

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISC.CIVIL APPLICATION NO. 25700/2023

ASSISTANT COMMISSIONER FOR LANDS.....1ST APPLICANT

THE HONOURABLE ATTORNEY GENERAL.....2ND APPLICANT

VERSUS

BUILDING, WATER AND EARTH WORKS LTD.....RESPONDENT

RULING

06 & 18/03/2024

KAGOMBA, J

The applicants herein, are before this Court seeking extension of time to file a notice of appeal out of time so as to eventually appeal against the decision of this Court (Hon. L. E Mgonya, J (as she then was)) dated 24th April, 2023 in Miscellaneous Cause No. 65 of 2022 where the respondent triumphed. They also crave for any other relief(s) this Court may deem it fit and just to grant, while praying the costs of the application to follow the events.

The application is made by way of a chamber summons preferred under section 11(1) of the Appellate Jurisdiction Act, [Cap 141 R. E 2019] and Rule 47 of the Court of Appeal Rules, 2009 (As Amended). The same is

supported by affidavit of Vivian Method, Senior State Attorney, on behalf of the applicants.

Opposing the application, the respondent has filed a counter affidavit sworn by Ashiru Hamis Lugwisa, learned Counsel for Respondent.

A very brief prelude to this matter reveals that the respondent had indulged the Assistant Commissioner for Lands, who is the 1st applicant herein, to renew her Right of Occupancy over Plot No. 110 Mikocheni Light Industrial Area, Kinondoni, Dar es Salaam. The 1st applicant refused to heed for a reason that the respondent had failed to comply with the terms and conditions of the grant. Following the 1st applicant's decision, the respondent successfully applied to this court for prerogative orders of *certiorari* and *mandamus* which saw the 1st applicant's decision quashed vide the Ruling of this court dated 24th April, 2023 in Misc. Cause No. 65 of 2022 before Mgonya, J (as she then was), which is now being impugned. Since the 1st applicant did not appeal within the time prescribed by the law, she now seeks extension of time to file her appeal to the Court of Appeal to challenge the said Ruling.

During hearing of this application, Mr. Urson Luoga, learned State Attorney, represented the applicants while Mr. Ashiru Lugwisa, learned Advocate, represented the respondent.

In his oral submission, Mr. Luoga strongly urged the court to grant the extension of time basing on illegality allegedly engulfing the impugned Ruling. His main contention is that in deciding in favour of the respondent, the court wrongly applied the provisions of the law governing the procedure for revocation of right of occupancy, which was not the matter before the court, instead of the provisions governing renewal of the Right of Occupancy. To unveil the said illegality, he referred this court to the averments made in paragraph 11(i)-(iv) of the affidavit in support of the application.

The learned State Attorney further submitted that his contention on the presence of illegality, is supported by respondent's Counsel under paragraph 3 of his counter affidavit whereby he admits that the matter that was confronting the court was renewal of the right of occupancy and not revocation.

Mr. Luoga cited the cases of **Mohamed Salum Nahdi v. Elizabeth Jeremiah**, Civil Reference No. 14 of 2017 CAT at DSM; **Juto Ally Vs. Lucas Komba & Another**, Civil Application No. 484/17 of 2019 CAT at DSM and **Lyamuya Construction Co. Ltd v. Board of Registered Young Christian Women Association of Tanzania**, Civil Application No. 2 of 2010, CAT at Arusha, for a contention that a point of illegality once

established would constitute sufficient ground for extension of time. According to him, illegality was very clear on face of record as averred in the affidavit, adding that in the impugned Ruling, it was evident that the Judge discussed the issue of revocation and not renewal, as she should have done, leading to an erroneous decision.

Preempting the respondent's opposition, Mr. Luoga submitted that what is stated in paragraph 11 of the supporting affidavit are facts based on the position of the law, and should not be considered argumentative as alleged in the counter affidavit. He cited the case of **Fatuma Muhamed Vs Chausiku Selema**, Civil Appeal No. 228/08 of 2022, CAT at Mwanza, for a contention that, even if the affidavit might be considered to contain some averments which are argumentative, the same be considered as tolerable narration made to make the facts more intelligible.

He wound up his submission by praying the court to grant the applicants time extension, adding that nowhere in the Counter Affidavit the respondent showed that she will be jeopardized if this application is granted.

Replying, Mr. Ashiru Lugwisa, strongly objected the application, submitting that the same has not satisfied legal requirements for its granting. To make his contention clear, the learned counsel referred to the case of

Lyamuya Construction Co. Ltd (supra), where the Court of Appeal held that in application of this nature the discretion to grant time extension must be exercised according to rules of reasons and rules of justice. Building on this position, the learned Counsel attacked the 1st applicant for a delay of more than three hundred (300) days since 24th April, 2023 when the Ruling was delivered in the presence of her counsel, until November 2023 when the application was eventually filed. In his views, this situation defies the rules of reasons and the rules of justice, because filing a notice of appeal does not require one to have studied the decision she intended to appeal against. For this reason, he holds the view that the application does not qualify to be granted.

