

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 95 OF 2020.**

*(Originating from land appeal No. 62 of 2016 of the District Land  
and Housing Tribunal for Kinondoni at Mwananyamala)*

**DEBORA CHRISTOPHER MTAMAKAYA.....APPLICANT**

**VERSUS**

**ASHA MANGAPI** (*Adminstratix of the estate of the late*

**LEILLAH ILIYASA .....RESPONDENT**

**RULING**

**I. ARUFANI, J**

The applicant filed in this court the application at hand seeking for extension of time upon which to file in this court an appeal out of time to challenge the decision delivered by the District Land and Housing Tribunal for Kinondoni at Mwananyamala (hereinafter referred as the District Tribunal) in Land Appeal No. 62 of 2016 dated 23<sup>rd</sup> August, 2019. The application is supported by affidavit sworn by the applicant and rebutted by the counter affidavit affirmed by the respondent.

When the application came for hearing before my learned Sister Opiyo, J on 30<sup>th</sup> November, 2021 the applicant was represented by Mr. Goodchance Lyimo, learned advocate and the respondent was represented by Ms. Benadetha Kunyenje, learned advocate. As the

counsel for the respondent was not feeling well the court ordered the application to be argued by way of written submission. Thereafter, Hon. Opiyo, J was transferred to another station and the file of the case was re-assigned to me to continue from where the matter had reached to its final determination.

The counsel for the applicant submitted that the reason for the applicant's delay to lodge appeal in the court within the time prescribed by the law is deposed at paragraphs 7 and 8 of the affidavit supporting the application. He stated that, the District Tribunal failed to promptly supply the applicant with the copy of the impugned decision on time and consequently the applicant found herself out of time prescribed by the law. He argued that, after delivery of the impugned decision the applicant never slept as she applied for the copy of the impugned decision and kept on pressing to be supplied with the same until when the copy of the impugned decision was supplied to her.

He argued that, delay to obtain copies of the impugned decision and the decree constitutes sufficient cause for granting extension of time. He supported his argument with the cases of **Tanzania Revenue Authority V. Yusuph Juma Yusuph**, Civil Application No. 2 of 2014, **John Ondolo Chacha V. Dar Cool Makers Ltd** cited in the case of **Zaina Mohamed Msangi V. Lameck Lusonyekwa**, Misc. Land Application No. 828 of 2018 decided by this court. He submitted that, after being supplied with

the copy of the impugned decision on 25<sup>th</sup> February, 2020 the applicant promptly filed the present application in this court on 26<sup>th</sup> February, 2020.

He went on submitting that, the applicant raised the issue of problematic and illegality of the decisions of the District Tribunal that, the respondent was crowned and blessed by the tribunal in the appeal that she had *locus standi* to sue. He argued that is deposed at para 10 of the affidavit supporting the application, while there was no letters of administration or probate of the estate of the deceased which had been granted to her and stated that can be gleaned at page 6 of the impugned decision of the District Tribunal.

He submitted further that, a claim of illegality constitutes sufficient reason for extension of time as aptly enunciated in various court decisions which among them is the cases of **Patrobert D. Ishengoma V. Kahama Mining Corporation Ltd & two Others**, Civil Application No. 2 of 2013 and the **Principal Secretary, Ministry of Defence and National Services V. Devram Valambia**, [1992] TLR 182 whereby the Court of Appeal of Tanzania stated that, a claim of illegality in the challenged decision, constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant for the delay or not.

He also referred the court to the case of **Danford Elisante Ngowo** (as legal representative of the estate of the late **Robert Elisante**

**Ngowo) V. Jenerali Ulimwengu & Two Others**, Misc. Land Application No. 120 of 2019 which emphasized the same principle of the law. At the end he prayed the court to base on the stated reasons to allow the application with costs.

In his reply the counsel for the respondent stated in his submission that, the application of the applicant was not filed in the court on 26<sup>th</sup> February, 2020 as argued by the counsel for the applicant at paragraph 6<sup>th</sup> of page 2 of the applicant's submission but the application was filed in the court on 3<sup>rd</sup> day of March 2020 which is after six days from the date of being issued with the copy of the impugned decision. He cited in his submission the case of **Wambele Mtumwa Shahame V. Mohamed Hamisi**, Civil Application No. 197 of 2014 where the case of **Mustafa Mohamed Raze Varian V. Mehboob Hassanali Versi**, Civil Appeal No.168 of 2014 (CAT) was cited and held that, in application for extension of time every single day lost must be accounted.

