

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

MISC. LAND APPLICATION No. 8145 OF 2024

*(Arising from the decision of the District Land and Housing Tribunal for Geita in
Land Application No. 38 of 2019)*

DAUDI PETRO KASAMBULA *(Administrator of the estate of
the late PETRO MICHAEL KALAGO)* **APPLICANT**

VERSUS

HELENA MBOJE BAJIMU & 16 OTHERS.....**RESPONDENTS**

RULING

Date of last order: 14/05/2024

Date of Ruling: 22/05/2024

MWAKAPEJE, J.:

The Applicant herein, under section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019 requests this court to grant him an extension of time within which to appeal out of time. The application is filed by chamber summons supported by the Applicant's affidavit.

Briefly, this application stems from a ruling delivered by the District Land and Housing Tribunal for Geita (herein referred to as the DLHT) in Land Application No. 38 of 2019 on 20th October 2023. The Applicant initiated legal action against the Respondents for encroaching on their

family's land. The Applicant sought relief from the tribunal to prevent the Respondents from interfering with their property and compel them to remove erect structures therein. The Applicant, as the estate administrator, also sought a declaration affirming his rightful ownership of the disputed land.

However, during the composition of a judgment, the trial Chairman of the DLHT observed that the application in question was time-barred. Furthermore, he noted that an extension of time granted by the Minister for Constitutional and Legal Affairs was invalid because it exceeded the time stipulated. Following the address by the parties on the issue, the trial Chairman dismissed the application because it was out of time, and the Minister's order was ruled to be contrary to the provisions of the Law of Limitation Act, Cap.89 R.E. 2019. It is this dismissal that the Applicant challenges, seeking to appeal against the decision, only to realise that his appeal is similarly time-barred, prompting the present application.

This application was argued orally, and when it was called for hearing, the Applicant was represented by Mr Bartholomew Msyangi, a learned advocate, while the 2nd, 3rd, 4th, 5th, 7th, 8th, 9th, 11th, 12th, 13th & 16th Respondents were represented by Mr Felix Kagimbo, a learned advocate, and Mr Viane Mbuya, a learned advocate represented the 1st,

14th & 17th Respondents. The 6th, 10th, and 15th Respondents were unrepresented and absconded. Efforts to procure their attendance through a process server proved futile, compelling the court to proceed *ex parte* against them.

Being the first to address the Court, Mr Msyangi articulated that his application for an extension of time hinged on two key issues: impediments within the electronic filing system and the illegality within the District Land and Housing Tribunal of Geita. Mr Msyangi expounded on the delays caused by the electronic filing system, elucidating that he encountered obstacles with the system following the conclusion of the DLHT case on 20th October 2023. Despite the fact that the grounds of appeal were prepared and duly signed by the Applicant on 22nd November 2023, he confronted difficulties in transitioning from the JSDS2 System to the e-CMS within time.

Moreover, he faced issues with reference numbers when transferring cases from the District Court to the High Court. In February 2024, he discovered that cases from tribunals did not need reference numbers, causing a delay that exceeded the period of limitations. Following this, he sought guidance and advice from the Deputy Registrar as per Rule 24(1) of the Judicature and Application of Laws (Electronic

Filing) Rules, 2018. The Deputy Registrar acknowledged the missed deadline but recommended providing evidence of obstacles faced with the e-CMS. Consequently, an appeal was submitted with a correspondence, which was admitted. During the initial stages of the hearing, the appeal was withdrawn with leave to refile the present application.

On the second issue of illegality, Mr Msyangi contended that the DLHT of Geita erred in contesting the extension of time order issued by the Minister for Constitutional and Legal Affairs that the same had surpassed the allowable extension period of one-half, as outlined in Section 44(1) of the Law of Limitation Act. Additionally, he countered the DLHT's ruling, which disregarded the fact that he delayed because he was detained and that the Minister's time limit was scheduled to expire in November 2024. Mr. Msyangi further claimed that the trial Chairman had rejected the application, which is crucial to their appeal. To reinforce his argument, Mr Msyangi referenced the case of **KCB Bank Tanzania Limited vs Sara Joel Mahanyu** (Misc. Land Application 30 of 2021) [2022] TZHC 13248 (9 September 2022), where the court cited the case of **Christmas Elimikia Swai & Others vs Tanzania Electricity Supply Co. Ltd & Another** (Civil Application 559 of 2018) [2019] TZCA 292 (2 September 2019). He stressed that in assessing a request for a

time extension, the court must consider the reasons provided and other factors, including illegality from previous rulings. Mr. Msyangi also mentioned the case of **TANESCO vs Mufungo Leonard Majura & Others** (Civil Application 94 of 2016) [2017] TZCA 239 (5 June 2017), where illegality was the basis for the time extension. In the end, he prayed that the application be granted in accordance with Section 14 of the Law of Limitation Act.