Making reference to **Lyamuya's case** as well as the cases of **Muse Zongori Kisere v. Richard Kisika Mughendi and 2 others**, Civil Application No. 244/01 of 2019, CAT at DSM, and **Finca (T) Ltd & Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, CAT at Iringa, the learned Counsel's view is that the applicants should have accounted for all the time of delay.

Mr. Lugwisa is not oblivious of the position of the law that a point of illegality is sufficient ground for extension of time. He contends, however,

that not every allegation of illegality would automatically entitle one to extension of time, as stated in **Lyamuya's case**. He argues that the point of illegality must be of sufficient importance and it must be on the face of record.

According to Mr. Lugwisa, the grounds of illegality stated in paragraph 11 of the affidavit are neither apparent nor of sufficient importance. He cited as an example, paragraph 11(i) arguing that required the Court to analyze the law. In his view, such could be a ground of appeal and not ground for time extension. He saw similar fault with paragraph 11(v) of affidavit, and the rest of the grounds of illegality pleaded in the affidavit.

Reacting to the authorities cited by his counterpart, Mr. Lugwisa found them distinguishable. He argued that illegality raised in the case of **Mohamed Salum Nahidi (supra)**, was on denial of right to be heard, which was apparent on the face of record, hence it was a sufficient ground.

On the case of **Juto Ally (supra)**, he also distinguished it on the ground that illegality was on the jurisdiction of the court, which is also apparent and sufficient.

And, lastly, Mr. Lugwisa distinguished the case of **Fatuma Mohamed (supra)** which his counterpart relied on to show that the grounds of illegality

stated in the affidavit were not argumentative. In Mr. Lugwisa's views, the difference is that, while there was an objection in that case against some paragraphs considered argumentative, in the instant matter he has neither objected to such paragraphs nor prayed them to be expunged. According to him, his opposition is based on the concern that those grounds require analysis, contrary to the guidance given in **Lyamuya's case**.

On the argument that the respondent would not be prejudiced by allowing this application, Mr. Lugwisa doesn't agree. In his views, the respondent stands to be delayed to develop her properly.

Based on the above submission, the learned Counsel invited the court to dismiss this application with cost.

When called on to rejoin, Mr. Luoga started where his counterpart had ended. In Mr. Luoga's view, the submission that the respondent will be prejudiced by granting of this application was a mere statement from the bar, not stated in the counter affidavit.

Regarding the cases he had cited which his counterpart attempted to distinguish, Mr. Luoga rejoined that, his learned friend had never analyzed those cases well. By and large, he reiterated his submission in chief.

On **Lyamuya's case**, Mr. Luoga's view is that in the said case, the grounds for time extension do not go together. He reiterated that his submission is based on illegality in the decision alone. He reiterated his position that in the instant application, it is not disputed that the matter before the court was on the renewal of right of occupancy and not revocation as it was decided.

With regard to **Ally Salim Said's case**, Mr. Luoga rejoined that the applicant in that case was not given right to be heard. However, illegality was not raised in the application, rather it was during Advocate's submission, hence the said case is distinguishable. He maintained that the instant application illegality is stated in the affidavit and is on the face of record.

On the argument that the Counsel for the applicants was present during delivery of the ruling, and that the applicants should count for all the days of delay, Mr. Luoga reiterated that once there is illegality on the face of record, even if the delay is not accounted for, such illegality suffices as a ground for extension of time.

Having so rejoined, the learned State Attorney prayed for extension of time be granted to enable the 1st applicant be heard by the Court of Appeal.

I have carefully considered the rival submissions above, in light of the position of the law as to what the court ought to consider in granting applications for extension of time. Reading the above submissions between the lines, it is clear to me that the issue to be determined is not whether illegality constitutes sufficient reason for granting time extension. The main issue here is whether the alleged illegality in the impugned Ruling is apparent on the face of the record and of sufficient importance, as per the position adopted by the Court of Appeal in **Lyamuya's case, (supra)**. The second issue is whether the averments in paragraph 11 of the applicants' affidavit are argumentative.

Before embarking on determination of the above issues, I find it convenient to first restate the position of the law on time extension. The law requires that whoever desires the Court to grant him extension of time, he or she has to adduce reasonable or sufficient cause. Section 14(1) of the Law of Limitation Act, [cap 89 R.E 2019] clearly so provides: -

*"14.-(1) Notwithstanding the provisions of this Act, **the Court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application**, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."* [Emphasis added]

I should add that one of the grounds which the court may consider reasonable or sufficient cause for granting time extension is allegation of illegality in the decision intended to be challenged. This position, which stands as a guiding principle across the jurisdiction, was enunciated by the Court of Appeal in **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) T.L.R 182, when it stated 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 right".

