

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB-REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM.

MISCELLANEOUS LAND APPLICATION NO. 490 OF 2023

(Arising from the Judgment and Decree of the High Court of Tanzania (Dar es Salaam District Registry) at Dar es Salaam (Hon. Mahimbali, J) dated 6th June, 2023 in Land Case No. 67 of 2011)

KINONDONI MUNICIPAL COUNCIL.....APPLICANT

VERSUS

ANTHONY MASANZA..... 1ST RESPONDENT

STARA MPONDA..... 2ND RESPONDENT

RULING

Date of last order: 28/02/2024

Date of Ruling: 15/03/2024

A.A. MBAGWA, J.

This is an application for extension of time within which to file notice of appeal against the judgment of this Court (Hon. Mahimbali, J) dated 06th June, 2023 in Land Case No. 67 of 2011. The applicant has brought this application by way of chamber summons under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019] (the AJA), section 14(1) of the Law of Limitation Act, [Cap. 89 R.E. 2019] and section 95 of the Civil Procedure Code [Cap 33 R.E 2019], praying for the following orders;



- a) That the Honourable Court be pleased to extend time to allow the applicant to file notice of intention to appeal out of time.
- b) Any other order (s) that this Honourable Court may deem just and fit to grant.
- c) Costs of this application to follow the event

On the one side, the application is supported by an affidavit of the applicant deposed by Ms. Leah Mnzava, Principal Legal Officer whereas on the other side, it is strongly contested by the respondents via a counter affidavit sworn by Mark Stephan Lebba, the respondents' learned counsel. The facts of the matter as gleaned from the depositions may briefly be stated as follows: the applicant was the plaintiff before this Court in Land Case No. 67 of 2011 which was, on 06th June 2023, dismissed with costs by this court (Hon. Mahimbali, J).

The applicant states that upon dismissal of the suit, she convened a meeting with the Office of Solicitor General and it was unanimously agreed to challenge the decision by way of appeal. The applicant further deposed under paragraph 7 of the affidavit that the decision sought to be impugned is tainted with illegalities. She expounded that the trial judge erred in law to declare the defendants as lawful owners of the suit property while there is existing Government Notice (GN) No. 148 of 2003 which declared the land in dispute as a Public Recreation area. The

applicant also faulted the trial judge for failure to take a judicial notice of Government Notice (GN) No. 148 of 2003 which is the public document and lastly, she lamented that the trial judge issued a judgment and decree which are inexecutable.

On the other hand, the respondents protested the applicant's claims saying that the belated applicant's intention to appeal is a mere afterthought and the delay of sixty-two (62) days is inordinate and manifestly excessive and cannot be reasonably explained. The respondents also disputed the existence of the alleged illegality.

On the 17th day of October, 2023, when the application was called on for hearing, Mr. Thomas Mahushi, learned State Attorney appeared on behalf of the applicant whilst the respondents were represented by Mr. Mark Lebba, learned advocate. This Court ordered the application to be disposed of by way of written submissions and both sides complied with the filing schedule set by the Court. I am grateful to both learned counsel for their submissions.

Submitting in support of the application, Mr. Mahushi adopted the affidavit affirmed by Leah Mnzava to form part of the applicant's submission. Mr. Mahushi submitted that there are three grounds under paragraph 7 of the applicant's affidavit in support of the application. He pointed out that, essentially, the ground is confined to illegality. Expounding on the alleged



illegality, Mr. Mahushi had it that the trial judge failed to consider legal impact of Government Notice No. 148 of 2003 as the ownership of the applicant roots back from the Government Notice. He referred the Court to the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT, Arusha and **Mohamed Salum Nahdi vs Elizabeth Jeremiah**, Civil Reference No. 14 of 2017, CAT, Dar es Salaam, where the Court of Appeal held, inter alia, that where the point at issue is the illegality of the decision sought to be challenged, that constitutes a sufficient reason for extension of time. Mr. Mahushi insisted that the alleged illegality is on face of the record. Based on the above ground, Mr. Mahushi implored the court to allow the application.

In reply, Mr. Lebba, learned counsel for the respondents, at the outset, prayed to adopt the joint counter affidavit in opposition to the application. He submitted that, the applicant has not accounted for the delay of sixty two (62) days from 06th June 2023 when the impugned decision was delivered up to 07th September 2023 when the present application was filed. To buttress his submission, Mr. Lebba cited the case of **Exim Bank (T) Ltd vs Zawadi Ally Msalla**, Civil Application No. 43 of 2015, CAT at Arusha.



He added that, the principle of illegality as a ground for extension does not apply in all cases where illegality is alleged. He clarified that it applies only where there was noncompliance with the principle of natural justice i.e., a party being condemned unheard. To back up his stance, he cited the case of **Laurent Simon Assenga vs Joseph Magoso & Two Others**, Civil Application No. 50 of 2016, CAT, **Ngerengere Estate Co. Ltd vs Edna William Sitta**, CAT, Civil Appeal No. 209 of 2016, **Lyamuya** (*supra*) and **Mohamed Nahdi** (*supra*) where the Court of Appeal granted extension of time to lodge notices of appeal on the grounds of non-observance of the right to be heard. The respondent's counsel added that, the principle applies also where the decisions to be challenged on appeal were passed without necessary jurisdiction.

