

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

MISC. LAND CASE APPLICATION No.596 OF 2019

ABDALLAH HITLER RAMADHANI..... APPLICANT

VERSUS

HASSAN ABUBAKAR MWICHUMU.....RESPONDENT

Date of last Order: 22.06.2021
Date of Ruling: 26.07.2021

RULING

V.L. MAKANI, J

The applicant has moved this court under section 41(2) of the Land Disputes Courts Act, Cap 216 RE 2002 as amended by Misc. Amendment Act No. 2 of 2016 and any other enabling provision of the law. He is seeking for extension of time to file appeal against the judgment and decree of the District Land and Housing Tribunal for Temeke (the **Tribunal**) in Land Application No.198 of 2007. The application is supported by the affidavit of the applicant.

The court ordered the application to be argued by way of written submissions. The applicant's submissions were drawn and filed by Mr.

Alex Enock, while the respondent personally drew and filed submissions in reply.

Submitting in support of the application, Mr. Enock for the applicant prayed to adopt the contents of the applicant's affidavit and its annexures, he added that the delay to file the appeal was not intended but necessitated by health problems. That the impugned decision was delivered on 03/02/2017. He said after securing the copies of the decision the applicant's health was not good and the problem persisted for long time. That upon getting relief he found that time to appeal had expired. He filed Misc. Application No.260 of 2017 which was struck out for being preferred under wrong provision of the law, and Application No. 185 of 2019 which was struck out for containing hearsay evidence, he ultimately filed this application. Mr. Enock insisted that at the time of filing the present application, the applicant was still sick. His condition was not good due to paralysis of the body. He said that the law protects people who have failed to meet the deadline as long as they have sufficient reasons for delay. He insisted that health reasons have been approved by the Court of Appeal of Tanzania as good reasons for extension of time. He cited the case of **Richard Mlagala and Others vs. Aikael Minja & 3 Others, Civil**

Application No.160 of 2015 (CAT-DSM) (unreported) whereby the Court of Appeal approved health problems as sufficient reasons for extension of time. Mr. Enock further said that apart from health reasons the judgment of the District Tribunal was tainted with irregularities and illegalities. He said that the Tribunal failed to rule out that the respondent did not bring any contract proving how he acquired the land in dispute prior to obtaining a residential licence which was owned by the applicant in the present application. Also, the Tribunal failed to disregard hearsay statements of **PW2** as there was no document tendered to prove that the said witness was present during the dispositions. He relied on the case of **Amour Habibsalim vs Hussein Bafagi, Civil application No.52 of 2009 (CAT-DSM)** (unreported) whereby the Court of Appeal stated that illegality constitute sufficient reasons for extension of time. He prayed for the application to be granted with costs.

In reply the respondent said that the applicant had alleged sickness as a reason for the delay, however, copies of the medical chits attached from TMJ Hospital bears the name of one **Abdallah R. Kibelenge** and the other bears the name of **Sada A. Lipati**. He said though the applicant alleges sickness but the medical chit bears

names of other patients. The respondent said in Misc. Application No.260 of 2017 the applicant deponed in paragraph 4 of his affidavit that he is totally poor living from hand to mouth and needed legal assistance which was totally a lie as the applicant herein managed to hire an advocate when this matter was heard on merit. That he even hired two advocates at the Tribunal; Mr. Thadei and Mrs. Chuma, therefore it is not true that the applicant is poor as alleged. He further said while in Misc. Application No.260 of 2017 the applicant alleged to be poor and therefore failed to file appeal on time but in this application he relied on sickness as the basis of the delay to file the appeal.

On illegality and irregularity, the respondent said these matters were not raised in the affidavit and therefore it was not proper to raise them at the hearing stage. He relied on Order VI Rule 7 of the Civil Procedure Code, CAP 33 RE 2019 (the **CPC**) which prohibits the raising of new grounds not contained in the pleadings. He insisted that the grounds of illegality and irregularity were not contained in the applicant's affidavit and therefore cannot be considered during the hearing as parties are bound by their own pleadings. He prayed for this application to be dismissed with costs.