The above principle has thenceforth been restated in several cases including **Kalunga & Co. Advocates v. NBC Ltd** (2006) T.L.R 235; **Victoria Real Estate Development Ltd vs TIB and 3 Others**, Civil Application No. 255 of 2014, CAT (Unreported) and **Lyamuya's case (supra)**.

In the latter case, the Court of Appeal clarified that not every allegation of illegality ought to stand as sufficient cause for granting time extension,

rather, it has to be manifest on the face of the record, and should be of sufficient importance to the matter under consideration.

The contention whether the alleged illegality pleaded by the applicants in the affidavit is such apparent and is of such importance to warrant the court to grant this application, necessarily calls for perusal of the records, to see whether the illegality alleged in the affidavit can be gleaned on the impugned Ruling. The relevant averments in the affidavit at paragraph 11 read as follows:

" 11. That, the decision of the Court is tainted with illegalities as stated hereunder;

- (i) The decision relied on the provisions of the Land Act providing for procedures for revocation of the right of occupancy while the said matter involved renewal of the right of occupancy;*
- (ii) That, the decision of the Court creates rights and obligations to both the Commissioner for Lands and the occupier of the land which had ceased after the right of occupancy came to an end by effluxion of time;*
- (iii) That, the Land Act provides for distinct procedures for revocation of right of occupancy and renewal of the right of occupancy;*
- (iv) That, the power to revoke a right of occupancy is vested to the President and the same is done while the right of occupancy still subsists whereas the discretion to renew*

the right of occupancy is vested to Commissioner for Lands and the same is done after the tenure of the right of occupancy has come to an end”.

Before stating my observation on the above allegation, I am minded to address the second issue, whereby concerns were raised by Mr. Lugwisa that paragraph 11 of the affidavit was argumentative and based on the 1st applicant's opinion on the position of the law. Looking at the contents of paragraph 11 above, I first agree with the views of Mr. Lugwisa that the same are argumentative in that they attract an opposing opinion. However, I also agree with Mr. Luoga that whatever that may look argumentative can be excused for being tolerable narration aimed at making the position of the law more intelligible. In deciding so, I am comforted by a similar position taken by the Court of Appeal in **Fatuma Muhamed Vs Chausiku Selema**, (supra). I don't see more than that in the averments quoted above.

Back to the main issue whether there is illegality on the face of the record, Mr. Luoga's repeated contention is in the impugned Ruling the court based on the procedure for revocation instead of procedure for renewal. My perusal of the impugned Ruling from page 17 to 25 where the court laboured on the issue for determination, reveals that the court considered the contents of the letter of revocation in light of the provisions of section 45 and 46 of the Land Act, on “**Liability to revocation for breach of conditions**”. This

analysis by the Court proceeded to page 25 of the impugned Ruling, where the Court held that the statutory opportunity to notify the occupier to show cause upon breach of conditions was necessary and was missing in this matter. Apparently, it is this analysis which formed the *ratio decidendi* of the Ruling which the applicants seek to impugn on account of basing on procedure for revocation rather than renewal. Also, in so far as the alleged illegality touches on the *ratio decidendi* of the decision reached, it becomes of significant importance.

My understanding of the contention made by Mr. Luoga, and which is clearly stated under paragraph 11(i) and (ii) of the affidavit, is that the procedure for revocation of a right of occupancy is, in law, different from the procedure for renewal of right of occupancy. He simply argues that the Ruling carries such an error. If what I have seen is what Mr. Luoga finds as illegality in the decision, then I agree with him because the same is apparent on the face of the record.

Guided by the decision of the Court of Appeal in **Regional Manager TANROADS-Lindi vs D. B. Shaprya & Co Ltd**, Civil Application No. 29 of 2012, I am fully aware that, at this stage, this Court is not supposed to consider the in-depth of the alleged claims of illegality nor would this court confirm the position stated under paragraph 11 of the affidavit to be true.


Those are matters to be considered during the intended appeal. All what the court would state for now is that reading the Ruling, what is considered to be the points of illegality are manifest on page 24 to 25. And, this observation has not required any long-drawn or in-depth analysis, but mere perusal of the impugned Ruling in light of the grounds of illegality stated in the affidavit.

In the above premises, therefore, I hold that sufficient reason has been adduced by the applicants for this application to be granted. Since illegality is considered a sufficient reason to grant extension of time, the need to analyze each of the rest of the arguments does not arise.

In the upshot, I grant the application. The applicant has thirty (30) days to lodge his intended appeal. Each party to bear own costs.

Dated at Dodoma this 18th day of March, 2024.




ABDI S. KAGOMBA
JUDGE