

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA SUB-REGISTRY
AT MUSOMA
MISC. LAND APPLICATION NO. 5119/2024

BETWEEN

MWITA NYANDEGE MARWA.....APPLICANT

AND

GHATI KERARYO MASEKE.....1ST RESPONDENT

MASABA MASEKE SERYA.....2ND RESPONDENT

08/05/2024 & 22/05/2024

RULING OF THE COURT

Kafanabo, J.:

This is an application for extension of time within which to appeal made under section 38(2) of **the Land Disputes Courts Act, Cap. 216 R.E. 2019**. The application is made by chamber summons supported by affidavits of the Applicant and that of Mr. Baraka Makowe, learned Advocate for the Applicant.

A brief background of the matter as may be gathered from the affidavits supporting the application is that the Applicant herein was one of the Respondents before the Ward Tribunal of Kwihancha in Land Case No. 6/2020. The Ward Tribunal delivered a decision which aggrieved the Applicant and thus appealed to the District Land and Housing Tribunal for Tarime vide Land Appeal No. 26 of 2022. The said appeal was dismissed on 12th September 2023, by D.S. David, Chairman. The Applicant was aggrieved

by the dismissal of the appeal, but could not appeal on time and thus this application for extension of time.

According to the affidavits supporting the Application, there are two major reasons advanced to justify the application for extension of time. First, is the alleged Applicant's sickness and the medical treatment he received as deposed in paragraphs 3, 4 and 5 of the Applicant's affidavit. Second, the Applicant contends procedural irregularities as averred in paragraphs 5(a)(b)(c)(d)(e) of Mr. Baraka Makowe's affidavit supporting the application.

The Respondents on their part, filed two joint counter affidavits against the two affidavits supporting the application. The Respondents deny the reasons for extension of time as stated in the affidavits supporting the application. They deposed that that the Applicant has failed to account for each day of the delay and failed to advance sufficient cause for extension of time. They further deposed that the issue of procedural irregularities is new and was not raised in the first appeal before the District Land and Housing Tribunal for Tarime, and thus cannot be used as a ground for extension of time.

When the matter came for hearing, the Applicant was represented by Mr. Baraka Makowe, learned Advocate, and the Respondents were represented by Mr. Dominic Chacha, learned Advocate.

In support of the application, Mr. Makowe adopted both affidavits filed in support of the application as part of his submission. He further submitted that the major reason for the delay was the Applicant's sickness, and the medical report is attached to the affidavit proving his sickness, and he was attending Tarime District Hospital for treatment. He submitted that

paragraphs 4, 5 and 6 of the Applicant's affidavit read together with a medical report attached, show that the Applicant was hospitalized for 5 days before being discharged from the hospital. It was also submitted that the Applicant was advised not to travel, but continued with medication as prescribed. The Applicant was required to report to hospital on 25/01/2024 and 15/02/2024 for follow up. The Applicant continued to attend hospital until 28/02/2024, and thereafter he was required to attend hospital as per the schedule provided by the hospital.

The learned counsel also submitted that the Applicants' joint counter affidavit contests paragraphs 3, 4 and 6 of the Applicants' affidavit which are about sickness of the Applicant. However, the Respondents did not bring any evidence to disprove that the Applicant was not sick and thus, according to the learned counsel, this application has not been contested.

Further, it was submitted by the Applicant's counsel that since the Respondents believe that the Applicant has not advanced sufficient reasons for extension of time, their counter affidavit is not proper because paragraph 2 of the same is about their belief, so they were supposed to explain the ground of their belief in the verification clause, but because they did not, the verification clause of the counter affidavit was affected. Mr. Makowe prayed that the Application be granted because the delay was caused by the Applicant's sickness.

Responding to the issue of sickness as a reason for the delay, Mr. Dominic Chacha, the Respondents' learned counsel, commenced his reply submissions by adopting the Respondents' joint counter affidavits as part of

his submissions. The learned counsel opposed the issue of sickness as a reason for the delay.