Mr Mbuya, the learned to advocate for the 1st, 14th & 17th Respondents, opposed the application and contended that the Applicant failed to justify the delay in filing the appeal. He referenced the case of **Wambele Mtumwa Shahame vs Mohamed Hamis** (Civil Reference 8 of 2016) [2018] TZCA 39 (6 August 2018) to support his argument. He emphasised that the Applicant's reasons for the delay were insufficient and dismissed claims of technical difficulties. Additionally, he argued that the Applicant's incarceration and the Minister's order were not relevant to the application and challenged the relevance of cited cases on illegality while citing a legal stance in the case of **Charles Richard Kombe vs Kinondoni Municipal Council** (Civil Reference No. 13 of 2019) [2023] TZCA 137 (23 March 2023) on factors to consider on claims of illegality. He pleaded for the application to be dismissed with costs for the lack of

merit and failure to adhere to established legal principles on matters pertaining to illegality.

Mr Felix Kagimbo, representing the 2nd, 3rd, 4th, 5th, 7th, 8th, 9th, 11th, 12th, 13th & 16th Respondents, supported Mr Viane's submission. He highlighted the lack of evidence supporting explanations for delays and stressed the importance of substantiating reasons with evidence in the affidavit, including the certificate of delay. He argued that evidence from the Deputy Registrar and their correspondence should have been included, and the specific duration of the delay was unspecified, making the application for extension unjustified. In support of his position, he cited the case of **Ramadhani Rashidi Kitime vs. Anna Ally Senyangwa** (Misc. Land Application no. 3 of 2023) [2023] TZHC 19283 (10 March 2023).

Additionally, he highlighted that Section 14(1) of the Law of Limitation Act necessitates demonstrating a good reason to justify an extension of the limitation period. Furthermore, he emphasised the requirement of accounting for each day of delay, referring to the case of **Sebastian Ndaula vs Grace Rwamafa**, Civil Application No. 4 of 2014, CAT (Unreported), as cited in the **Ramadhan Rashidi Kitime vs Anna Ally Sinyangwe** (*supra*) case. He argued that even a single day of delay

must be explained to adhere to the court's rules regarding timelines and taking necessary steps.

Mr Kagimbo questioned the justification for delays in electronically filing an appeal due to technical difficulties faced by the Applicant's counsel. To bolster his argument, he referenced the case of **Jubilee Insurance Company (T) Ltd vs Mohamed Sameer Khan** (Civil Application 439 of 2020) [2022] TZCA 623 (12 October 2022) to argue against granting an extension of time. While citing the case of **Omari R. Ibrahim vs Ndege Commercial Services Ltd** (Civil Application No. 83 of 2020) [2021] TZCA 64 (5 March 2021), he dismissed the obstacles encountered by the advocate for the Applicant as lacking merit.

Further, Mr Kagimbo argued that the Minister's Order was illegal under section 44(1) of the Law of Limitation Act, stating that the Minister can only extend time as per the law, not at his discretion. He supported DLHT's rejection of the application due to the Applicant surpassing the limitation period and the Minister's time limit also lapsing. Referring to the case of **Ramadhan Kitime** (*supra*) on page 6, he stressed the need to promptly address any legality issues and urged for the application to be dismissed with costs.

In his rejoinder on illegality, Mr Msyangi addressed the issue, emphasising that it is a legal point pending determination. He highlighted that this point could be crucial for granting the application, enabling it to be argued and addressed in an appeal. He further reiterated that the challenge arose from a system alteration, leading him to seek advice from the Deputy Registrar. He concluded by pleading that the application be granted to ensure justice is served.

Upon reviewing the submissions from both parties, I will now examine the basis on which the Applicant requests an extension of time to file an appeal. The Applicant has put forth reasons related to difficulties with the electronic filing systems and claims of illegality, which will be addressed in seriatim.