He went on submitting that, the impugned decision was delivered on 23<sup>rd</sup> August, 2019 and the letter requesting for a copy of the decision was written by the applicant on 3<sup>rd</sup> October, 2019 which was after the elapse of a period of 41 days from when the judgment was delivered and no reason for the said delay has been given by the applicant. He argued further that, there is no proof from the District Tribunal to support the applicant's allegation of network problem from 12<sup>th</sup> February, 2020 to 25<sup>th</sup>

February, 2020 which is a period of 13 days. He submitted that, even the e-payment receipt stated at paragraph 8 for the affidavit was not annexed to the affidavit. He submitted that makes the total number of the days that were not accounted for to be 60. He submitted that, as the said delay was not accounted for, then there is no good or sufficient cause which has been shown by the applicant to warrant the court to grant the her the extension of time is seeking from the court.

As for the issue of existence of illegality in the impugned decision the counsel for the respondent stated that, the illegality alleged by the counsel for the applicant is in existence in the decision of the Ward Tribunal and in the District Tribunal is about locus standi and stated it was extensively examined and determined by the Ward Tribunal and the District Tribunal. He argued that there is no illegality in the impugned decision which can form basis of granting the applicant extension of time is seeking from the court. At the end he prayed the application be dismissed with costs.

In his rejoinder, the counsel for the applicant reiterated his submission in chief and added that, all annexures including annexure DC-5 which is e-payment receipt indicating the payment date were served to the respondent. He argued that, if the same is not seeing is not a negligence which should be imputed to the applicant. He submitted that the applicant filed the present application in the court on 26<sup>th</sup> February 2020 but the approval from the Deputy Registrar was made on 3<sup>rd</sup> March 2020. He

submitted that the issue of lodging the letter in the District Tribunal it was lodged within the time of appeals emanating from the District Land and Housing tribunal and stated the applicant abided to the rule of practice.

After considering the rival submissions from the counsel for the parties the court has found the issue to determine in this application is whether the applicant has managed to show good and sufficient cause for being granted extension of time to file appeal in the court out of time. The court has framed the said issue after seeing that is what a person seeking for extension of time under section 38 (1) of the Land Disputes Courts Act, Cap 216, R.E 2019 is required to show.

The question to ask here is what is a "good" and "sufficient" cause required to be shown to move the court to grant extension of time sought from the court. The said terms are not defined in the cited law or in any other written law but there are number of judicial decisions where the said terms have been considered and given literal meaning. One of the case where the term "good cause" was defined is the case of **Bertha V. Alex Maganga**, Civil Reference No. 7 of 2016 (unreported) where the Court of Appeal of Tanzania stated as follows:-

*"Whilst it may not be possible to lay down an invariable definition of **good cause** so as to guide the exercise of the court discretion, the court is enjoined to consider, inter alia the reasons for the delay, the length of the delay, whether the*

*applicant was diligent and the degree of prejudice to the respondent if time is extended.”[Emphasis added].*

As for the term “sufficient cause” the court has found the said term was considered by the Court of Appeal of Tanzania in the case of **Tanga Cement Company Limited V. Jumanne D. Masangwa & Another**, Civil Application No. 6 of 2001 cited in the case **Benedict Mumello V. Bank of Tanzania**, Civil Appeal No. 12 of 2002, CAT at DSM (unreported) where the Court of Appeal stated that:-

*“What amount to **sufficient cause** has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant.”*  
[Emphasis added].

While being guided by the definition of the terms “good” and “sufficient” cause given in the above quoted cases the court has found the applicant deposed at paragraphs 6, 7 and 8 of her affidavit in support of the application that, the reason caused her to delay to lodge appeal in the court within the time prescribed by the law is the delay to be supplied with the copy of the decision of the District Tribunal. The applicant deposed in the mentioned paragraphs that, after the judgment being

delivered, she wrote a letter to the District Tribunal on 3<sup>rd</sup> October, 2019 seeking for the copy of the decision of the District Tribunal. It is deposed further that, the copy of the impugned decision was supplied to the applicant on 25<sup>th</sup> February, 2020. The counsel for the applicant stated in his submission that, after the applicant being supplied with the copy of the impugned decision, they lodged the present applicant in this court on 26<sup>th</sup> February, 2020.