He submitted that the Applicant has failed to account for each day of the delay as per requirement of the law because the decision which the Applicant seeks to challenge, if extension of time is granted, was delivered on 12/09/2023 before D.S. David, Chairman. The Applicant fell sick on 8th November 2023, as per the medical report from Tarime District Hospital attached to the Applicant's affidavit.

The learned counsel submitted that, it is crystal clear that before the Applicant fell sick, there were fifty-seven (57) clear days which the Applicant could utilize for appeal purposes. The said fifty-seven (57) days cover the period from 12/09/2023 to 08/11/2023. The fifty-seven (57) days were not accounted for and the Applicant did not explain where he was, and why he did not utilize them whilst the decision he seeks to challenge was delivered in his presence.

It was, therefore, submitted that the Applicant did not advance a good cause for his delay. The case of **Zuber Nassoro Mohd vs Mkurugenzi Mkuu Shirika La Bandari Zanzibar (Civil Application 93 of 2018) [2018] TZCA 337** (14 December 2018) was cited supporting the submission on accounting for each day of the delay. It was also argued that, the Applicant's affidavit and the attachment thereto, do not explain any other measure taken by the Applicant in pursuing his right of appeal.

Having heard the parties on the issue of sickness as a reason for the delay and the Respondents' response that the Applicant has failed to account for

each day of the delay, this court proceeds to determine whether the Applicant's alleged sickness made him unable to file the appeal within the time prescribed by the law and if he has advanced a good and sufficient cause for the delay.

It is this court's view that a good starting point is setting out the undisputed and/or clear facts as may be collected from the pleadings before the court, as follows:

One, it is not disputed that the decision of the District Land and Housing Tribunal for Tarime was pronounced on 12/09/2023.

Two, the Applicant fell sick on 08/11/2023 as indicated in the purported medical report attached to the Applicant's affidavit.

Three, fifty-seven (57) days had lapsed from the date of the decision to the date the Applicant, allegedly, fell sick.

Four, the Applicant and his advocate, never attempted to explain why they did not file an appeal within the said Fifty-Seven (57) days before the applicant allegedly fell sick.

Given the above, this court agrees with the Respondent's counsel that the Applicant failed to account for the Fifty-Seven (57) days that, immediately, followed the pronouncement of the decision in respect of the land appeal before the District Land and Housing Tribunal for Tarime.

In his rejoinder submissions, the Applicant's counsel came up with a novel submission that a person applying for extension of time is supposed to account for the time that had ensued after the lapse of the time prescribed

by law. He adamantly submitted that the Applicant is not supposed to explain why he failed to act within the time prescribed by law.

With profound respect to Mr. Makowe, this court is not prepared to follow his line of reasoning. The learned counsel, who also swore the affidavit in support of the application, wants this court to exercise its discretion and extend time within which to appeal, but he does not want to explain why the Applicant failed to file the appeal within the time prescribed by law.

It should be recorded here that once a party fails to take necessary step in pursuing their right within the time prescribed by law, the whole time, counting from day one, when the law allowed him to pursue his right, to the day he files an application for extension of time, turns and befits the days (time) of the delay in respect of which each day must be accounted for.

It is unbecoming for a party to argue that he is only required to account for the days that came after lapse of the prescribed time. The basis and essence for the extension of time, is for a party to explain and advance a sufficient cause as to why he failed to utilize the time prescribed by law, plus any other time that has lapsed, to pursue his right in order to convince the court that he be allowed to act outside the time prescribed by law.

The guiding law in this application is section 38(1) of the **Land Disputes Courts Act, Cap. 216 R.E. 2019**. The said section provides that:

38.-(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:

*Provided that, **the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.***

The relevant section allows the court to extend time upon a party establishing a good and sufficient cause for the delay. In the case of the **Attorney General vs Tanzania Ports Authority & Another (Civil Application 87 of 2016) [2016] TZCA 897 (12 October 2016)**, her Ladyship, the single justice of the Court of Appeal, held that:

'What amounts to good cause includes whether the application has been brought promptly, absence of any invalid explanation for delay and diligence on the part of the applicant.'

