

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 727 OF 2018**

**ADRIANO CHANJA ..... APPLICANT**

***VERSUS***

**RENATHA TIGIYA ..... 1<sup>ST</sup> RESPONDENT**

**HAMU KATEKI MWAKASOLA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of Last Order: 22/08/2019*

*Date of Ruling: 06/09/2019*

**MALLABA, J**

The applicant herein, **Adriano Chanja**, applies for extension of time to be able to appeal to this court, against the decision of the District Land and Housing Tribunal for Ilala in Land application No. 90 of 2010. Hearing of the

application proceeded by way of written submissions in accordance with the schedule given by this court.

The applicant submitted that, the decision intended to be appealed against was delivered on 16/5/2017. One day thereafter, on 17/5/2017, he wrote to request for copy of judgment, proceedings and decree. He was provided with copies thereof on 12/08/2016. On receiving copies of the documents, he filed Land Appeal No. 149 of 2016 which was struck out on 13/10/2017. Thereafter, he filed Misc. Land Application No. 982 of 2017 for extension of time. Unfortunately, the application was also struck out on 28/9/2018. Thereafter, he filed this application. He submits that, he has good cause for delay. He did not sleep over his rights. He added that, the judgment of the district tribunal also has an illegality, as it went against the principle that no one can pass a better title than he has.

On the other hand, the respondents submitted that, the applicant has not shown good and sufficient cause to deserve an extension of time. They cited the case of **Tanga Cement Company Ltd Vs. Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 (CAT) (unreported) to

emphasize a point that, the application has not been brought promptly. There is no valid explanation for delay and there is lack of diligence on the part of the applicant. It was negligence for the applicant to file an appeal straight away after being served with the documents. He should have started with an application for extension of time. After the appeal was struck out, the applicant was duty bound to file a proper application free of defects. Instead, he filed an application with a defective affidavit. In filing a defective appeal and application, that is negligence. The respondents cited the case of **William Shija Vs. Fortunatus Masha** (1997) TLR 213 to support a point that, negligence on the part of the counsel for a party does not constitute sufficient cause for extension of time. As regards the aspect of illegality, the respondent submitted that, that is a mere allegation of error on the face of the record and they cited the case of **Omary Shaban Nyambu Vs. Dodoma Water and Sewarage Authority**, Civil Application No. 146 of 2016 (CAT – Dodoma) (unreported) to support their contention that, errors on the face of the record does not constitute a sufficient cause for a delay.

The defendants admitted that, illegality is indeed a good ground for extension of time. However, they claimed that, what is alleged in the present matter does not constitute illegality because it is a point which was exhaustively determined by the tribunal. Also, they submitted that, it is a matter of evidence and therefore cannot be a point of illegality. In the end, they submitted that, the only aspects to be considered is the length of delay, the reason for delay and the degree of prejudice to the defendant/respondent if time is extended. They cited the case of **Palumbo Reef Co. Ltd Vs. Colin Alli Abdallah Duchi**, Civil Application No. 105/201 of 2017 (CAT-Zanzibar) (unreported) in this regard.


In this matter, the parties and also this court are agreeable that, for an applicant to deserve an extension of time, he has to account for his delay, showing good and sufficient cause for the delay. Sufficient and good cause has never been defined. One of the established good and sufficient cause is, as was stated by the respondents, accounting for the length of delay, the reason for the delay and the degree of prejudice to the defendant/respondent if the time is extended. However, in the view of this court, this is not the only incidence of good and sufficient cause or reasons.

uses to wait for documents to enable him appeal, constitutes a good and sufficient reason for extension of time. Once he received copies of the documents, he did not take long before filing an appeal, which was struck-out. Thereafter he filed an application which was also struck-out. This court is of a considered view that, the applicant has accounted well for the delay. Therefore, he deserves an extension of time.

In the circumstances, this court uses its discretion to grant the extension of time sought by the applicant. The applicant is to file the intended appeal within thirty (30) days from the date of this ruling.

No order as to costs.

It is ordered accordingly.

  
**J.B. MALLABA**  
**JUDGE**

**06/09/2019**