

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MTWARA

AT MTWARA

MISC. LAND APPLICATION No. 5085 OF 2024

(Originating from Land Application No. 1 of 2022 in the District Land and Housing Tribunal for Liwale at Liwale)

HEMED RASHID KIMBUKULI.....APPLICANT

VERSUS

FATUMA ABDALLAH MABODO.....1st RESPONDENT

YONO AUCTION MART & CO. LTD.....2nd RESPONDENT

ABDALLAH ISSA MABODO.....3rd RESPONDENT

HADIJA LUTAU.....4th RESPONDENT

RULING

4th & 11th June, 2024

MPAZE, J.:

This ruling arises from an application for an extension of time for filing an appeal against the decision of the Land and Housing Tribunal for Liwale at Liwale B, hereinafter referred to as "the DLHT," in Application No. 1 of 2022. In this application, the DLHT declared the 1st Respondent the lawful owner of the disputed land, Plot No. 129 Block D, located in Lilongwe, Liwale District. The DLHT further stated that the 3rd and 4th Respondents are liable for paying the applicant the purchase price of the disputed house.

The application is made under the provisions of section 41(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019, and Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019, along with any other applicable provisions of law. It is supported by the applicant's affidavit, which details the grounds on which the extension of time is sought.

The grounds advanced as the basis for this application are: **One**, the delay in obtaining a copy of the judgment; **Two**, a technical delay; and **Three**, the existence of illegality in the impugned judgment.

Despite being duly served with the application, the respondents did not appear, so the application proceeded with the hearing ex parte against all the respondents.

When the matter was called for hearing, Mr. Issa Chiputula, the counsel representing the applicant, adopted the applicant's affidavit as part of his submission. Addressing the reasons for the delay, Mr. Chiputula informed the court that these are clearly stated in the applicant's affidavit from paragraphs 3 to 13, highlighting technical delay and illegality as the main factors.

Mr. Chiputula argued that the impugned judgment was delivered on 7th October, 2023 and a copy of the judgment was ready for collection on 7th November, 2023. He stated that soon after the applicant obtained the copy of the judgment, he began the process of appealing but

encountered challenges in registering the appeal due to network problems, which prevented him from obtaining a reference number for registering the appeal.

The counsel reminded this court that this period coincided with the transition from JSDS II to eCMS. He said the network stabilized on 29th February, 2024 but he was already out of time by then. Mr. Chiputula asked the court, under Rule 24(1) of the Judicature and Application of Laws (Electronic Filing) Rules G.N. No. 148, to exclude the time lost due to network challenges.

Regarding the issue of illegality, Mr. Chiputula argued that the disputed house was sold in an auction under a primary court order in a matrimonial cause, where the house was declared as matrimonial property of the 3rd and 4th respondents. This decision led to the subsequent auctioning of the house. Mr. Chiputula pointed out that on pages 11 to 12 of the impugned judgment, the DLHT nullified the sale on the grounds of its invalidity and that the primary court erred in deciding the matter in the absence of the 1st respondent .

Mr. Chiputula contended that the DLHT's decision was improper/illegal as it lacked jurisdiction to overturn the primary court's decision. In support of this argument, counsel referenced the case of **Ramadhani Bakari & 95 others v. Aga Khan Hospital**, Civil

Application No 5/01 of 2022, on pages 14-15 (unreported). Mr. Chiputula concluded his submission by urging the court to find that there are good and sufficient reasons for allowing the application, with costs.

After going through the applicant's counsel submissions, the issue to be resolved by this court is whether the applicant has shown good and sufficient reasons for an application to be granted.

The law on extension of time requires, among other things, that such extension is granted at the discretion of the court, exercised judiciously upon the applicant providing sufficient reasons or good cause for the requested extension. Determining what constitutes good cause is a factual question dependent on the circumstances of each case.

Factors to be considered in such applications were outlined in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, including accounting for the entire period of delay, ensuring the delay is not excessive, demonstrating diligence rather than apathy, negligence, or sloppiness in prosecuting the intended action, and the presence of a significant legal issue such as the illegality of the decision being appealed against.

The Court of Appeal also highlighted these factors in cases such as **Yusuph Same and Hawa Dada v. Hadija Yusuf**, CAT at Dar es

Salaam, Civil Appeal No. 1 of 2002 (unreported), and **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002, CAT at Dar es Salaam (unreported).

In the matter under consideration, the applicant primarily based his application on technical delay and illegality. Regarding the technical delay, the counsel submitted that the delay in registering and filing an appeal was attributed to network failure compounded by the court's transition from JSDS II to eCMS during that period.

Mr. Chiputula asserted that due to this challenge, the Court should consider Rule 24(1) of the Judicature and Application of Laws (Electronic Filing) Rules G.N No. 148 of 2018 in extending the time to file an appeal out of time.