In rejoinder, Mr. Enock reiterated his main submissions and added that in the Chamber Summons he clearly stated that the application will be supported by applicant's affidavit and any other grounds which will be addressed in the course of hearing and the respondent was afforded time to respond to the applicant's submission during the hearing in which any argument raised had to be addressed. Mr. Enock added that the applicant's name is as it appears in the application but **Kibelenge** is also his name and so **Abdallah Hitler Ramadhan** or **Ramadhan Kibelenge** all mean the same person. He said that the applicant has now passed away and that the name of **Sada A. Lipati** appeared on the face of the medical chit because on the said date the deceased had to use his wife's insurance to get treated. He insisted that the applicant's affidavits in the previous applications which have been struck out have nothing to do with this application. That page 2 of the Tribunal's judgment shows that the applicant failed to get legal representation as he was poor therefore Mrs. Chuma disqualified herself from the service.

Having gone through the affidavits and the submissions by the parties, the main issue for determination is whether this application

has merit. It is a settled principle of the law that an application for extension of time is entirely the discretion of the court and it may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported).

The main reasons advanced by Mr. Enock for the delay in the filing of the appeal, is that the applicant was seriously sick and that the impugned judgment was tainted with illegalities and irregularities. Indeed, as pointed out by the respondent, the medical chits presented by the applicant contain names other than that of the applicant, that is, **Abdallah R. Kibengele** and **Sada A. Lipati**. Mr. Enock conceded that the names in the medical chit are different from the applicant's name and further the applicant had to use his wife's insurance to get treated. But with due respect to Mr. Enock, if that was the case, the applicant's affidavit would have reflected that that **Abdallah R. Kibengele** is one and the same person as the applicant **Abdallah Hitler Ramadhani**. The assertion that these two people are one and the same are from the bar, which assertions the court cannot rely upon. This is also the case with the medical chit named **Sada A. Lipati**. The affidavit is silent as to who she is and how the medical

chits were attached to the affidavit by the applicant. The best thing Counsel would have done was to have filed the affidavit of **Sada A. Lipati**, the alleged applicant's wife, which affidavit would have given the state of affairs. In the absence of such an affidavit or even a paragraph in the applicant's affidavit that **Sada A. Lipati** is the wife of the applicant, it becomes unsafe to rely on mere statements of Counsel from the bar.

On the other hand, Mr. Enock has also claimed that the alleged sickness has resulted to the death of the applicant. But there is nothing on record to support this assertion. It was expected that Counsel would have presented either the death certificate or burial permit for the court to safely rely upon this fact, but unfortunately, this is not the case. In the absence of such proof, this court cannot rely on mere statements from the applicant's Counsel, which does not even state the date of the death and proceed to believe that the applicant's sickness has led to his death. In view thereof, the reason of sickness and death cannot at any rate constitute a sufficient reason for extension of time.

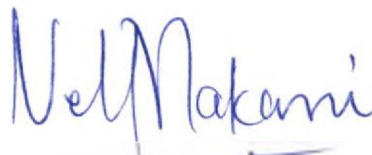
On the issue of alleged illegality and irregularities on the impugned judgment, it is true as alleged by the respondent that the same was not pleaded in the applicant's affidavit but in his Chamber Summons the applicant stated clearly that the application is supported by applicant's affidavit together with any other grounds which will be adduced at the hearing. The issue of illegality has therefore been raised as any other grounds to be adduced at the hearing.

Indeed, it is now settled that an alleged illegality must be apparent on the face of the record. Once it is established that the illegality in the impugned decision is clearly visible on the face of record, then it can be termed as a sufficient cause to warrant extension of time (see the case of **Moto Matiko Mabanga vs. Ophir Energy PLC & Others, Civil Application No.463/01 of 2017 (CAT-DSM)** (unreported) and **Omary Ally Nyamalege (as Administrator of the estate of the Late Seleman Ally Nyamalenge) & Two Others vs. Mwanza Engineering Works, Civil Application No. 94/8 of 2017**). In the present application the illegality alleged is not quite apparent. The issue of hearsay evidence and contract to prove ownership cannot apparently be seen on the face of the records unless this court digs deep into the decision of the Tribunal. And where the court has to

prod for facts to justify illegality then the said illegality cannot be said to be apparent on the face of the record. In view thereof, this ground cannot be taken to be a reason for the applicant's delay to file the appeal.

For the reasons I have endeavored to demonstrate hereinabove, I am persuaded that the applicant has failed to establish sufficient cause to warrant this court to exercise its discretionary powers to grant extension of time to file his appeal. Subsequently, the application is hereby dismissed with costs for want of merit.

It is so ordered.



V.L. MAKANI
JUDGE
26/07/2021

