

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA SUB – REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO. 513714 OF 2023**

**REF NO. 20230726000513714**

*(Arising from Land Application No. 11 of 2023 at High Court of Tanzania  
Musoma Sub-Registry)*

**BETWEEN**

**FRORENCE CHACHA..... APPLICANT**

**VERSUS**

**TANZANIA COMMERCIAL BANK PLC**

**(FORMERLY KNOWN AS TPB PLC) ..... 1<sup>ST</sup> RESPONDENT**

**MCHINA AUCTION MART & REAL AGENCY ..... 2<sup>ND</sup> RESPONDENT**

**RAMADHANI BWANA TRADING AS**

**(LE GRAND VICTORIA HOTEL) ..... 3<sup>RD</sup> RESPONDENT**

**KITAJI INVESTMENT LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**GATI DEBORA (Administratrix of the Estates**

**of the Late CHACHA MWITA NGARIBA) ..... 5<sup>TH</sup> RESPONDENT**

**ZAITUNI NGARIBA ..... 6<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

*18<sup>th</sup> & 24<sup>th</sup> June, 2024*

**M. L. KOMBA, J.:**

The applicant is seeking leave to file Notice of appeal out of time against the decision of the High Court (Musoma Sub-Registry) in Land Application No. 11 of 2023. The application is premised under section 11

(1) (b) of the Appellate Jurisdiction Act, Cap 141 and is supported by an affidavit sworn by the applicant, Florence Chacha. When served with the affidavit, respondents filed counter affidavit to contest the same save for the 6<sup>th</sup> respondent.

Despite of use different way to reach the 6<sup>th</sup> respondent, she did not show up neither filed counter affidavit so the matter was ordered to proceed ex-parte against the 6<sup>th</sup> respondent. It was difficult for the rest of respondents to meet for hearing when the matter was scheduled for, thus parties agreed the matter be heard by way of written submission. Filing schedule was issued and only applicant and the 1, 2 and 7 respondents comply by filing written submission on time.

The applicant was represented by Mr. Ostack Mligo, advocate from Mligo & Company advocate while 1<sup>st</sup>, 2<sup>nd</sup> and the 7<sup>th</sup> respondents were represented by Ms. Neema Mwaipyana, State Attorney. Counsels managed to file written submission on behalf of their clients.

While reminding mandate conferred to this court by section 11 (1) of Cap 141 of extending time to lodge notice of intended appeal, Mr. Mligo submitted that at paragraph 6 and 8 of the affidavit the applicant is to the effect that the order in Land Application No. 11 of 2023 has serious irregularity and illegality as it was dismissed on wrong provision of law

pursuant to Order VIII Rule 21 (a) of the Civil Procedure Code, Cap 33 (the CPC).

Elaborating what happened in Land Application No. 11 of 2023 on 16/02/2023, counsel submitted that application was wrongly dismissed under wrong provision of law which is Order VIII rule 21 after the failure of the applicant, then plaintiff to serve defendants while actually the Order is applicable when the matter is scheduled for mediation. According to counsel the remedy was supposed to be struck out. Applicant applied for restoration on 18/3/2023 which was double registered (Misc. Application No. 25 of 2023 High Court and 07 of 2023 Extended Jurisdiction). After noting it was wrong forum, the applicant withdraws Misc. Application No. 25 of 2023 on 20/7/2023 as the proper remedy was an appeal and not restoration as she thought.

Mr. Mligo insisted there was serious irregularity in the expunged order by the high Court and relied on the decision of the court in **Aloyce Chacha Kenganya t/a & Others vs Irasanilo Gold Mine (Civil Application No.852 of 2022) [2023] TZCA 17348 (13 June 2023), Amour Habib Salim vs Hussein Bafagi (Civil Application 52 of 2009) [2010] TZCA 26 (14 July 2010) and Hamisi Mohamed (administrator of The Estates of The Late Risasi**

**Ngawe) vs Mtumwa Moshi (administratrix of The Late Moshi Abdallah) (Civil Application No. 407 of 2019) [2020] TZCA 13 (21 February 2020)** that dismissing a suit under wrong provision of law is serious irregularity which need intervention by the higher court and the power of court to extend time when there is illegality. For the purpose of justice, he prayed the application be granted.

Resisting the application Ms. Mwaipyana submitted that section 11(1) of Cap 141 which was the base of this application confers discretionary powers to this court to extend time where there is special circumstances and good cause which is relative basing on reasons as registered by the applicant.

