

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**MISC. LAND APPLICATION NO. 27800 OF 2023**

*(Arising from Application No. 27OF 2022, before District Land and Housing Tribunal of Ukerewe)*

**MGALA MANUMBU (Administrator of the  
Estate of the MANUMBU MALELO).....1<sup>st</sup> APPLICANT**  
**MECTRIDA MEMBO NSABO.....2<sup>nd</sup> APPLICANT**  
**ABIA MANUMBU.....3<sup>rd</sup> APPLICANT**  
**MBAGA PERES MANUMBU.....4<sup>th</sup> APPLICANT**

**VERSUS**

**WAMBURA DAUD MABURA..... RESPONENT**

**RULING**

*14<sup>th</sup> March & 12<sup>th</sup> April, 2024*

**ITEMBA, J.**

The applicants hereinabove have applied before this court for an order of extension of time within which to file an appeal against the Judgment issued by the District Land and Housing Tribunal for Ukerewe District (herein the Tribunal), in Land Application no. 27/2022. The application is supported by an affidavit deposed by all the four applicants. It is opposed through the counter affidavit of Wambura Daudi Wambura, the respondent.

When the application was scheduled for hearing, the applicants were represented by Mr. Einhard Mushongi the 1<sup>st</sup> and 2<sup>nd</sup> applicants and the respondent were also present while the respondent was enjoying the services of Mr. Arsein Molland both learned counsels.

In his submission in support of the application, the applicants' counsel told the court that the application is based on two main grounds technical delay and illegality. Explaining on the technical delay he prayed that the time between 4/10/2023 and 27/11/2023 be excluded from counting because the 1<sup>st</sup> applicant had already filed an appeal within time, which was struck out on 27/11/2023 for being incompetent. As regards illegality he submitted that in the proceedings and judgement of the DLHT Ukerewe. The issue of ownership of the suit property was already decided by the High Court, Mwanza through Probate Appeal no. 2/2022 before Hon. Ndyansobera J on 4/4/2022 where parties were Mgala Manumbu and Elias Manumbu Malelo. That, in the said matter, among the exhibits relied by the Probate Court was a sale agreement and the Court ruled out that the agreement is invalid. That, the respondent reopened the same case before DLHT. He stressed that the Court has already decided several times that the Probate court has power to determine ownership of the property. He refers to the case of Makoye Joseph as administrator of estate of **Joseph Nyara v Bertha Ndodi as administrator of estate of Ndodi Itaba** Land Appeal no. 63/2021, HC Mwanza which cited with approval the case of **Mgeni Seifu v Mohamed Yahaya Khalfani** Civil Application no. 1/2009 CAT Dar es salaam, at pages 14 to 15 the Court insisted that Probate Court

can determine ownership. He stressed that, it was illegal for the Tribunal to asses ownership of the suit plot as it had no power and this aspect need to be rectified through appeal. The applicants' counsel finalized by stating that the time of two weeks used to prepare this application is reasonable.

In his reply, the counsel for the respondents opposed the application. Starting with the issue of technical delay, he submitted that the impugned decision was issued on 24/1/23 and on 30/1/2023 only the 1<sup>st</sup> applicant filed Land Appeal 31/2023 High Court (extended jurisdiction) which was struck out. That, the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> applicants were not parties thereof and they were not in court. That, in the said appeal the ground for striking it out was the manner the rest of the applicants were joined because the rest of the applicants were joined when amending the appeal and by then the time of 45 days set for filing appeal had already lapsed. He insisted that under those circumstances there is no technical delay.

With regard to the second ground of illegality, he stated that the High Court decision cited originated from purely probate court and not land court and the issue was on revocation of an administrator. That in the present case, the respondent was not a party to the said probate. That, the contract mentioned by the learned counsel is different from the contract which the

Tribunal relied in its decision. That, as long as the dispute is on land issue according to **section 3 of the LDCA cap 216 R.E. 2019** the Tribunal had power to determine land disputes and stating that the probate court can determine land matters depends on the nature of circumstances and under the present circumstances, the respondent was not involved and the Tribunal issued a judgment in persona. He argued that all the grounds regarding contracts would have been raised before the Tribunal and the applicants would have appealed.

He insisted that the applicant failed to account for each day of delay. That according to **FINCA T Ltd v Boniface Mwalukisa** Civil Application 589/12 of 2018 and **Bushiri Khalfan v Latifa L. Mashayo** the delay of even a single day has to be accounted for, otherwise, there is no need of having rules prescribing periods. Therefore, he argued, even if the court considers the alleged illegality, still there are no reasons as to where the rest of the applicants were and why they delayed in filing their appeal. The learned counsel went on that, illegality will stand as a ground of extension only if there were procedural irregularity in reaching a decision and the applicants have not shown which procedure was violated by the Tribunal and that the Tribunal is not bound by Probate case decision in Land matters.