The court has considered the submission by the counsel for the applicant that the application at hand was lodged in the court on 26<sup>th</sup> February, 2020 but find that, as rightly argued by the counsel for the respondent the record of the present application shows the application at hand was lodged in the court on 3<sup>rd</sup> March, 2020 and not 25<sup>th</sup> February as submitted by the counsel for the applicant. The argument by the counsel for the applicant that the applicant lodged the application in the court on 26<sup>th</sup> February, 2020 but it was endorsed by the Deputy Registrar on 3<sup>rd</sup> March, 2021 is not supported by any evidence. That means there is a delay of about seven days from when the copy of the impugned decision was supplied to the applicant to the date of filing the present application in this court.

The court has also found that, the applicant has not told the court why she delayed to apply for the copy of the impugned decision from the District Tribunal because while the impugned decision was delivered on



23<sup>rd</sup> August, 2019 but the letter to seek for the copy of the decision of the District Tribunal was written on 3<sup>rd</sup> October, 2019 which was after passing 41 days. The court has also found that, the applicant and his counsel have not told the court why they were waiting for the copy of the decision they want to challenge before lodging the petition of appeal in court. The court has found that, even the letter written to the District Tribunal by the applicant does not state the applicant was seeking for the copy of the impugned decision for appeal purpose but for his personal record. That makes the court to find the argument by the counsel for the applicant of waiting the copy of the decision from the District Tribunal is an afterthought and it cannot be taken as a good and sufficient cause for delaying to lodge the appeal in court within the time.

The court has arrived to the above view after seeing that, as provided under section 38 (2) of the Land Disputes Courts Act the appeal was required to be filed in the District Tribunal and there was no legal requirement for the applicant to use the said decision to accompany her petition of appeal. Although one may say the applicant would have not managed to prepare sound grounds of appeal without the copy of the impugned decision but that line of thinking is not stated anywhere in the affidavit or submission supporting the application, hence that is just a speculation which cannot move the court to do anything.

In the premises the court has found the applicant has not managed to show sufficient diligence in pursuing the intended appeal to convince the court she was delayed by good and sufficient cause to lodge the appeal in the court within the time prescribed by the law. The court has also found the applicant has not managed to account for all days of the delay as emphasized in the case of **Sebastian Ndaula V. Grace Rwamafa, (Legal personal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014 (unreported) where it was held that, a party seeking for extension of time is required to account for each day of the delay.

The court has also found the applicant has deposed at paragraph 10 of the affidavit supporting the application and it has been argued in the submission of the counsel for the applicant that, the impugned decision of the District Tribunal contains illegality which need to be determined by the court to put the record right. The position of the law where there is an allegation of illegality in an impugned decision was laid in the famous case of the **Principal Secretary Ministry of Defence and National Service V. Devram Valambia**, [1992] TLR 182 where the Court of Appeal stated 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 will be established, to take appropriate measures to put the matter and the record right.”*

Under the guidance of the above stated position of the law the court has found the point of illegality alleged by the counsel for the applicant is in the impugned decision is the allegation that the respondent had no locus standi to institute the dispute in the Ward Tribunal against her. The court has found that, although it is true as argued by the counsel for the respondent that the said issue was raised and determined in the appeal filed by the applicant before the District Tribunal but as the applicant was dissatisfied by the decision of the District Tribunal, that is a point of sufficient importance which can move the court to grant the applicant extension of time to lodge appeal in the court out of time for the purposes of ascertaining if the alleged illegality will be established, the decision of the tribunal can be rectified and put the record of the matter right.

It is because of the above stated reason the court has found that, as there is allegation of existence of the mentioned illegality in the impugned decision of the District Tribunal, the court is justified to use its discretionary power to grant the applicant extension of time is seeking from this court. Consequently, the application of the applicant is hereby granted and the applicant is given fourteen (14) days from the date of delivery of this ruling to lodge her appeal in court. It is so ordered.

Dated at Dar es Salaam this 23<sup>rd</sup> day of March, 2022.



**I. ARUFANI**

**JUDGE**

**23/03/2022**

**Court:**

Ruling delivered today 23<sup>rd</sup> day of March, 2022 in the presence of Mr. Goodchance Lyimo, Advocate for the applicant and in the presence of Mr. Achileus Charles Kalumuna, Advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



**I. ARUFANI**

**JUDGE**

**23/03/2022**