Mr. Lebba Submitted further that, the alleged illegalities under paragraph 7 of the applicant's affidavit are issues of law worth determination by the appellate but not illegalities.

On the complaint regarding the GN 148 of 2003, the counsel for the respondents submitted that, the trial High Court Judge took into account all legal issues related to the said Government Notice including the fact that the same was published in 2003, some nine (9) years from the date the respondents were formerly issued with a letter of offer of a right of occupancy in 1990 and the fact that the respondents were not offered



compensation for unexhausted improvements, and deemed it proper to determine the suit in favour of the Respondents. To bolster his submission, counsel for the respondents referred the Court to the case of **Lyamuya** (*supra*).

Mr. Lebba submitted further that, the applicant has failed to account for each day of delay. He cited the case of **Amani Girls Home vs Isack Charles Kanela**, Civil Application No. 325/08 of 2019, CAT where the CAT held that even a delay of a single day has to be accounted for. He lamented that, the applicant was negligent, a fact which mitigates the application.

Counsel for the respondents submitted further that, there exists no illegality of the impugned decision. He further added that, if this court finds a flicker of credibility in the claim of illegality, then the court should grant the application only for the purposes of ascertaining the point, not granting extension of time to appeal out of time. In support of his proposition, the learned counsel referred the Court to the decision of **Theresia Mahoza Mganga v. the Administrator General (RITA)**, Civil Application No. 5/2006, CAT at Dar es Salaam (unreported) wherein the Court stressed on ascertaining the points of illegalities as raised before granting an application for extension of time. In conclusion the learned counsel prayed the Court to dismiss the application with costs.



Having canvassed the rival submissions and upon appraisal of the depositions made by the parties, the pertinent issue for determination is whether the applicant has demonstrated sufficient cause to warrant the extension of time.

It is common cause that the grant of extension of time is exclusively the discretion of the Court. See also the case of **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT at Dar es Salaam. It is further settled that, in the exercise of this discretion, the court is guided by one factor namely, whether there are sufficient grounds.

The law is clear that there is no fast and hard rule as to what constitutes a good cause rather, a sufficient cause is determined upon consideration of all the obtaining circumstances in a particular case. See **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, CAT at Dar es Salaam and **Laurent Simon Assenga vs Joseph Magoso and Two Others**, Civil Application No. 20 of 2016, CAT at Dar es Salaam. In **Assenga's case** (supra), the Court of Appeal had the following to say;

What is a good cause is a question of fact, depending on the facts of each case. For that



reason, many and varied circumstances could constitute good cause in any particular case".

Following the absence of universal definition of a good cause, through case laws, courts have endeavored to prescribe various considerations which are relevant for establishing sufficient cause. The factors include the length of delay involved, reasons for the delay, the degree of prejudice, if any, that each party is likely to suffer, the diligence of a party, the conduct of the parties, and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bwesa & Another**, Civil Application No. 392/01 of 2020, CAT at Dares Salaam and **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar es Salaam.

I have gone through the applicant's affidavit along with the annexures. It is clear that the impugned decision was delivered by the trial court on the 6th day of June, 2023 whereas the present application was filed in court on 7th September, 2023 i.e., 93 days later. The applicant has not provided plausible explanations for such an inordinate delay of about ninety-three (93) days. Indeed, the applicant has failed to account for each and every



day of delay in his affidavit as required by the law. See the case **of Bakir Israel vs Republic**, Criminal Application No. 4 of 2011, CAT at Arusha.

I have noted, under paragraph 6 of the applicant's affidavit that the applicant has alleged that after the delivery of the impugned judgment, she arranged a meeting with the Office of the Solicitor General to brainstorm on the best way to challenge the decision. However, the applicant did not explain how the meeting exacerbated the delay nor did she mention the dates on which the alleged meeting was convened. I therefore find this ground baseless and devoid of merits.

Regarding the alleged illegality, the applicant has contended under paragraph 7 of the affidavit in support of the application that the impugned decision is tainted with illegalities including that the trial judge erred in law to declare the respondents herein as lawful owners of the suit property in the existence of the Government Notice No. 148 of 2003 which declared the said property in dispute as a Public Recreation area. On the other hand, the respondents have contended that, the said grounds are fit for being grounds of appeal and not grounds for extension of time as this court dealt and determined the same during the hearing of the suit.



It is a cardinal principle that, a claim of illegality of the impugned decision can be a basis for extension of time. However, the said illegalities must be apparent on the face of record. With regard to the case at hand, the alleged illegalities are not apparent as averred by the respondents. Moreover, if anything, are errors of law but not illegalities to warrant extension of time.

In addition, it is a trite law that illegalities should not be used as a shield to hide the applicant's ineptness. See the case of **Mtengeti Mohamed vs Blandina Macha**, Civil Application No.344/17 of 2022, CAT at Dar es Salaam.

In view of the above deliberations, it is my considered findings that the applicant has failed to demonstrate sufficient cause for grant of extension. For that reason, I dismiss the application with costs.

The right of appeal is explained.

Dated at Dar es Salaam on this 15th day of March, 2024.




A.A. Mbagwa

JUDGE

15/03/2024