That, for administration of estate to be done, if there is conflict of ownership and land, the Land court must first determine it before the division.

The learned counsel also relied on the case of **Attorney General v MICCO's INTERNATIONAL T LTD. and another** civil application no 495/16 of 2022 stating that the word Illegality is not about the decision itself but the manner of which the decision was reached.

In his brief rejoinder the applicants' counsel insisted that there is a technical delay, that the appeal by the 1<sup>st</sup> applicant was struck out for being incompetent and indeed, the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> were not joined but they were joined after amendments of petition. That, technical delay applies when the former appeal was found incompetent being struck out.

That, on the issue of illegality, he stated that it is not true what the counsel for respondent states that Wambura Daudi was not a party before the High Court because Wambura Daudi was the respondent, the decision issued by the Tribunal affected her because he was the buyer of the suit plot. That, when the sale agreement was nullified, the remedy was to oppose the said decision instead of filing a new case and creating confusion.

I have considered the submissions by both parties and both grounds of application by the applicant's counsel. The issue is whether the application has merit. In application of this nature, the applicant is required to satisfy the court that there is a good cause for the delay in filling the application. There are numerous authorities to this effect and some of them include **Kalunga & Company Advocates Ltd v. National Bank of Commerce Ltd** (2006) TLR 235 and **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010

There is no dispute that the 1<sup>st</sup> applicant had filed his appeal on time only that it was struck out for being incompetent. Therefore, the time between 4/10/2023 and 27/11/2023 is deducted from counting the period of delay. However, respondent's counsel is opposing the rest of the applicants to benefit from this technical delay because they were not parties in the former appeal. Indeed, I have not seen any evidence by the rest of the applicants trying to account for the delay between 4/10/2023 and 27/11/2023 therefore they cannot automatically be exempted on the basis of the appeal filed by the 1<sup>st</sup> applicant.

However, there is a second ground of application based on illegality, which I think is rather crucial. It has been also held in times without number that, a ground contending illegality constitutes good cause for extension of time. Among the decisions include, **Principal Secretary Ministry of Defence and National Service v. Devram P. Valambhia** (1992) TLR 387, **Kalunga & Company Advocates Ltd (supra)** and **Arunaben Chaggan Mistry v. Naushad Mohamed Hussein & 3 Others**, Civil Application No. 6 of 2016, (Arusha) (unreported). I will start by quoting a passage in the decision issued by the landmark case of **Principal Secretary Ministry of Defence, (supra)** as cited with approval in **Arunaben Chaggan Mistry v. Naushad Mohamed Hussein & 3 Others** (supra), which states that:

*"In our view when the point at issue is one alleging illegality of the decision being challenged, **the Court has a duty even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established to take appropriate measures to put the matter and the record right**" [Emphasis supplied].*

The applicant's counsel claims that, the impugned judgment was issued after the Probate court (Hon. Ndyansobera, J) has already issued a decision regarding the sale of the same suit property. I took liberty to find

the decision mentioned by the applicants, issued by my brother Hon. Ndyansobera, J in Probate Cause no 5/2021 High Court Mwanza where the parties are **Mgala Manumbu v Elias Manumbu Malelo**. It is noted among others that, the suit property was a family house left by Manumbu Malelo Malelo who died on 9/7/2017. He was survived with a widow Mektrida Membo Ngabo, the 2<sup>nd</sup> applicant herein and fourteens children including the 1<sup>st</sup> 3<sup>rd</sup> and 4<sup>th</sup> applicants herein.

After hearing of the probate appeal, the High Court nullified the sale of the suit property because the seller Elias Manumbu was not an administrator of the deceased's estate and he had no power to sell the property. Now, following such nullification, the respondent lodged a land dispute against the applicants before the Ukerewe Ward Tribunal claiming ownership over the same suit property. A decision was issued in the respondent's favor. It is noted that this dispute was filed at the Tribunal after the Probate court has nullified the sale of the suit property. As correctly argued by the applicant's counsel, the reopening of the case was unprocedural and this is an illegality which cannot be left to stand. It important for these grey areas to be worked upon and a clarity be made



either they are black or white. For that reason, the second ground of application has merit.

I find it proper to use my discretion and grant an extension of time to the applicants to file their intended appeal. For the matter of clarity, I have considered the involvement of the rest of the applicants and illegality occasioned and find that, legal technicalities, if entertained will not assist the parties in finalising their dispute. For the interest of justice, all interested parties should be heard. Therefore, the grant of extension of time is issued to all the four applicants. That said, appeal against Land application no. 27/2022 have to be filed within 21 days from the date of this ruling.

Right of appeal explained. Costs to follow the event.



**L.K.J. ITEMBA**  
**JUDGE**  
**12/4/2024**