

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

MISC. LAND APPLICATION NO. 27 OF 2023

(Originating from the decision of the District Land and Housing Tribunal for Nzega in Land Appeal No. 51 of 2021, Original Land Case No. 13 of 2021 before Itumba Ward Tribunal)

MARUANGA MAGANGA.....APPELLANT

VERSUS

SHUMBU KISIGILA.....RESPONDENT

RULING

Date of Last Order: 06/03/2024

Date of Delivery: 23/05/2024

MANGO, J.

The Applicant, Maruanga Maganga, filed this application praying for extension time to lodge an appeal against the decision of the District Land and Housing Tribunal for Nzega in Land Appeal No. 51 of 2021. The matter was originally instituted before Itumba Ward Tribunal as Land Case No. 13 of 2021.

The application is by way of Chamber summons made under section 14(1) of the Law of Limitation Act [Cap 89 R.E 2019] and section 38(1) of the Land Disputes Courts Act [Cap 216 R.E 2019] supported by an affidavit sworn by the Applicant.

The brief facts show that, the Applicant unsuccessful instituted Land Case No. 13 of 2021 before Itumba Ward Tribunal claiming ownership over a piece of land. Dissatisfied with the decision of the Ward Tribunal he appealed to the District Land and Housing Tribunal for Nzega, which also dismissed his appeal. Aggrieved by the findings of the District Land and Housing Tribunal, the Applicant has approached this court for extension of time to file a second appeal.

During hearing of the application, the applicant enjoyed legal services of Mr. Thadeus Kivulunzi, learned advocate whereas the respondent was represented by Ms. Stella Nyakyi, learned advocate.

In his submission in support of the application, the Applicant's counsel adopted the contents of the affidavit except sub paragraphs to paragraph 5 which were expunged. He then proceeded to submit on the grounds for extension of time which were delay to be supplied with the judgement of tribunal and illegality. He argued that, the delay to file an appeal was occasioned by late supply of the copy of judgement by the District Land and Housing Tribunal. He explained that, the judgment was delivered on 09/03/2023 and the applicant was supplied with the copy of judgment on 10/06/2023, when time for appeal had already expired.

Mr. Kivulunzi argued further that, the decision of the appellate tribunal was tainted with illegality. He alleged that, the decision of the District Land and Housing Tribunal did not determine grounds of appeal placed before it instead, it raised new issues and determined them suo moto without affording parties the right to address the tribunal on the same. He referred

this Court to the case of **Charles Christopher Humprey Kombe vs Kinondoni Municipal Council**, Civil Appeal No. 81 of 2017 in which the Court of Appeal observed that, whenever the court raises issues suo moto, parties should be given an opportunity to address the court on the raised issues before the court determines the matter before it based on the issues raised by the Court.

In response, advocate Nyaki objected grant of orders sought in the chamber application due to the Applicant's failure to account for the delay with sufficient grounds. She argued that, there is no any paragraph in the affidavit which contains reasons for delay to appeal. She argued further that, despite the fact that, judgement of the tribunal was delivered on 09/03/2023 there is no evidence produced by the Applicant proving that he requested to be supplied with the copy of judgement before 6/6/2023. She added that, the Applicant did not account even for the delay from 6th June 2023 when he was supplied with the copy of judgment, to 20th June 2023 when he filed the application at hand.

On the alleged illegality, Ms Nyakyi stated that, the same is not on face of record since the Applicant's counsel advanced it as a general argument against the judgment of the appellate tribunal. She argued further that, illegality should be on issues done in contravention of the law which in her opinion, such issues does not feature in the judgement of the appellate tribunal. She distinguished the case of Charles Christopher supra cited by the Applicant's counsel on the ground that, circumstances in that case are very different from the circumstances in the application at hand. She explained that, in the case cited, the Court was determining an appeal thus,

the court was supplied with records of the lower court while the case at hand is an application and the Court has no record of proceedings from lower tribunals. He added that, the Applicant's counsel did not mention even the page in which the alleged illegality can be found. To buttress her arguments, she cited the case of **Motto Matiko Mabanga vs Ophir energy PLC and others**, Civil Application No. 463/01 of 2017 in which the Court of Appeal insisted that delay of even a single day should be accounted for and that, for illegality to be a ground of extension of time, it should be clear on face of record.

