

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.431 OF 2019**

(Originated from District Land and Housing Tribunal in Application No.275 of  
2018 dated the 16<sup>th</sup> April, 2019)

**SIMPHROSA PAUL MREMA ..... APPLICANT**

**VERSUS**

**ROSE MAIKO MKUPAS ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH PAUL MREMA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 22.07.2021*

*Date of Ruling: 28.07.2021*

**A.Z.MGEYEKWA, J**

I am called upon in this matter to decide whether this court should exercise its discretion under section 41 (2) of the Land Disputes Courts Act, Cap. 216 to extend time within the applicant to file an appeal against the Ruling and Order of the District Land and Housing Tribunal in Application No.275 of 2018 dated 16<sup>th</sup> April, 2019.

The application is supported by an affidavit deposed by Simphrosa Paul Mrema, the applicant. The application has encountered formidable opposition from the first respondent and has demonstrated his resistance by filing counter affidavit, deposed by Rose Michael Mkupasi, the 2<sup>nd</sup> respondent.

When the matter was called for hearing on 08<sup>th</sup> March, 2021, the appellant enjoyed the legal service of Ms. Jaqueline Masawe, learned counsel and the respondent enjoyed the legal service of Mr. Richard Kinawale, learned counsel. By the court order and consent by the parties, the application was argued by way of written submissions whereas, the applicant's Advocate filed his submission in chief on 15<sup>th</sup> March, 2021 and the respondents' Advocate applied for extension of time to file his reply, his prayer was granted thus he filed his reply on 22<sup>nd</sup> July, 2021. The applicant's Advocate waived his right to file a rejoinder.

Ms. Jaqueline, learned counsel was the first one to kick the ball rolling. Reiterating what was deposed in the supporting affidavit, the learned counsel urged this court to adopt the applicant's application and form part of his submission. The learned counsel for the applicant started with a brief background of the facts which led to the instant application which I am not going to reproduce in this application. She stated that the court

has discretionary power to grant extension of time and the same must be exercised judicially. She stated that on 16<sup>th</sup> April, 2019 when the judgment was delivered the applicant was absent. She submitted that the applicant has stated good cause that she fall sick thus she could not instruct her Advocate to prepare the appeal on time. To support her submission she referred this court to paragraph 4 of the applicant's application and annexure A3. She also cited the case of **Emmanuel R Maira v The District Executive Director Bunda District Council**, Civil Application No.66 of 2010.

The learned counsel for the applicant continued to submit that the applicant has accounted for every single day of delay and acted diligently to make follow-up to collect copies from the tribunal, unfortunately, she fall sick thus she was not able to file the appeal on time. Fortifying her submission she referred this court to the case of **Emmanuel R. Maira** (supra). The learned counsel went on to state that the applicant received the copies on 28<sup>th</sup> May, 2019 and filed the instant application on 26<sup>th</sup> July, 2019.

The learned counsel for the applicant further stated that there are a lot of irregularities and illegality. The applicant's Advocate stated that the applicant has stated his intention to challenge the judgment of the tribunal that the Chairman misdirected herself holding that the new case filed was

*res judicata* while this was subject of the objection proceeding. She insisted that the only remedy for the applicant was to file a new case. Stressing she said that there is an issue of illegality that has to be corrected by this court. Supporting her submission she cited the case of MZA RTC Trading Company v Export Trading Company Ltd, Civil Application No.12 of 2018 (unreported).

In conclusion, the learned counsel for the applicant beckoned upon this court to grant the applicant's application.

Mr. Richard, learned counsel for the respondent vehemently resisted the application. He began with disputing the length of the delay. The learned counsel stated that the applicant's averments are stipulated under paragraphs 3, 4, and 5 of the affidavit that her delay to file an appeal timely was because she falls sick. The learned counsel for the respondent argued that a party seeking for extension of time has to show a good cause and sufficient cause for his delay he went on to state that the applicant was also required to account for each day of delay. to buttress his submission he cited the case of Oswald Masatu Mwinzarubu v Tanzania Fish Processors Ltd, Civil Application No.13 of 2010 at Mwanza (unreported).

