Reference No. 2 of 2015 that, illegality cannot be used as a shield to hide against in action on the part of the applicants. And if I may add, the position set by our previous decisions is that, irrespective of the nature of the grounds advanced by the applicant in support of an*

application for extension of time, he must as well show diligence, and not apathy, negligence or ineptness in the prosecution of the action that he intends to take. (See Lyamuya Construction Company Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania, Civil Appeal No. 2 of 2000 (unreported)).

He submitted that, the judgment sought to be challenged was delivered on 07/06/2022 and the present application was filed on 11/04/2023 which is almost 10 months passed. The applicant did not exercise vigilance and pursue for his rights within a reasonable period of time.

Finally, he submitted that, the applicant did not account for the number of days he delayed, thence the application is without merits and prayed the matter to be dismissed with costs.

Having analysed the evidence and submissions for and against the application for extension of time, this court has gathered that; **one**, the Ward Tribunal delivered its decision on 31/03/2020 whereby the applicant lost the case, **two**, the applicant did not prefer an appeal within the time limit of 45 days to challenge the decision of the Ward Tribunal as required under section 20 (1) of the Land Disputes Courts Act Cap 216 R.E.2019. the section reads;

"Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days after the date of the decision or order against which the appeal is brought"

Three, on 21/ 09/2020 the applicant filed an application for extension of time in the District Land and Housing Tribunal within which to appeal against the Ward Tribunal delivered on 31/03/2020 by Ward Tribunal. This was almost nine (9) months from the date of decision. The reason for delay advanced by the applicant is that, at the time of delivery of judgement by the Ward tribunal, he was in prison thus unable to take charge of the proceedings. This stated in paragraphs 3 and 4 of the applicant's affidavit in support of application before the DLHT.

Four, on 08/11/2021, the District Land and Housing Tribunal for Karagwe District (DLHT) dismissed the application for want of sufficient cause for the delay,

Five, dissatisfied thereof, on 06/12/2021 the applicant preferred an appeal to this court challenging the decision of the DLHT denying extension of time.

Six, on 07/06/2022 this court delivered judgement in respect to an appeal by the applicant herein and dismissed it with costs, **seven**, the applicant did neither issue notice of appeal nor appeal to the court of appeal within the prescribed time limit of sixty (60) days.

Eight, on 11/ 04/2023, the applicant lodged the present application seeking extension of time within which to file notice of appeal to appeal to the court of

appeal against the decision of this court delivered on 07/06/2022. The present application was filed after ten (10) months from the date of delivery of the said Judgment.

Nine, the applicant pleaded illegality that, the Ward Tribunal determined the land dispute based on unsworn or unaffirmed evidence by the witnesses before it and that, the respondent had no locus stand to sue and claim on the land in dispute.

To start with, in determining an application for extension of time, the umbilical cord for consideration by the court are well settled by overabundance list of authorities by court of appeal. Just few, shall be cited and referred to. These are; **first**, the case of **Lyamuya Construction Co. Ltd Vs. The Registered Trustees of Young Women Christian Association of Tanzania** Civil Application no. 2 of 2010 CAT (unreported), **Addija Ramadhani (binti Pazi) vs. Sylvester W. Mkama**, Civil Application no. 13 of 2018, where the court principled that;

*(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 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.

(e) the degree of prejudice the respondent stands to suffer if time is extended;

Second, the case of **Elius Mwakalinga vs. Domina Kagaruki and 5 others**, Civil Application no. 120/12 of 2018 (unreported) and added that;

"A delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing period within which certain steps have been taken."

Third, the case of **Hamisi Ismail @ Zulu Vs. Republic**, Criminal Appeal no. 205 of 2015 (unreported) the court of appeal held that

"It is settled that in an application for extension of time, the applicant is duty bound to demonstrate good or sufficient cause for delay. Further, every delay, even if for one day has to be accounted for."

Forth, the case of **Osward Masatu Mwizarubi vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 where 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 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."

Sixth, the case of **Sebastian Ndaula vs. Grace Rwamafa**, Civil Application No. 4 of 2014 (unreported) where the Court stated that,

"Delay of even a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"

Seventh, if illegality has been pleaded as ground for extension of time, it shall be equally, in addition, be considered in line with; **one**, the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] T.L.R. 387 where the court stated that;

The Court... emphasized that such point of law, must be that of sufficient importance and I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process.

