IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUB-REGISTRY OF GEITA

AT GEITA

MISC. LAND APPLICATION NO. 11128 OF 2024

(Arising from Misc. Application No.18 of 2023 of the Chato District Land and Housing Tribunal, Originating from Land Case No. 05 of 2005 of the Muganza Ward Tribunal)

ZACHARIA KAPANDE……APPLICANT

VERSUS

CHRISTINA MASUKA……RESPONDENT

RULING

Date of last order:30/05/2024
Date of Ruling:28/06/2024

MWAKAPEJE, J.:

This ruling arises from an application seeking leave to extend the time within which to file a petition of appeal out of the stipulated period. The application is made pursuant to Section 14 of the Law of Limitation Act, Cap 89 R.E. 2019, and Section 95 of the Civil Procedure Code, Cap.33 R.E. 2019, and is supported by a chamber summons and affidavit of the Applicant.

The crux of the matter at the heart of this application is as follows: The Respondent successfully sued for the recovery of clan land before the Muganza Ward Tribunal from the Applicant who bought it. The trial Tribunal, however, ordered that before the occupation of the land in question by the Respondent, the Applicant be refunded the amount he

paid for the purchase of the land and the compensation payments for the unexhausted improvements he has done on the land. Upon payments of Tshs. 50,000/= being the purchase price and Tshs. 130,000/= being the compensation for the unexhausted improvements by the Respondent, the trial Ward Tribunal ordered the Applicant to vacate the land.

Subsequently, the Applicant brought the matter to the District Land and Housing Tribunal in Chato, contesting the valuation amount for the unexhausted improvements conducted by the Nyamirembe Division Agricultural Officer. The District Land and Housing Tribunal of Chato revised the trial Tribunal's order regarding the Applicant's eviction until a proper valuation could be conducted by a recognised valuer appointed by the Applicant and the subsequent payments made by the Respondent.

This decision did not sit well with the Respondent, who successfully sought a review before the same Tribunal. In the review, the District Land and Housing Tribunal ordered the Applicant to retain possession of 2 ½ acres of the land he had purchased rather than the 6 ½ acres he claimed to have bought, with the remaining land to be occupied by the Respondent. The Applicant then appealed to the High Court at Bukoba Registry in Misc. Land Appeal No. 05 of 2011, challenging the review order. The Court nullified both orders, i.e., Revision and Review, issued

by the District Land and Housing Tribunal and reinstated the decision of the trial Ward Tribunal, instructing the parties to return to the Ward Tribunal for the Applicant to present his claim for unexhausted improvements with supporting evidence.

Despite the High Court's directive in 2015, the Applicant failed to file a claim before the Ward Tribunal. Consequently, in 2023, the Respondent successfully applied for execution before the District Land and Housing Tribunal of Chato in Misc. Application No. 18 of 2023 on 03/08/2023. The Applicant contested this order in the High Court Mwanza Registry through a revision in Land Revision No. 14 of 2023, which was later withdrawn by him on 5/03/2024. Now, the Applicant seeks to appeal against the execution order, only to realise that he is out of time, hence this application.

In his affidavit, the Applicant deposed that the cause of his delay in lodging his appeal in time stemmed from pursuing for wrong remedies, the exigencies of his health condition, the wrong advice from his advocates and illegalities in the impugned decision to be challenged. Even before the pronouncement of the withdrawal order from the High Court Mwanza Registry, the Applicant contended to be in a state of severe illness, necessitating medical attention at Bugando Hospital, Sekeou Toure

Referral Hospital, and Kamanga Medics, all in Mwanza, and Muganzo Health Centre in Chato and CZRH whose location is not clearly disclosed.

He supported his contention by the Copies of National Health Insurance foam from the mentioned health facilities, bearing different dates, as in Bugando Medical Centre, the forms show that the Applicant attended on 07/01/2021, Sekeou Toure Referral Hospital he attended once on 03/07/2017, Kamanga Medics he attended twice on 26/02/2021 and 29/03/2021, CZRH he did attend thrice on 03/08/2023, 21/12/2023 and 22/01/2024, lastly Muganzo Health Centre he attended once on 14/02/2024.