In rejoinder the Applicant's counsel asserted that, the Applicant was making follow up for the copy of judgement orally that is why there is no document attached to prove late supply of copy of judgment. He concluded that, illegality is contained under paragraph 5 and mentioning particulars of illegality in the affidavit would result into an affidavit being defective. He urged this court to grant the application.

Having considered oral submissions made by the parties, I am settled that, the issue for determination in this application is whether the Applicant has advanced good cause to warrant extension of time to file an appeal.

In order for the Court to exercise its discretion to grant an application for extension of time, the Applicant must establish good cause for the delay and account for each day of delay as it was observed by the Court of Appeal of Tanzania in the case of **Hamis Babu Bally vs the Judicial officers**

Ethics Committee and Others (Misc. Civil Application 37 of 2019) [2020] TZHC 357 (3 March 2020),

It is not disputed that, the appellate tribunal delivered its judgment on 09/03/2023. The Applicant alleges that he received the copy of the judgment on 10/06/2023. The copy of judgment attached to the application does not bear the date of certification thus, it is presumed that it was ready for collection on the date of its delivery unless proved to the contrary. Unfortunately, the Applicant did not avail the Court with any explanation as to why the Applicant failed to collect the copy of judgment timely. Also, as correctly submitted by Ms Stella, the Applicant failed to account for the delay from 10/06/2023 to 20/06/2023 when this application was filed.

It should also be noted that, the suit subject to this application originates from the Ward Tribunal. The law, section 38(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019], does not require attachment of the copy of judgement to appeal to the High Court from the decisions of the District Land and Housing Tribunal exercising its appellate jurisdiction. The Applicant ought to have filed a petition of appeal before the tribunal which determined his appeal from the decision of the Ward Tribunal that is, the District Land and Housing Tribunal for Nzega. Under the circumstances, it is my considered view that, the Applicant has failed to establish any sufficient cause for his delay.

Despite such findings, the Applicant raised illegality as among the grounds for extension of time. Mr. Kivulunzi alleged that the decision of the District Land and Housing Tribunal did not determine grounds of appeal

placed before it instead, it raised new issues and determine them suo moto without affording the parties with the right to address the tribunal on the same.

It is a settled position in our jurisdiction that, illegality is a sufficient ground that can move the court to extend time. The Court of Appeal in the case of VIP Engineering and Marketing Limited and Two Others Vs Citibank Tanzania Limited, Consolidated Civil Reference No. 6, 7 and 8 of 2006, held that:

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 (now Rule 10) of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay."

The only condition for illegality to be considered as a ground for extension of time is that, such illegality should be clear on face of record. The alleged illegality in this application is clear on face of record. The judgement of the Appellate tribunal indicates that the Applicant raised five grounds of appeal. Despite such reflection, the decision does not contain any deliberations and determination of the five grounds of appeal. To the contrary the decision is based on two issues and the tribunal did not state whether it was determining the five grounds in general or the two issues were part of the grounds of appeal raised by the Appellant, the Applicant herein.

Even the Respondent's counsel did not counter the Applicant's allegations that the two issues were merely raised by the tribunal suo motto.

That suggests that, the two issues were not part of the grounds of appeal. Since the matter before the tribunal proceeded by way of written submissions, the possibility of parties to be heard on the two issues is very minimal. Right to be heard being one of the cardinal principles of justice, I find it to be sufficient ground to move the Court to grant extension of time so that, the alleged illegality can be addressed and cleared by the Court.

In that regard, the application for extension of time to file an appeal is hereby granted. The applicant should file his appeal within 30 days from the date of this ruling. Given the fact that the Respondent did not contribute anyhow to the alleged illegality, I do not award costs.

Dated at Tabora this 23th day of May 2024



A handwritten signature in black ink, which appears to read 'Z.D. Mango', is written over a faint circular stamp.

**Z.D. MANGO
JUDGE**