In this application the Applicant never attempted to explain and/or justify the delay of the first fifty-seven (57) days after the pronouncement of the decision of the District Land and Housing Tribunal for Tarime. Instead, and rather perplexing, it was argued that he was not required to explain the said fifty-seven (57) seven days, but he is supposed to explain the delay after the lapse of 60 days which is the time prescribed by law within which to appeal. In light of the Applicant's stance, there is neither valid explanation for the delay, nor diligence on the part of Applicant in pursuing his right of appeal.

It follows that the Applicant has failed to account for each day of the delay, as correctly argued by the Respondents' counsel. Therefore, this court finds that a period of more than fifty-seven (57) days has not been accounted for by the Applicant in his application for an extension of time. The law requires the Applicant to account for each day of the delay in order for the court to exercise its discretion to extend time.

There is a plethora of Court of Appeal decisions cementing on an obligation of the applicant for an extension of time to account for each day delayed. The cases of the **Board of Trustees of the Free Pentecostal Church of Tanzania vs Asha Selemani Chambada and Another (Civil Application 63 of 2023) [2023] TZCA 147** (28 March 2023), **Sebastian Ndaula v. Grace Rwamafa, Civil Application No. 4 of 2014** (Unreported), **Lyamuya Construction Company Ltd v. the Board of Registered Trustee of Young Women’s Christian Association of Tanzania, Civil Application No. 02 of 2010 (Unreported)**, **Zuber Nassoro Mohd vs Mkurugenzi Mkuu Shirika La Bandari Zanzibar (Civil Application 93 of 2018) [2018] TZCA 337 (14 December 2018)** are relevant.

Under the circumstances, the applicant has failed to convince this court to exercise its discretion to extend time in light of the provisions of sections (1) and 38(1) of the **Land Disputes Courts Act, Cap. 216 R.E. 2019** based on the ground of the alleged sickness.

Turning to illegality, the learned counsel for the Applicant submitted on the issue of illegality as one of the reasons for the extension of time. He submitted that the District Land and Housing Tribunal for Tarime, being the first appellate court did not perform its duty properly as per the law. Thus, this court be pleased to extend time and allow the Applicant to appeal so that the court may appreciate the illegalities complained by the Applicant. The illegalities complained of will be stipulated herein below as captured from the learned counsel’s affidavit supporting the application.

Replying to the Applicant's Counsel's submissions on illegality, the Respondent's counsel submitted that not every illegality amounts to a good cause for extension of time. The alleged irregularities stated in the affidavits supporting the application do not amount to illegalities warranting extension of time. The case of **Zahara Mingi v. Athumani Mangapi, Civil Appeal No. 279 of 2020** was cited supporting the submission.

The Respondents' counsel also argued that not every error on a point of law constitute an illegality, and what should be proved on the issue of illegality citing the case of **Charles Richard Kombe v. Kinondoni Municipal Council Civil Reference No. 13/2019 pages 7,8 and 9**. Further, it was submitted that what was not placed in the first appellate cannot be invoked as a ground of appeal in this court.

Moreover, it was submitted that the counter affidavits of the Respondents are proper and have not violated any law, the verification clauses were also in order. The Respondents thus prayed for the dismissal of the application with costs.

After hearing the parties' submissions on the point of illegality as a ground for extension of time, it is worthy stating that it is trite law that if an illegality is established as a ground in an application for extension of time, the application will, unhesitatingly, be granted. The Court of Appeal cases of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185, **Ntiga Gwisu vs Republic (Criminal Appeal 428 of 2015) [2019] TZCA 395** (6 November 2019), and **Vip Engineering and Marketing Ltd and 2 Others vs Citi Bank**

Tanzania Ltd (Consolidated Civil Reference 6 of 2006) [2007] TZCA 165 (26 September 2007) are relevant.

The irregularities stated in the affidavit supporting the application, but turned illegalities in the submissions supporting the application, were set out in paragraph 5 of the affidavit of Mr. Baraka Makowe, and they were:

(a) A Ward Tribunal removing a party to (sic) the proceedings in a dispute (sic) without an application or request from the adverse(sic) party.

(b) The legality of a Ward Tribunal to allow a party to the matter to conduct cross-examination without a witness (adverse party) having adduced evidence.