This application was ordered to be disposed of by written submission. The Applicant was represented by Mr Joseph Mange, a learned advocate, who filed his written submission on time, i.e. 10/06/2024, as scheduled. On the contrary, when the Respondent was scheduled to file her reply on 19/06/2024, she failed to abide by that order, though she was properly served on 14/06/2024 and received the submission in chief supporting the Applicant's application. Thus, she failed to defend her case as she did not file the reply. This Court faced a similar issue in the case of **Emakulata Tarimo vs Kapaya Doto** (Miscellaneous

Civil Application No. 4673 of 2024) [2024] TZHC 1359, where it observed that:

> *"It is axiomatic within the realm of our legal jurisprudence that the failure to adhere to the directives of a court's scheduling order constitutes a non-appearance."*

The court went further and referred the cases by the Court of Appeal in the case of **Godfrey Kimbe vs Peter Ngonyani** (Civil Appeal 41 of 2014) [2017] TZCA 1, when citing the cases of **National Insurance Corporation of (T) Ltd & Another vs Shengena Limited**, Civil Application No. 20 of 2007 and **Patson Matonya vs The Registrar Industrial Court of & another,** Civil Application No. 90 of 2011 (both unreported)**.** Particularly in the case of **National Insurance Corporation of (T) Ltd & another v. Shengena Limited (supra),** it was observed that:

> *"The Applicant did not file submission on the due date as ordered. Naturally, **the court could not be made impotent by a party's inaction**. It had to act. ... it is trite law that failure to file submission(s) is tantamount **to failure to prosecute one's case**." [Emphasis supplied]*

I am thus compelled to emphasise that the behaviour demonstrated by the Respondent, who frequents the court seasonally, in neglecting to submit her response cannot be deemed accidental, given her prior refusal to acknowledge a summons dated 16th May 2024 presented to her by the

Nyabilele Village Executive Officer one Mariam M. Hamuli. Her actions undermine the authority and integrity of this esteemed Court, which it is my solemn responsibility to protect with unwavering dedication. Consistent with the directives issued by this esteemed court and the Court of Appeal on numerous occasions, and as evidenced in the **Ngonyani case** (*supra*), the failure of the Respondent to submit her response implies her failure to defend her position. Consequently, I shall proceed promptly with the ruling as if she were absent.

The reasons presented in the Applicant's affidavit and further elaborated upon in the written submission to support the application for an extension of time included a technical delay, the Applicant's lack of legal knowledge regarding the appropriate remedy to seek, errors made by the Applicant's legal counsel, the Applicant's health condition, and illegalities in the decision being contested.

Mr. Mange argued that technical delay, caused by pursuing an application for revision instead of an appeal, is a valid reason for extending the time to appeal. To bolster his argument, he referred to the case of **Josephine Michael Zambo vs Farida Benard Chifunda (Administratrix of the Estate of the Late Bernard William Chifunda)** (Misc. land application No.453 of 2023) [2023] TZHCLandD

16918 which referred to the case **Elly Peter Sanya vs Ester Nelson (Civil Appeal 151 of 2018) [2020] TZCA 157**, emphasising that time spent in court proceedings can be considered a technical delay.

Regarding errors by an advocate, it was stated that the Applicant mistakenly filed a revision application instead of an appeal due to a lack of legal knowledge. Mr Mange contended that mistakes by advocates could be grounds for an extension of time, highlighting that advocates are prone to errors, but these should not impact the rights of the parties involved. To support his argument, he referred to the case of **Kambona Charles (As Administrator of the estate of the late Charles Pangani) vs Elizabeth Charles,** Civil Application no. 529/17 of 2019 (Unreported), which referred to the case of **Zuberi Mussa vs Shinyanga Town Council,** Civil Application No. 03/2007.

The illness of the Applicant, including health issues like high blood pressure and respiratory problems, was presented as a good cause for the delay in filing an appeal. Mr Mange, while referring to the case of **Richard Mlagala & Others vs Aikael Minja & Others, Civil Application No. 160/2015** (Unreported), which referred to the case of **Leonard Magesa vs M/S Olam (T) Ltd, Civil Appeal No. 117/2014** and **Masunga Mbegete & 784 Others vs The Hon. Attorney**

General & Another, Civil Application no. 173/01 of 2019 (Unreported) argued that illness can justify an extension of time, citing cases where courts allowed for extensions due to health challenges faced by Applicants.

