

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**THE HIGH COURT OF TANZANIA**  
**MBEYA SUB - REGISTRY**  
**AT MBEYA**

**MISC. LAND APPLICATION NO. 27590 OF 2023**

*(From the District Land and Housing Tribunal for Mbeya at Mbeya in  
Application No. 284 of 2019)*

**LETSHEGO BANK OF TANZANIA LIMITED.....APPLICANT**  
**VERSUS**  
**ABDALLAH NELSON MSYANI.....1<sup>ST</sup> RESPONDENT**  
**AVATOR TANZANIA LIMITED.....2<sup>ND</sup> RESPONDENT**  
**JESSE KABEFU MWAKIPESILE.....3<sup>RD</sup> RESPONDENT**

**RULING**

*Date: 2 May 2024 & 30 May 2024*

**SINDA, J.:**

This is an application for an extension of time to file an appeal out of time. It has been preferred under section 41 (2) of The Land Disputes Courts Act, Cap 216 R.E 2019 (the **LDCA**).

The background of this case is that the first respondent sued the applicant at the District Land and Housing Tribunal for Mbeya at Mbeya (the **DLHT**), claiming to be the lawful owner of Plot No. 341 Block "A" at Chapwa

Msapania Area, Tunduma within Songwe Region (the **Disputed Property**). The first respondent claimed that the applicant unlawfully sold The Disputed Property to the third respondent. The second respondent was a court broker. The DLHT found that the Disputed Property belonged to the first respondent.

Dissatisfied with the decision, the applicant filed Land Appeal No. 09 of 2023, which was heard by Hon. P. D. Ntumo, a resident magistrate with extended jurisdiction. The first respondent raised a preliminary objection on the point of law that the appeal was defective in law because the second and third respondents were not joined in the original suit. Hence, the appeal was struck out.

Now, the applicant brought this application for an extension of time on the following grounds:

- (i) The delay in filing the appeal within the prescribed time was a technical delay caused by the time spent in pursuing the extended jurisdiction Land Appeal No. 09 of 2023, which was struck out on 13 November 2023.
- (ii) The impugned decision of the trial tribunal is tainted with patent illegalities which need the intervention of this court.

At the hearing, the applicant was represented by Luka Ngogo, learned counsel. The first respondent was represented by Kelvin Kuboja Gamba, learned counsel. The application proceeded ex-parte against the second and third respondents. The application was supported by the chamber summons and affidavit of Mr. Ngogo. The application was argued orally.

Mr. Ngogo prayed to correct typing errors in paragraphs six (6), seven (7), and nine (9) of his affidavit. He suggested that instead of December, the paragraphs should read November. He also prayed to adapt his affidavit to support his submission. He advanced two grounds for the delay i.e. technical delay and illegality.

Submitting on the first ground, he stated that after being aggrieved with the decision of the DLHT, he filed his appeal to the High Court, which was transferred to the Resident Magistrate with extended jurisdiction. The appeal was opposed with preliminary objections from the first respondent and was struck out on 13 November 2023. He stated that the applicant was technically out of time to appeal to the High Court that's why this application for extension of time.

He stated further that he was given the decision to struck out the appeal on 27 November 2023. He lodged this application for an extension of time on 1 December 2023, which is within three days after being supplied with

the decision which struck out his appeal. He referred to the ***Director General LAMP Pensions Fund vs Pascal Ngalo***, Civil Application No. 76 of 2018 (CAT at Mwanza) and ***National Housing Corporation & Three Others vs Jing Lang LI***, Civil Application No. 432/17 of 2017 (Court of Appeal of Tanzania (**CAT**) at Dar es Salaam) to support his argument.

On the second ground of illegality, Mr. Ngogo stated that the DLHT's decision was tainted with patent illegalities that needed the intervention of this court. This included the DLHT's jurisdiction and judgement on properties in the shop, which is not a land matter. The DLHT had no jurisdiction on that matter.

Mr. Ngogo further stated that the decisions of the High Court and the CAT have already stated that if there is apparent illegality in the decision being challenged, it is a good reason for the Court to extend time. He referred to the case of the ***National Housing Corporation*** (supra).

In reply, Mr. Gamba prayed to adopt the contents of the counter affidavit. He referred to the case of ***Lyamuya Constructions Company Limited vs Board of Registered Trustees of Young Women Christian Association of Tanzania***, Civil Application No. 2 of 2010 (CAT at Arusha), which stated four (4) principles to be followed on the application

for extension of time as follows: (i) that the applicant must account for all the period of delay, (ii) the delay should not be inordinate, (iii) the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and (iv) if the court think that, there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision thought to be challenged.

Mr Gamba stated that the applicant's submission is based on paragraphs seven (7), eight (8), nine (9) and ten (10) of the applicant's affidavit and has not complied with the four (4) principles stated in ***Lyamuya Constructions Company Limited*** (Supra).

Mr. Gamba contended that the applicant failed to account for the twenty-five (25) days from the decision date to the date this application was filed. Mr. Gamba found that the delay was inordinate because it was twenty-five (25) days.

Mr. Gamba submitted that the applicant must show diligence to apply for an extension of time to file an appeal out of time. He added that Mr. Ngogo did not show diligence, as shown in paragraph four (4) of the counter affidavit of the respondent. As the respondents received the judgment on the same date, the judgment was delivered on 13 November

2023. The applicant collected the judgment on 27 November 2023. He contended that this shows the lack of diligence, apathy and failure to prosecute their matter.

Mr. Gamba further argued that there must be illegality. He argued that the illegality pointed out by the applicant is not apparently on the face of records. He referred to the ***Principal Secretary Ministry of Defence and National Service vs D.P Valambia 1992 TLR*** to support his argument. In this case, it was stated that the illegality claimed by the applicant must be apparently on the face of records and not require long arguments to show it.