Before delving into addressing the matters articulated as bases for the present application, I should, at the onset, concur with the counsels for the parties that the grant or refusal to extend the limitation period is the discretion of the court. Nonetheless, it is essential to underscore that the exercise of such discretion has to be judicious; see the **Yusufu Same & Another vs Hadija Yusufu** (Civil Appeal No. 1 of 2002) [2006] TZCA 141 (20 October 2006).

Moreover, for an Applicant to be granted an order extending the period of limitation, he has to advance sufficient cause to move the court to exercise its discretion. Section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019 explicitly provides that:

*"14.-(1) Notwithstanding the provisions of this Act, the court may, **for any reasonable or sufficient cause, extend the period of limitation for the Institution of an appeal or an application**, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

At the outset, it is important to note that whether a particular reason constitutes sufficient cause, though not defined, is ultimately up to the discretion of the court. However, the interpretation of sufficient cause was articulated in the case of **Felix Mtumbo Kisima vs. TCC Limited and another**, Misc. Civil Appeal No. 1 of 1997 quoted in the case of **Bahati Matimba vs Jaglo Enterprises Ltd**, Misc. Application No. 01 of 2020, where it was stated that:

*'It should be observed that sufficient cause should not be interpreted narrowly, but should be given a wider interpretation **to encompass all reasons or causes which are outside the Applicant's power to control or influence resulting in a delay in taking any necessary steps.**' [Emphasis supplied]*

In the present application, the decision of the District Land and Housing Tribunal for Geita was rendered on 20th October 2023. The advocate for the Applicant contends that despite completing the preparation of his appeal on time, i.e. 22nd November 2023, he failed to appeal on time because of challenges within the electronic filing system. He managed for the first time to file his appeal on 31st March 2024, which was withdrawn by the Applicant on 04th April 2024. It was on 16 April 2024 that the Applicant filed this application. The question before me is whether, in the circumstances of the present case, challenges in the electronic filing system are a good cause.

The electronic filing system previously used by the Judiciary of Tanzanian was JSDS2 until 6th November 2023, when it transitioned to e-CMS. By the time he completed preparing his appeal on 22nd November 2023, e-CMS had already begun. In paragraph 6 of his affidavit, the Applicant stated that in December 2023, he secured an advocate to process the filing of an appeal, but it was difficult because the system was novel to the said advocate until when they were assisted by the court to file it in March 2024.

This line of reasoning appears illogical to me as, **first**, the Judiciary had conducted comprehensive training sessions for all advocates within

their designated zones prior to transitioning to e-CMS. If the Applicant's advocate had encountered any challenges with the system, he could have easily sought guidance from his peers promptly. In my view, this slackness on the part of the advocate is unacceptable and, therefore, does not serve as a good cause in cases of this nature: see the cases of **Umoja Garage v. National Bank of Commerce, [1997] TLR 109; Paul Martin v. Bertha Anderson**, Civil Application No. 07 of 2005 (unreported) and **Wambura N.J. Waryuba vs The Secretary Ministry of Finance & Another** (Civil Application No. 320 of 2020) [2021] TZCA 457 (2 March 2021). Specifically, in the case of **Paul Martin v. Bertha Anderson**, it was stated that:

*"...unexplained inordinate delay which exhibits sloppiness, negligence and **inaction on the part of the Applicant and her advocates and further that the said inaction and negligence of the advocates is not an excuse for extension of time.**" [Emphasis supplied]*

Secondly, the establishment of this sub-registry of the High Court was on 1st December 2023. Since its inception, it has registered and determined cases submitted through the e-CMS. Why, then, did only the Applicant encounter difficulties? This issue cannot be attributed to factors beyond the Applicant's control, as he had the ability to promptly bring the matter to the attention of the judiciary's technical team, who could have

addressed it in a timely manner. However, this was not done until March 2024, when the court helped, as outlined in paragraph 6 of the affidavit. It is worth noting that the DLHT decision was issued on 20th October 2023, and the Applicant filed his appeal, followed by this application on 31st March 2024 and 16th April 2024. From this, I should once more stress that it is well-established in law that the Applicant is accountable for each day of delay. See the cases of **Sebastian Ndaula vs Grace Rwamafa** and **Ramadhan Rashidi Kitime vs Anna Ally Sinyangwe** (*supra*). Mr Msyangi cited Rule 24(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018, which excludes from computation the period in which the electronic filing system was not in operation. Sub-Rule (1) of the said Rules should, however, be read together with sub-Rule (3), which prohibits the excluded period from exceeding the filing period under the Law of Limitation Act. Now, from 20th October 2023 to March 2024, the period of the Law of Limitation Act in the present application has already exceeded.