Confusion over where to file the application, leading to additional time needed for consultation with an advocate and electronic filing preparation, was highlighted as a reason for the delay. Mr Mange referenced similar cases where a reasonable period for preparation was accepted as grounds for extending the time to appeal. Reference was made to the case of **Fatuma Mohamed vs Chausiku Selema**, Civil Application no. 228/08 of 2022 (Unreported).

Lastly, the Applicant cited illegality in the Ward Tribunal's ruling, such as lack of specific property descriptions and unreflected orders, as grounds for an extension of time to appeal. Mr Mange supported this argument with the cases of **Principal Secretary Ministry of Defence and National Service vs Devran Valambhia (1992) TLR 387** and **Mohamed Salum Nahdi vs Elizabeth Jeremiah**, Civil Reference no. 14 of 2014 CAT – Dar es Salaam (Unreported), which urge the Court to grant the extension to address the identified illegalities on appeal.

Therefore, the Applicant urges this Court to grant the extension of time to correct these illegalities on appeal.

Now, the decision to grant or deny an extension of time is fundamentally within the court's discretionary power, which has to be exercised judiciously. Consideration in exercising the said discretion is pegged on sufficient cause advanced by the Applicant. Though sufficient cause has not been defined, and since it is a matter of the circumstances of each case, see the case of **Hyasintha Malisa Versus John Malisa,** Civil Application No. 167/01 of 2021 TZCA. Factors to consider on the sufficient cause were stated in the case of **Tanga Cement Co. Ltd vs Jumanne D. Masangwa & Another** (Civil Application 6 of 2001) [2004] TZCA 45 (8 April 2004), to include:

> *"(i) whether or not the application has been brought promptly;*
>
> *(ii) the absence of any or valid explanation for the delay;*
>
> *(iii) lack of diligence on the part of the Applicant."*

Moreover, in the said case of **Tanga Cement** (*Supra*), reference to what amounts to good cause was made to the case of **Dar es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987 (CAT) (unreported), which, in turn, drew inspiration from the decision

rendered in the case of **C.M. Van Stillevoldt vs El Carriers** Inc. (1983) 1 All ER 699, wherein it was expounded that:

> *"……in my judgment, all the relevant factors must be taken into account in* ***deciding how to exercise the discretion to extend time.*** *Those factors include the* ***length of the delay, the reasons for the delay, whether there is an arguable case on appeal,*** *and* ***the degree of prejudice to the defendant if time is extended****" [Emphasis supplied]*

These factors have been emphasised in numerous judicial decisions in the land, requiring Applicants to justify each day of delay. Particularly noteworthy among these decisions are the cases of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4; **Paradise Holiday Resort Ltd vs Theodore N. Lyimo** (Civil Application No .435/01 of 2018) [2019] TZCA 670; and **Bushiri Hassan v. Latifa Lukio Mashayo,** Civil Application No. 3 of 2007 (unreported). Particularly in the case of **Lyamuya Construction Co. Ltd** *(supra)*, observed the following as good cause:

> *"i. the length of the delay;*
>
> *ii. the reasons for the delay;*
>
> *iii. whether the Applicant was diligent;*
>
> *iv. the degree of prejudice the Respondent stands to suffer if time is extended;*

> *v. whether there is a point of law of sufficient importance, such as the illegality of the decision sought to be challenged"*

Delving into the grounds for the delay and exploring the reasons for the delay, let us begin with the first reason. I concur wholeheartedly with Mr Mange's perspective that if a party diligently pursues a legal matter in court, only to later discover that they are out of time to file for a proper remedy, this should be considered a technical delay and, therefore, a good cause to grant an extension. In the case of **Elly Sanya** *(supra),* it was stated that:

> *"It is now settled that the delay in taking action within the time specified by the law caused by time spent in prosecuting a matter in court constitutes good cause of delay. This is what is in legal arena as technical delay".*

