



THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT SHINYANGA

(CORAM: Hon. FRANK MAHIMBALI)

MISCELLANEOUS LAND APPLICATION NO. 000006817 OF 2024

JOSEPH JILALA MAYILA Applicant

VERSUS

JUMA SALUMU1st Respondent

KASHINJE GIBE2ND Respondent

RULING

29th April & 27th May 2024

F.H.MAHIMBALI, J

This is a ruling in respect of an application of extension of time to file an appeal challenging the decision of the District Land and Housing Tribunal of Maswa. Initially the applicant in the late 2016 had sued the respondents before ward tribunal claiming for his parcel of land. The trial ward tribunal in a full determination, entered its decision in favour of the applicant. Right to appeal was fully explained to any aggrieved party. None opted for any. Surprisingly, in the year 2023, the respondents filed an application for revision before the said DLHT

claiming among others that the ward tribunal when adjudicating the matter had no jurisdiction to do so. The DLHT in consideration of the application granted the prayers sought and ruled intalia that the ward tribunal had no jurisdiction to try the matter after its powers were ceased, and thus the proceedings and decision so reached were quashed and set aside and the interested party was advised to file a fresh suit before acompetentcourt. The applicant is not amused with the decision, he intends to challenge it by way of appeal hence this application for extension of time on grounds of illegality and irregularity in the impugned decision after the time available of appealing it had expired.

During the hearing of this application, both parties appeared in person and unrepresented. Arguing for the application, the applicant prayed for his affidavit be adopted to form party of his submission and thus his application be allowed. Similarly,the respondents had no much to say, instead prayed for theirjoint counter affidavit be adopted to form party of theirs submission and thus the application be dismissed for lack of merit.

In rejoinder, the applicant had nothing to add, he just pressed for the application be granted as prayed as the prayers in the application

are valid as stated into his affidavit. He also averred that he failed to take the appropriate cause immediately, because he had no means to survive. He went to the farm for agricultural activities, and now he has to seek his redress.

Having heard both parties on merit, I have now to determine this application and the issue for consideration is whether this application is merited.

Upon a thorough scanning of the applicant's application and the reasons contained into the affidavit, the contentious here is whether the DLHT was right to quash the decision of the ward land tribunal reached in the year of 2017, thus amounts to illegalities and irregularity. According to the applicant, the DLHT was not right but to the respondents the DLHT was right and no illegalities tainted in the impugned decision.

I am aware that the grant or refusal of such an application is court's discretionary power which the same ought to be judiciously exercised (See **TanESCO Vs. Mfungo Leonard Mkajura** (civil Appeal No. 94/2016, **Ngao Godwin Losera** (Civil Application No. 10 of 2015 at page 4). In these cases, amongst other things the Court of Appeal set

basic guidelines/conditions prior to granting extension of time as constituting sufficient reasons or good causes.

As per the minimal guidelines set by the Court of Appeal in the case of **Ngao Godwin Losero** (supra) making reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (*Civil Application No. 2/2010 – unreported*) the Court of Appeal reiterated the following guidelines for the grant of extension of time.

- a) The applicant must account for all the period of delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he is intending to take.*
- d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decisions ought to be challenged.*

In reaching this verdict, I have dispassionately considered and weighed the rival arguments from parties. For sure I am mindful that to refuse or grant this application is the court's discretion. However, to do

so there must accounted reasons for that. In **Mbogo Vs. Shah (1968)** EA the defunct Court of Appeal for Eastern Africa held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time....."

In a deep digest of the current application and in the circumstances of the application pertaining to, I move to consider the ground expounded in the chamber summons and the affidavit thereto, contending that the decision of the DLHT sought to be appealed against is tainted with illegalities and irregularities which this Court needs to look into. There are several decisions of this 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"

Now, before the amendment of the Land Disputes Courts Act, Cap 216 RE 2019 by Written Law (Miscellaneous Amendment) Act No.3 of 2021, which came into operation on 28th September 2021, the Ward Land Tribunal used to dispense justice by delivering its decision basing on merit and evidence of the case. Later, the situation changed following the enactment of the Written Laws (Miscellaneous Amendment) Act (supra).

Now, does the emerge of Written Law (Miscellaneous Amendment) Act (supra) nullify the whole proceedings and decision reached by the Ward Tribunal before its enactment?

In my formed view, the Written Law (Miscellaneous Amendment) Act No.3 of 2021, came in operation prospectively and not retrospectively. I think it was not the intension of the legislature that all the decisions so reached by the ward tribunals were tainted with erroneous but it was due to the need of having the comprehensive legislation. In so holding, the DLHT in the case at hand mistakenly opened a ponderable box to a case which was already closed many years ago. Allowing this practice could lead to a reopening of many concluded cases on ground of this position of a new legislation which ceased power of the ward tribunal. That was an erroneous position reached by the DLHT.

I hold without hesitation that the impugned decision is tainted with illegalities needs to be addressed by the Court. The illegality need not to draw long line in identifying it. As it was held in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, (supra) when the Court observed; -

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. **The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a longdrawn argument or process"** (emphasis added).*

In the event, I must conclude that, under the circumstances pertaining to this case, the applicant has illustrated good cause that entitle him extension of time as sought. This application is consequently granted and the applicant should file his appeal within 30 days from the date of delivery of this ruling.

No order as to costs.

It so ordered.

DATED at SHINYANGA this 27th day of May 2024.



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F.H. MAHIMBALI
JUDGE