The technical delay complained by the applicant is a creature of the law. The relevant law in this regard is the Judicature and Application of Laws (Electronic Filing) Rules G.N No. 148 of 2018, which outlines the entire process of filing a case and what steps should be taken in case of technical problems during the process. The law further specifies how time can be computed in case the electronic filing system is not in operation, as submitted by Mr. Chiputula.

In his submission, the counsel referred to Rule 24(1) of G.N No. 148 of 2021. For a better understanding, I find it prudent to quote the entire rule, which reads;

24.-(1) The period during which the electronic filing system is not in operation, for any reason, shall be excluded from the computation of time for filing.

(2) Problems on the user's end, such as problems with the user's Service Provider (SP), hardware, or software problems, shall not constitute a sufficient reason for an untimely filing.

(3) For the purpose of sub-rule (1), the excluded time shall not extend the limitation period for such filing under the Law of Limitation Act, or any other written law.

(4) Where electronic filing is done, the rules relating to time for the purposes of limitation shall be the same as those applicable to conventional filing.

(5) Where party misses a filing deadline due to technical problems referred to in sub-rule (1) the party shall move informally and ex parte the Registrar or the magistrate in-charge not later than 15:00 hrs of the following working day for appropriate relief.

(6) Where the Registrar or magistrate in-charge is satisfied that there was good cause for missing the deadline, he shall grant the request under sub-rule (5) in writing.[Emphasis Added]

This section outlines what should be done in circumstances where a technical problem causes a party to miss a filing deadline. Comparing

this provision to what counsel for the applicant has submitted regarding the issue of technical delay, I am inclined to say that the counsel's submission consists of mere words without any proof.

I consider these mere words because, even after examining the applicant's affidavit, nothing has been attached to prove that the applicant genuinely encountered difficulties while filing the appeal. One might wonder what kind of proof I expect the appellant to provide.

Suppose one reads sub-rules 5 and 6 of Rule 24 above. The subsections clearly explain that where a party encounters a technical problem, he shall informally and ex parte notify the Registrar by 15:00 hrs of the following working day for appropriate relief.

Subsection (6) explicitly states that if the Registrar is satisfied that there was good cause for missing the deadline, he shall grant the request under sub-rule (5) in writing.

Under this circumstance, therefore, the proof I am referring to here, according to sub-rules 5 and 6, is that I expected, if the applicant indeed faced technical delays as claimed, there should have been evidence showing how he moved the Registrar and what the Registrar's response was. This evidence is missing.

The absence of that evidence reveals that the applicant did not substantiate the technical problem encountered during filing his appeal

from November 2023 to February 2024. Consequently, failure by the applicant to provide sufficient reasons renders this ground inadequate for granting the application.

Upon finding that the technical ground fails to provide sufficient reason to grant the application, I will now address the second ground, which pertains to illegality.

There are numerous decisions indicating that a party can raise a ground of illegality to obtain an extension of time to file an appeal out of time. If this ground is proven, the application will be granted. When such a ground is raised and highlights an illegality that is apparent on the face of the record, it becomes a sufficient reason to grant the extension of time, regardless of the length of the delay presented by the applicant. See the case of **Ramadhani Bakari & 95 Others** (*supra*).

In his argument regarding the issue of illegality, Mr. Chiputula highlighted that the DLHT nullified the sale of the disputed property, which had been ordered by the primary court, deeming it void. He also pointed out another error committed by the DLHT, which declare that the primary court erred in deciding the matter in the absence of the 1st respondent.

Mr. Chiputula was of the opinion that the findings by the DLHT were improper, as the DLHT had no jurisdiction to overturn the decisions made by the primary court.

Since it is not within the purview of this court, when considering an application for an extension of time, to delve deeply into whether the point of law raised is true or not, it suffices to determine if the ground raised highlights an illegality that is apparent on the face of the record. If the raised point highlights solely a legal issue, it will suffice to allow the application.

In the case of **Ramadhani Bakari & 95 Others** referred by Mr. Chiputula, the Court of Appeal had this to say;

'It is a settled law that in an application for an extension of time where the applicant raises illegality as a ground, the court has a duty to grant it and that it is not for the court extending time to determine as to whether or not the point raised is correct. This is because such determination would be the domain of the court that would preside over the intended appeal.'

Applying the principles outlined in the cited case above and considering the submissions made by counsel for the applicant and the applicant's affidavit, they have convincingly demonstrated the presence of apparent illegality in the impugned judgment of the DLHT. Therefore,

I find it proper to grant this application so that the issue of illegality can be addressed in the intended appeal.

Having said that, the application for an extension of time to file an appeal out of time is hereby granted. The applicant is directed to file his appeal within 30 days from the date of delivery of this ruling. Given the nature of the application, no costs are awarded.

It is so ordered.

Dated at Mtwara this 11th June, 2024.



M.B. Mpaze

Judge

Court: Ruling delivered in Mtwara in Chambers on this 11th day of June, 2024, in the presence of Mr Ahyadu Nanyohe for the applicant but in the absence of the Respondents.



M.B. Mpaze

Judge

11/6/2024