The technical delay, as stated, however, does not automatically warrant an extension of time unless the days delayed in filing for the appropriate remedy following the last court order are accounted for. In the case of **Kibaha Housing Cooperative Society Limited (KIHOCOSO) vs Judith Yoas & Others** (Civil Application No. 343/17 of 2021) [2023] TZCA 17836, it was observed that:

> *"The time spent in the conduct of the proceedings is therefore excusable in what is referred to as 'technical delay'.* ***An account of the period outside the technical delay period was also made****. One will note that there is a short span of time. The first application was filed within 20 days*

of the decision of the High Court. This application was filed within 7 days from the date of the decision of the last application. The period involved in both situations was short and reasonable." [Emphasis supplied]

The issue at hand in this case pertains to whether the Applicant accounted for the days that lapsed following the withdrawal order of Application for Revision No. 14 of 2023 before the High Court on 05/03/2024. The aforementioned application was filed on 15 May 2024, which equated to a 70-day gap from the date of the last order. The reason for the delay was that the Applicant was uncertain regarding the appropriate High Court Registry, whether in Geita or Mwanza, to lodge an appeal and that he was in consultation with the advocate to prepare and file the instant application, which also took time since the documents were to be prepared and filed through the electronic system. He also contended to have recovered from sickness by 20/04/2024.

It is trite that each day of delay is accounted for by the Applicant; see the case of **Lyamuya Construction Co. Ltd** *(Supra).* Firstly, on the issue of the venue to lodge to appeal, to me, it is unreasonable for the Applicant and his advocate, who should know better, to claim ignorance of the appropriate venue for lodging the appeal on 15th May 2024, nearly six months after the commencement of the High Court, Geita sub-registry and later and more that 60 days after Revision No. 14 of 2023 was

withdrawn. It is implausible that they deliberated for the entirety of those 70 days on the appropriate filing location. In short, ignorance of the Applicant or his advocate cannot be a good cause to extend time; see the cases of **Bariki Israel vs The Republic**, Criminal Application No. 4 of 2011; **Charles Salugi vs The Republic**, Criminal Application No. 3 of 2011 (both unreported); and **Omari R. Ibrahim vs Ndege Commercial Services Ltd** (Civil Application No. 83 of 2020) [2021] TZCA 64. In the case of **Omari R. Ibrahim**, it was explicitly provided that:

> "*neither ignorance of the law nor counsel's mistake constitutes good cause*"

Secondly, a 70-day delay cannot justify consultation with the advocate, including preparation and filing of the application to the Court. Mr Mange argued that he uploaded his appeal on 01/05/2024, failing to recognise the distinction between uploading a document into the system and officially filing it. The records in the system indicate that the application was formally filed on 15/05/2024, two weeks later. It remains unclear whether there were any obstacles preventing timely submission. In my assessment, this explanation does not hold merit and, hence, it is not a good cause.

Thirdly, regarding the Applicant's illness, I concur with Mr Mange that it would be justifiable to grant an extension of time. Nevertheless,

the Applicant must provide substantiating evidence to support the claim. The NHIF forms that have been submitted as evidence indicate that the Applicant's last hospital visit was on 14/02/2024 at Muganzo Health Centre, which was prior to the withdrawal of Revision No. 14 of 2023. There is no other evidence, as contended by Mr Mange, suggesting that the Applicant became ill after 05/03/2024 when the revision application was withdrawn. Additionally, there is no proof that the Applicant's illness hindered the timely filing of the appeal, particularly since there is no indication that the Applicant was hospitalised or bedridden. Therefore, the issue of sickness and medical treatment appears to be irrelevant in the context of this application. I, in conclusion, find the issue of technical delay not justifiable in the circumstances of this application, as the Applicant failed to account for the delay 70 days after the last court order for the withdrawal of Revision Application No.14 of 2023.

The last ground as a reason for the extension of time was the illegality alleged by the Applicant in Land Application No. 18 of 2023 in the District Land and Housing Tribunal, the decision he desires to be challenged. I entirely agree with Mr Mange that whenever illegality is raised, it is enough to compel the court to extend the time for the ascertainment of the same and to put records straight. This principle has been articulated in a number of cases. In the case of **The Principal**

Secretary Ministry of Defence and National Service vs Devram Valambia [1991] TLR 387, it was held thus;

> *"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*."