Nevertheless, in this application, the Applicant has not claimed that he encountered continuous challenges with the electronic filing system from October 2023 to March 2024. I, therefore, concur with the arguments put

forth by the learned counsels representing the Respondents that he has not accounted for the nearly 100 delayed days.

Thirdly, Mr Msyangi further argued that he believed reference numbers were imperative for transferring cases from the District Court to the High Court. It wasn't until February 2024 that he realised cases from tribunals did not require reference numbers, thereby causing the aforementioned delay. I do not subscribe to the contention that, as a legal representative, he is expected to be well-versed in court rules and procedures. It is a settled position of law now that an advocate's ignorance is not a good cause for delay. See the case of **Omari R. Ibrahim vs Ndege Commercial Services Ltd** (*supra*) and **Bakir Israel vs Republic (Criminal Application 4 of 2011) [2012] TZCA 146 (28 September 2012)**. Expressly in the case of **Bakir Israel**, it was observed that:

".....neither ignorance of the law nor counsel's mistake constitutes good cause....."

Fourthly, paragraph 6 of the Applicant's affidavit references an unidentified advocate who assisted him but faced challenges with the filing system. Nevertheless, this individual has not submitted their own affidavit on this matter, rendering the assertion as hearsay. This requirement has been addressed by case law, as demonstrated in the

cases of **Sabena Techincs Dar Limited v. Michael J. Luwunzu** (Civil Application 451 of 2020) [2021] TZCA 108 (14 April 2021), while referring the cases of **Benedict Kimwaga v. Principal Secretary Ministry of Health**, Civil Application No. 31 of 2000, and **NBC Ltd v. Superdoll Trailer Manufacturing Company Ltd**, Civil Application No. 13 of 2002 (both unpublished). It was stated that:

"... an affidavit which mentions another person is hearsay unless that other person swears as well."

Furthermore, Mr Msyangi argued during his oral submission that he had consulted the Deputy Registrar, who advised him to proceed with filing the appeal. However, this information was not included in the affidavit, and there was no evidence, not even the registrar's affidavit, to support this claim. I must reiterate that an Applicant seeking an extension of time typically bears the burden of proving that sufficient cause exists. Furthermore, Mr Msyangi argued during his oral submission that he had consulted the Deputy Registrar, who advised him to proceed with filing the appeal. If the Registrar had been consulted in terms of Rule 24(5), he should have acted in terms of Rule 24(6). For clarity purposes, the said sub Rules provide:

"(5) Where the party misses a filing deadline due to technical problems referred to in sub-rule (1), the party shall move

informally and ex parte the Registrar or the magistrate in charge not later than 15:00 hrs of the following working day for appropriate relief.

*(6) Where the Registrar or magistrate in charge is **satisfied that there was good cause for missing the deadline, he shall grant the request under sub-rule (5) in writing.*** “[Emphasis supplied]

In the present application there is no evidence to that effect was provided by the Applicant. Moreover, this information was not included in the affidavit, and there was no evidence, not even the registrar’s affidavit or order, to support this claim. Therefore, I find this reason inadequate to warrant this Court to exercise its discretion.

I now turn to consider the illegality as a ground relied upon by the Applicant in this application. It is trite law that when there is a point of law of sufficient importance, such as the illegality of the decision sought to be challenged, the Court may extend the period of limitation. See the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women’s Christian Association of Tanzania**, Civil Application No. 2 of 2010 [2011] TZCA 4 (3 October 2011). However, for one to challenge the decision on illegality, reference should not be to the decision arrived at but to the manner in which the said decision was reached. See the case of **Chunila Dahyabhai v. Dharamshi Nanji and Others, AIR**

1969 Guj 213 (1969) GLR 734, Supreme Court of India as referred in **Charles Richard Kombe vs Kinondoni Municipal Council** (*supra*).

The alleged illegality being contested in this application is detailed in paragraph 8 of the Applicant's affidavit. The Applicant asserted that the DLHT's decision to dismiss his case was erroneous, as the Minister's order to extend the limitation period in his favour was valid and allowed him ample time to file his case with the tribunal up to November 2024. Additionally, Mr Msyangi argued that the trial Chairman dismissed the application *suo motu*. Now, the key issue for consideration is whether the trial Chairman acted illegally in dismissing the application before him.