Two, the case of **Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Reference no. 13 of 2019, where the court of appeal after defining the word "illegality" came to the conclusion that; I quote;

"From the above decisions, it is our conclusion that for a decision to be attacked on ground of illegality, one has to successfully argue that the court acted illegally for want of jurisdiction, or for denial of right to be heard or that the matter was time barred"

Three, illegality must feature to the principles articulated in the case of **Mtengeti Mohamed vs Blantina Macha**, Civil Application No. 344/17/2022 where the court of appeal voiced that;

*It is a principle of equity that, **vigilantibus, non dormientibus, jura subvenient**, that is to say, equity aids the vigilant and not the indolent. By way of explanation, suffice it to say that, as a general rule, the law favours those who exercise vigilance in pursuing their rights and disfavours those who rest on their legal rights by failing to act to protect their rights in a reasonable period of time.*

Also, the principle in the case of **William Kasian Nchimbi and three others v. Abas Mfaume Sekapala and Two Others**, Civil Reference No. 2 of 2015 where the court of appeal held that;

"...illegality cannot be used as a shield to hide against inaction on the part of the applicants. And if I may add, the position set by our previous decisions is that, irrespective of the nature of the grounds advanced by the applicant in support of an application for extension of time, he must as well show

*diligence, and not apathy, negligence or ineptness in the prosecution of the action that he intends to take. (See **Lyamuya Construction Company Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 of 2000 (unreported))”.*

This court had once held in the case of **Ali Chamani and Kinyata Tindamanyile Versus Tanzania Building Agency and Attorney General**, Misc. Land Application No. 71 Of 2024 that;

Courts are enjoined not to accord weight to applicant who slumbers over his rights for song long. Sometimes the issue at hand might even have changed its status due to time lapses allowing such litigation will be encouraging old style of doing things which tends to obstruct development in a given nation. This necessitates the court to apply the maxim that; Interest republicae ut sit finis litium arises, meaning that; it is in the interest of the republic that, there should be an end of law suit. The legal principal Interest republicae ut sit finis litium enshrines that, it is advantageous to the public that there be an end to litigation. The court cannot open-endedly continue to accommodate and entertain a person who sleeps over his rights.

With such a very few referred plethora of authorities, it is clear that, based for illegality to be accommodated it must apparent and touching; **one**, jurisdiction,

two, time limit, *three*, res judicata, *four*, locus standi *five*, denial of right to be heard and *six*, other point of law with effect of making the subordinate proceedings and judgement a nullity ab initio, *seven*, raised timely that there must be diligence, and not apathy, negligence or ineptness in the prosecution of the action that he intends to take and *eight*, accounting for number of days delayed.

In the present application, the applicant has just pointed out existence of illegality but he did not account for the number of days delayed totaling ten (10) months from the date of delivery of judgement on 07/06/2022 to the filing of the present application on 11/04/2023. The applicant failed to account for, let alone attempt. This court has not been placed to the picture as to why the applicant failed to take immediate necessary legal steps just after delivery of judgement on 07/06/2022.

It is legal obligation of the applicant to place before the court such lucrative evidence to enable it exercise the discretionary supremacies upon being satisfied that there is good cause for the delay.

Besides the court, the court observed that, the applicant delayed in filed appeal against the decision of ward Tribunal delivered on 31/03/2020 for nine (9) clear months, thence an application for extension of time in the District Land and Housing Tribunal. Worse indeed, upon delivery of the judgment by this court on 07/06/2022, he failed to appeal within time thence the present application of which

the applicant delayed for more than ten (10) months. He is really an expert in delaying.

All said and done, my hands are tied by the law, as I have nothing to base on, to exercise the bestowed discretionary supremacies on me. I thus inclined to agree with the respondent that, the applicant has failed to discharge his legal obligation of accounting for number of days he delayed.

Consequently, **MISC. LAND APPLICATION NO. 34 OF 2023** for extension of time stands dismissed with cost.

IT IS SO ORDERED.

DATED at **BUKOBA** this 2nd April, 2024.



G.P. MALATA

JUDGE

02/04/2024

RULING delivered at **BUKOBA** this 2nd April, 2024.



G.P. MALATA

JUDGE

02/04/2024