Also, in the case of **Lyamuya** (*supra*), the Court of Appeal made the following observation;

> *"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every Applicant who demonstrate 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 emphasised that such points 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 the jurisdiction;* ***not one that would be discovered by a long drawn argument or process."*** *[Emphasis supplied]*

Guided by the above authorities, it is imperative to recognise that in order to contest the disputed decision on grounds of illegality, one must consider certain key factors. These factors include the lack of jurisdiction by the court to adjudicate the issue, the matter being time-barred, and the Applicant was not given the opportunity to be heard. See the case of **Charles Richard Kombe vs Kinondoni Municipal Council** (Civil

Reference No. 13 of 2019) [2023] TZCA 137. For instance, in the case of **Valambia** (*supra*), as cited by the Applicant, the illegality of the impugned decision was clearly visible on the face of the records that the party in question was not afforded an opportunity to be heard, thus violating the principles of natural justice.

The illegalities asserted by the Applicant in this application were thus: the ruling failed to clearly delineate the description, location, boundaries, and demarcations of the contested property; it inadequately addressed the rights, duties, and obligations of the parties as outlined in the Ward Tribunal's judgment; the orders issued did not align with the prayers made in the extension, and the application was prematurely resolved. In my view, these factors do not constitute illegalities. Illegality has to do with the manner in which a decision was procured and not the arrived-at decision. Further, it was pointed in the case of **Charles Richard Kombe** *(supra)* while referring to the case of **Chunila Dahyabhai vs Dharamshi Nanji and Others,** AIR 1969 Guj 213 (1969) GLR 734, Supreme Court of India**,** that:

> *….the words 'illegally' and 'material irregularity' do not cover either errors of fact or law. They do not refer to the decision arrived at* ***but to the manner in which it is reached****.* ***The errors contemplated relate to material defects of procedure*** *and not errors of either*

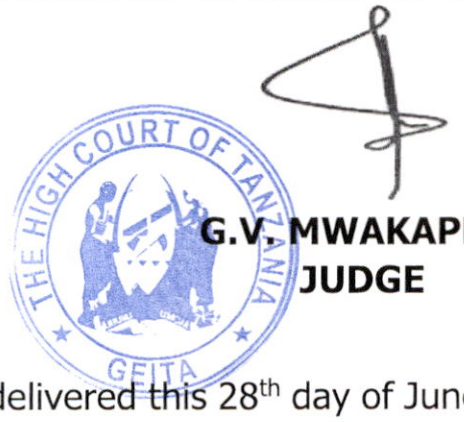
law or fact after the formalities which the law prescribes have been complied with. [Emphasis supplied]

In the application at hand, the Applicant attacks errors, if any, in the decision, and he does not state anything about the manner in which the said decision was reached. Consequently, I am not persuaded that the purported illegality is readily apparent from the record. It will, therefore, take a long process to ascertain.

To that end, I conclude that the Applicant has not demonstrated any good cause that would entitle him to an extension of time. As a result, this application fails and is accordingly dismissed with costs.

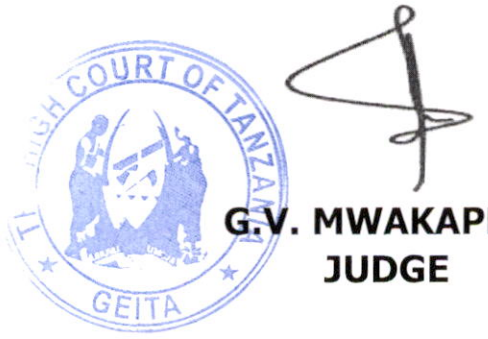
It is so ordered.

DATED and **DELIVERED** at **GEITA** this 28th June 2024.



G.V. MWAKAPEJE
JUDGE

This Ruling is delivered this 28th day of June 2024 in the presence of both the Applicant and the Respondent in person.



G.V. MWAKAPEJE
JUDGE