It is a well-established legal principle that in order to challenge a decision based on illegality, one must demonstrate that the court acted without jurisdiction, deprived him of the opportunity to present his case, or that the issue was time-barred. This was established in the case of **Charles Richard Kombe vs Kinondoni Municipal Council** (*supra*), where it was explicitly articulated that:

*"For a decision to be attacked on the ground of illegality, one has to successfully argue that the court acted illegally **for want of jurisdiction, or for denial of the right to be heard or that the matter was time-barred.**" [Emphasis supplied]*

In the current application, the records from page 3 of the trial tribunal's ruling indicate that the cause of action accrued in 1999 and consequently lapsed in 2011. On 30 October 2018, the Minister for Constitutional and Legal Affairs granted the Applicant an extension of 6 years until November 2024. This action, in accordance with the position of law and case law such as the case of **Rajabu Hassan Mfaume vs Permanent Secretary, Ministry of Health, Community Development, Gender, Elderly & Children** (Civil Appeal 287 of 2019) [2022] TZCA 148 (28 March 2022), compelled the trial Chairman to dismiss the application on the grounds that it was time-barred.

Nevertheless, as evidenced and indicated in the records, the trial Chairperson, upon recognising a point of law that required attention, called upon both parties to address him before rendering a decision. This can be found on page 3 of the ruling, where the trial chairperson recorded as follows:

*"Kwamba, baada ya kusikilizwa ushahidi wa pande zote mbili pamoja na maoni ya mjumbe kusomwa mbele za pande zote mbili, nilikaa na kuanza kuandaa hukumu na nilipokuwa napitia hati ya madai ya mleta maombi hasa aya ya 6(a)(x) mleta maombi anadai maombi haya yameletwa kwa amri ya nyongeza ya muda imeambatanishwa kama kiambata P-3 "ORDER OF EXTENSION OF PERIOD OF LIMITATION" ni katika kupitia hati hiyo **ndipo nilipogundua hoja ya***

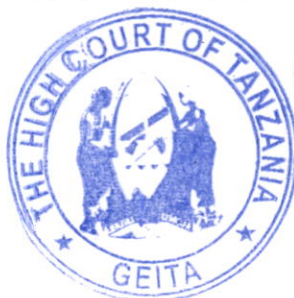
kisheria ilinilazimu kuwaalika pande zote mbili kuelezea hoja hiyo mbele ya baraza. Na katika kesi hii ni wakati gani muda wa nyongeza unaanza kuhesabika baada ya kuisha kwa miaka 12 kwenye madai ya ardhi. Pande zote mbili pia zilipewa angalizo kupitia maamuzi ya hivi karibuni ya Mahakama ya Rufaa ya **Rajabu Hassan Mfaume (the administrator of the estate of the late Hija Omary Kipara) vs Permanent Secretary, Ministry of Health, Community Development, Gender, Eldery & Children, Civil Appeal 287 of 2019** ya tarehe 26/03/2022. Katika hukumu hiyo inaweka msimamo na tafsiri sahihi kabisa ya sasa ya Kifungu cha 44(1) na (2) cha Sheria ya Ukomo sura ya 89 R.E 2019. [Emphasis supplied]

It was subsequent to the submissions made by the parties to the trial tribunal concerning this matter that the tribunal came to its conclusion. Despite the tribunal bringing up this matter, a decision was not made until the parties were summoned to address the matter. Hence, I do not concur with Mr Msyangi's assertion that it was decided *suo motu*. Upon reviewing the process by which the decision was made, it is evident that both parties involved in the application were given the opportunity for a hearing; ultimately, the tribunal had the jurisdiction to decide on the application that the same was time-barred. Therefore, I align with the Respondents' legal counsels in their argument that the Applicant did not provide enough evidence to support the claim of illegality in the tribunal's ruling.

The culmination of the preceding discussion is that the Applicant failed to provide sufficient cause for the delay. Furthermore, he failed to demonstrate any illegality in the tribunal's challenged decision in Land Application No. 38 of 2019. Consequently, this application for an extension of time within which to file an appeal lacks merits and is dismissed forthwith with costs.

It is so ordered.

DATED at **GEITA** this 22nd day of May 2024.



G.V. MWAKAPEJE
JUDGE

Ruling is delivered this 22nd day of May 2024 in the presence of the Applicant and the 2nd, 4th, 8th, 9th, 11th, 12th, and 15th Respondents.



G.V. MWAKAPEJE
JUDGE