Among the good cause is counting for days of delay and it was Ms. Mwaipyana's submission that applicant he has to account for each day of delay, the delay should not be inordinate and the applicant has to be diligent not apathy as in **Lyamuya Construction Case**. State Attorney pointed that in her affidavit, applicant failed to explain what she was doing from the date when Land Application No. 11 of 2022 was dismissed till when Misc. Application No. 25 of 2023 was filed. State Attorney proceeded to show the applicant failed to explain how she

spends time when Land Application No. 11 of 2022 was dismissed to when Misc. Land Application No. 07 of 2023 was withdrawn.

It was State Attorney contention that the affidavit of the applicant does not disclose that applicant was diligent in pursuing the matter neither negligence as it can be seen when she filed Misc. Application No. 25 of 2023 instead of lodging notice of appeal to the Court of Appeal. Applicant failed to conduct exhaustive research, she lamented. It was the position of Ms. Mwaipyana that applicant reasons to warrant an extension of time was engagement in court but was not on course.

On the second limb, it was her submission that the issue of illegality as pleaded in paragraph 6 of the applicant's affidavit is worthless as for it be ground for extension has to be clearly pleaded in the affidavit but it is featured in applicant's submission. In absence of it, State Attorney submitted that there is no material evidence for this court to determine merit of the application. It was her submission that mere mentioning that applicant intend to challenge illegality on wrong provision of the decision is too narrow to show illegality on the face of it as the same were supposed to be elaborated in the affidavit.

Pointing paragraph 8, State Attorney was of the position that applicant continue with narration of sequency of events instead of showing illegality. She supports her allegation by decision in the **Registered Trustee of Archdiocese of Dae es salaam vs the Chairman Bunju Village Government and 11 others, Civil Appeal No. 147 of 2006** where the Court said however, submission is not evidence, submission is generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered, expected to contain arguments on applicable law and not intended to be a substitute for evidence.

She finally submitted that one cannot attain decision on delayed appeal basing on illegality without regarding the grimness of the illegality alleged and prayed the application be dismissed with costs for lack of merit.

I am called upon to determine if the application has good cause to warrant a grant as it is discretion of this court. I have impassively considered and weighed the competing arguments from both parties. To begin with, I feel it is instructive to reiterate, as a matter of general principle that whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court, but that discretion is

judicial and so it must be exercised according to the rules of reasoning and justice.

As submitted by Ms. Mwaipyana there must be special circumstances and good cause for application to succeed. In the case at hand, it is not disputed that applicant was in court up to 20/07/2024 when the Misc Application No. 25 of 2023 was withdrawn and on the same date applicant filed this application. Ms. Mwaipyana noted this struggle and submitted that he was not on course. I find what is need in circumstances like this is for applicant to explain where he was in given days, and as submitted he was in court prosecuting Misc. Application which was filed on time. After withdrawal she was out of time hence this application in which apart from counting how she spends days given by law, she complains of illegality.

Ms. Mwaipyana call it a second limb of good cause and attack the affidavit of the applicant that it does not have enough and vivid clarification which can be seen on the face of record not in applicant's submission which are elaborations or explanation of evidence. I subscribe to findings in **Registered Trustee of Archdiocese of Dae es salaam** (supra) as the council for applicant elaborated how the

applicant finds she was out of time and explained the applicant has good cause due to illegality on the use of provision of law during dismissal.

First of all, does the law supports extension of time when there is illegality? The answer is in affirmative that there is a bundle of decision in our legal fraternity that prove the position. Among the decisions includes **Principal Secretary Minister of Defence and National Service vs Devram P. Valambia** [1992] TLR 387, **James Anthony Ifada vs Hamis Alawi**, Civil Appeal No. 482/2014 of 2019 and **Amour Habib Salim vs Hussein Bafagi** (supra).

I have read affidavit of the applicant and she provides facts on what happened to her previous applications including dismissal on wrong provisions of law which was elaborated by the applicant's counsel. At paragraph 6 of the affidavit applicant deponed about dismissal under wrong provision of law and elaborated in submission that High Court Order was issued under Order VIII rule 21 instead of Order V while the remedy was dismissal. So far as Misc Application No. 25 of 2023 was filed on time and on the same day when it was withdrawn applicant filed this application, I find she manages to count how she spent the days. Further I find the applicant managed to move this court by alleging irregularity as was decided in **Principal Secretary Minister of**



**Defence and National Service vs Devram P. Valambia** (supra)

that;

*'In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record straight.'*

This is not an appeal; it is application of extension of time to lodge notice of appeal. I find the submission and reason adduced manage to move this court to grant the prayer.

All being done, I hold that the applicant has adequately itemized good reason to be granted what she prayed. I hereby grant fourteen days (14) from the date of this ruling for the applicant to lodge notice of appeal.

No order as to costs.

**DATED** at **MUSOMA** this 24<sup>th</sup> day of June, 2024.



*NK*  
**M. L. KOMBA**  
**Judge**