(c) The legality of a judgment/decision of the Ward Tribunal whose members changed several times.

(d) The legality of a sketch map of a locus in quo drawn by some members who visited the site on behalf of others.

(e) The legality of exhibits presented before the Ward Tribunal and use (sic) as evidence without allowing the other party to cross examine on them.

After reiterating the above alleged illegalities as set out in the affidavit supporting the application, it is clear that there should be material before this court that would enable the court to comprehend and appreciate whether what is being complained of by the Applicant is valid. Considering the contents of paragraphs 2, 3, 4, 5, and 6 of Mr. Makowe's affidavit, the

Applicant is faulting the decision of the District Land and Housing Tribunal for Tarime in Land Appeal No. 26 of 2022, and also the decision of the Ward Tribunal of Kwihancha in Land Case No. 6/2020.

Regrettably, the Applicant did not assist this court to appreciate his ground of illegality for purposes of extending time. This is because of the following:

One, the decision of the District Land and Housing Tribunal for Tarime in Land Appeal No. 26 of 2022 complained of in this application for being complacent of illegalities committed by the Ward Tribunal and which, if extension of time is granted, would be challenged by the applicant by way of appeal, was neither averred nor attached to any of the affidavits supporting this Application.

Two, the decision of the Ward Tribunal of Kwihancha in Land Case No. 6/2020 which is alleged to contain illegalities was not made available vide this application for the court to comprehend the Applicant's concerns on illegalities.

Three, the pleadings and proceedings of both cases mentioned in items one and two above, were neither pleaded nor attached to the application for extension of time.

Under the circumstances, and considering the above reasons cumulatively, the Applicant did not place before this court material upon which this court would rely in determining the existence of the alleged illegalities in order to determine the soundness of the grounds for the application.

In order to appreciate the importance of the material for the court to consider in determining an application for extension of time, the Court of

Appeal traversed several times on the point of illegality as a ground for extension of time, and it set out clearly factor(s) to consider before exercising the discretion on either to extend time, or otherwise, on the ground of illegality.

The major factor to consider is that it is not enough to simply state that the decision sought to be challenged contains an illegality. The court may extend time if it is established that the alleged illegality is manifest and/or apparent on the face of the record complained of. The Court of Appeal in the cases of **Ngao Godwin Losero vs Julius Mwarabu (Civil Application 10 of 2015) [2016] TZCA 302** (13 October 2016), **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), and **Ntiga Gwisu vs Republic (Criminal Appeal 428 of 2015) [2019] TZCA 395 (6 November 2019)** are relevant on this point.

Moreover, in the case of **Zuber Nassoro Mohd vs Mkurugenzi Mkuu Shirika La Bandari Zanzibar (Civil Application 93 of 2018) [2018] TZCA 337 (14 December 2018)** the court observed that the applicant must explain the illegalities complained of in order to enable the court to see them.

Reverting to the circumstances in the present case, the affidavit supporting the application simply stipulated the alleged illegalities. However, this court was not positioned to see the alleged illegalities, and could not determine whether they are illegalities manifest of the face of record because the

applicant did not make available to this court necessary tools and materials (i.e. the lower tribunals decisions or any other record) for this court's cursory glance.

Therefore, this court finds that the Applicant has failed to establish that there was illegality in the decision of the District Land and Housing Tribunal for Tarime in Land Appeal No. 26 of 2022.

In light of the foregoing, and the observations of the court this far, the issue of verification clause of the Respondents' joint counter affidavit is unworthy determining as it would be an exercise in futility.

Under the circumstances, since this court did not find merits in the reason for the delay and the alleged illegalities as basis for the extension of time, it is a finding of this court that the Applicant has failed to establish a sufficient cause for extension of time. Therefore, this application is hereby dismissed with costs.

It is so ordered.

Dated and Signed at Musoma this 22nd day of May 2024.




K. I. Kafanabo
Judge

The Ruling has been delivered in the presence of Mr. Baraka Makowe, Advocate for the Applicant, and Ghati Keraryo Maseke and Masaba Maseke Serya, the Respondents.



K. I. Kafanabo

Judge

22/05/2024