He submitted that the applicant said his application was late for three (3) days, but the law requires a delay to be stated even if it is within one (1) day, as stated in the case of Henry Jalison Mwamlima vs Robert Jalison Mwamlima & Krista Jalison Mwamlima (Administrators of the Estate of Jalison Mwamlima and Two Others, Civil Reference 1004/06 of 2023, at page seven (7)).

Mr. Gamba argued further that the applicant stated in paragraphs seven (7) and eight (8) of the applicant's affidavit that the decision was delivered on 13 November 2023 and certified for collection on 27 November 2024, and he filed the application for an extension of time. He submitted that

the averment in paragraphs 7 and 8 is tainted with untruthiness because it was not true that the decision was certified for collection on 27 November 2023. Mr. Gamba stated that the decision was ready for collection immediately after it was read on 13 November 2023. The application was filed on 1 December 2023. Therefore, it is not true that it was filed immediately after it was delivered.

He argued that it is a settled principle that if an affidavit is based on falsehood, then it cannot be used in court, as stated in the case of ***Mohammed Iddi vs R***, Miscellaneous Criminal Application No. 12 of 2023. The court stated that an affidavit tainted with untruthfulness could not be relied upon. He prayed that the affidavit should not be considered as it is tainted with falsehood.

Mr. Gamba argued that the court should not consider the cases referred to by the applicant i.e. **The Director General LAPF Pensions Fund vs Pascal Ngalo** (supra) and **National Housing Corporation & Three Others vs Jing Lang LI** (supra). He stated that these cases are based on technical delays. These cases are distinguishable from the case at hand because there were no technical delays; rather, it was an actual delay.

In rejoinder, Mr. Ngogo submitted that the counsel for the first respondent is confused between technical delay and actual delay as stated in **the**

***Director General LAPF Pensions Fund vs Pascal Ngalo*** (supra). He insisted his application is based on technical delay and not actual delay. He added the submission by the counsel of the first respondent is relevant when someone pleads actual delay. That's when you have to account for the delays. If there is a technical delay, the law directs the applicant not to account for each day of delays. He added the case of ***Lyamuya Constructions Company Limited*** (supra) referred to is distinguishable as it refers to actual delay and not technical delay.

Mr. Ngogo submitted that the first respondent advocate claimed that there was a delay of twenty-five (25) days. He argued that the averment is not correct. The decision for extended jurisdiction came out on 13 November 2023. The applicant was supplied with the decision on 27 November 2023. He argued that Proof that it was collected on 27 November 2023 was attached, and the ruling was certified on 27 November 2023. Therefore, it is not true that there is untruthfulness. He has evidence as to when the ruling was certified. It is a practice when a copy of a ruling or judgment is ready for collection. The court will certify it as a date of supply of the same. He said it is for the court to evaluate and see if this was not immediate from 27 November 2023 to 1 December 2023. He argued that this is immediate and is a reasonable time. He further stated that the first



respondent said a delay of even a single day must be accounted for, but this is a principle for actual delay. What the court needs to look at is whether there is a technical delay. It is apparent that the DLHT was not to discuss properties in the shop which is not in their jurisdiction.

I have considered the court record and submission made by the parties. It is a settled principle of the law that the extension of time is at the discretion of the court. The discretion is always exercised after the applicant has advanced sufficient cause or good reason for the delay. See, the cases of ***Tanga Cement Co. vs. Jummanne Masangwa and Another***, Civil Application No. 6 of 2001, ***Sospeter Lulenga v. Republic***, Criminal Appeal No. 107 of 2006, CAT at Dodoma, ***Aidan Chale v. Republic***, Criminal Appeal No. 130 of 2003, CAT at Mbeya.

The issue is whether the applicant advanced sufficient reason for the delay.

On technical delay, the applicant submitted that after the DLHT's decision, he filed Land Appeal No. 09 of 2023, which was struck out on technical grounds.

He further submitted that the period he spent to prosecute Land Appeal No. 09 of 2023 amounted to technical delay see ***Fortunatus Masha vs. William Shija and Another*** [1997] TLR 154 and ***Salvand K. A.***

***Rwegasira v. China Henan International Group Co. Ltd.***, Civil Reference No. 18 of 2006. In ***Salvand K.A. Rwegasira*** (supra) subscribed to the position taken by a single Justice of the Court in ***Fortunatus Masha*** (supra), as follows:

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. **In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted.**"*

In this case at hand, the court records reveal that the applicant filed the Land Appeal No. 09 of 2023, which was struck out on 13 November 2023. The ruling was certified and ready for collection on 27 November 2023. The applicant obtained the ruling and filed the application for an extension of time on 1 December 2023.

In the case of ***Bank M (Tanzania) Limited vs Enock Mwakyusa***, Civil Application No. 520/18 of 2017 (CAT at Dar es Salaam), the CAT stated that the applicant was prompt enough to apply for this second bite immediately after she was supplied with the Ruling which dismissed his first attempt to apply for enlargement of time to file a notice of appeal.

In line with the above case of ***Bank of M (Tanzania) Limited vs Enoch Mwakyusa*** (supra), I also find that the applicant filed the application promptly and immediately after he obtained the ruling, which struck out his appeal.

Only three (3) days lapsed from the date he obtained a certified ruling i.e. 27 November 2023 to 1 December 2023, the date he filed this application for an extension. As such, I do not wish to determine the second ground as it falls at a juncture.

In these circumstances, an extension of time ought to be granted. Accordingly, the application for an extension of time to file an appeal out of time is hereby granted. The applicant is ordered to file his appeal within thirty (30) days from the date of this Ruling. No order as to the costs.

Dated at Mbeya on this 30 day of May 2024.



**A. A. SINDA**  
**JUDGE**