

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

**MISC. LAND APPLICATION NO.63 OF 2023**

*(Arising from Land Appeal No. 47 of 2022 from the High Court of Tanzania  
Shinyanga and Land Application No.35/2022 from the District Land  
Housing Tribunal for Maswa at Maswa)*

**NSULWA KIYAYA (Administrator of the estate  
of the deceased Ngele Kinyebu)..... 1<sup>st</sup> APPLICANT**

**MASANJA KIYAYA .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**MINGA KISENA .....RESPONDENT**

**RULING**

***13<sup>th</sup> February 2024***

**F.H. MAHIMBALI, J**

The respondent herein filed Land Application No. 35 before the DLHT for Mawa at Maswa against the applicants. The DLHT decided the matter in favour of the respondent. Dissatisfied with the decision of DLHT, the applicants unsuccessfully appealed before this Court via Land Appeal No. 47 of 2022. They now intend to appeal to the Court of Appeal of Tanzania. Now, the applicants had approached this Court seeking extension of time to file notice of intension to appeal to CAT out time based on the reasons that the impugned judgment of this Court contains illegality which need attention of the Court of Appeal of Tanzania.

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When the matter came for hearing, both parties appeared in person and unrepresented. Arguing their application, the applicants prayed for their application to be granted. Since the matter proceeded expert and the application was not opposed, it gave me time to put into consideration.

It is trite law that illegality in any impugned decision has been taken to be sufficient ground for extension of time. As it has been detailed in the chamber summons and the joint affidavit thereto, contending that the decision of this Court sought to be appealed is tainted with illegalities which the Court of Appeal needs to look into. There are several decisions of the Court, which considered this issue, where the ground of illegality of the impugned decision is raised. In **VIP Engineering and Marketing Limited and Two Others VS. Citibank Tanzania Limited**, Consolidated Civil Reference No.6, 7 and 8 of 2006 (unreported) it was held:

*"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 issue was also considered in the case of **TanESCO vs Mufungo Leornard Majura** and 15 Others, Civil Application No 94 of 2016, (Unreported), where it was stated:

*“Not Withstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, there is a complaint of illegality in the decision intended to be impugned .. suffices to move the Court to grant extension of times so that, the alleged illegality can be addressed by the Court”.*

It is, however, significant to note that the issue of consideration of illegality when determining whether or not to extend time is well settled and it should be borne in mind that, in those cases extension of time was granted upon being satisfied that there was illegality, the illegalities were explained. For instance, in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1999] TLR 182, the

illegality alleged related to the applicant being denied an opportunity to be heard contrary to the rules of natural justice. I also subscribe to the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010.

In the matter at hand the applicants claim for the impugned judgement to have illegalities based on the facts that; this court erred in law when failed to identify that the clan meeting had no locus stand to distribute the deceased estates in the absence of the administrator, this court left issue undetermined and parties were condemned unheard.

In the same vein, it is without doubt that the impugned judgement contains illegality which needs attention of the Court of Appeal of Tanzania. Being the case, I am sincerely persuaded by what is contemplated by the applicant on the alleged illegality in the decision of this Court to lead me to state that it is apparent on the face of it and thus can be discerned as a good cause for the Court to grant the prayers sought in this application.

In the event, I must conclude that, under the circumstances pertaining to this case, the applicants have illustrated good cause that entitle their extension of time as sought. This application is consequently

granted, similarly the applicants should file their notice of intention to appeal to the Court of Appeal of Tanzania within a period of 30 days from the date of this ruling. As regards to the leave application, the same is no longer a legal requirement after the amendments brought Miscellaneous Amendments Act, Act No.11 of 2023. In other words, obtaining leave has ceased to be a requisite before one can appeal to the Court of Appeal effective from the 1<sup>st</sup> December, 2023 (See the recent decision by the Court of Appeal in **Petro Robert Myavilwa vs Zera Myavilwa & Another** (Civil Application No. 117/06 of 2022) [2023] TZCA 17947 (13 December 2023)).

No orders as to cost. It is ordered accordingly.

DATED at Shinyanga this 13<sup>th</sup> day of February, 2024.



**F.H. Mahimbali**  
**Judge**