He claimed that the applicant did not attach copies of the letter wrote to be supplied with the said copies. He further stated that the law requires the aggrieved party to file an appeal within 45 days after the delivery of the judgment and the time when she received the said copies she was not barred by the law. Mr. Richard valiantly submitted that the applicant was negligent and lied to the court. The learned counsel for the applicant continued to state that this court has the discretion to grant the application but such discretion must be exercised judiciously. Fortifying his position he cited the case of **Lyamuya Construction Company Ltd v Board of Registered of Young Women's Christian of Tanzania**, Civil Application No.02 of 2010 (unreported).

Mr. Richard did not end there he came up with an objection that the jurat of attestation is defective. He went on to state that the applicant's affidavit is unattainable as it contains a defect in Jurat of attestation He urged this court to dismiss the applicant's application.

Having carefully considered the submissions made by the learned counsels in their written submission and examined the affidavit and counter-affidavit, the issue for our determination is ***whether the application is meritorious.***

The position of the law is settled and clear that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Moreover, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term “good cause” having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter-affidavit, Ms. Jacqueline has shown the path navigated by the applicant and the backing has encountered in trying to reverse the decision of the District Land and Housing Tribunal. The applicant's Advocate has raised two main limbs for

his delay, ordinary delay, and illegality. On the first limb, the applicant's Advocate stated that the applicant fell sick, they attached a hospital report which shows that the applicant was treated on 28<sup>th</sup> May, 2019. The copies of Judgment and Decree were delivered on the same date, thus, the applicant was unable to instruct her Advocate to prepare the appeal within time. The instant application was lodged before this court on 31<sup>st</sup> July, 2019 after two months from the date when he received treatment. However, the delay of 56 days was not accounted for. The applicant was supposed to prove that after receiving the said copies of Judgment and Decree she was still undergoing treatment but that was not the case. Therefore this ground has no merit.

Regarding the issue of illegality, the applicant's Advocate alleges that the decision of this court is tainted with illegality. The illegality is alleged to reside in the powers exercised by the District Land and Housing Tribunal that the Chairman misdirected herself by holding that the matter was *res judicata* while it was an completely new application for objection proceeding. In her submission, Ms. Jacqueline stated that there is no appeal on objection proceeding instead the aggrieved party is required to file a new case seeking the court to declare his interest in the disputed plot. Supporting his application, Ms. Jacqueline referred this court to Order XX1 Rule 62 of the Civil Procedure Code Cap.33 [R.E 2019]. In my

view, I think that the applicant's ground for illegality is sufficiently important to move this court to grant the applicant's application.

The legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same may constitute the basis for extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185 at page 89 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 straight." [Emphasis added].*

Similarly, in the cases of **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, CAT-Civil Application No. 6 of 2016 (unreported) and **Lyamuya Construction** (supra), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-



*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaambia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. **The Court there emphasized that such point of law must be that of sufficient importance** and, I would add that **it must also be apparent on the face of the record, such as the question of jurisdiction**; not one that would be discovered by a long drawn argument or process."* [Emphasis added].

Applying the above authorities, it is clear that the ground of illegality bears sufficient importance. In my considered view, this point of illegality meets the requisite threshold for consideration as the basis for enlargement of time and that this alone, weighty enough to constitute sufficient cause for extension of time.

Before I pen off, I am alive to the fact that, in his submission, the learned counsel for the first respondent argued that the issue of *jurat* attestation is defective. With due respect, the objection was supposed to be brought before the hearing of this application. The learned counsel is trying to pre-empt the applicant's application for extension of time by

raising an objection in his submission. Raising the same at this juncture is misplaced therefore the same is disregarded.

In sum, based on the foregoing analysis I am satisfied that the above ground of illegality is evident that the present application has merit. Therefore, I proceed to grant the applicant's application to lodge a Notice of Appeal within twenty-one days from today.

Order accordingly.

Dated at Mwanza this date 28<sup>th</sup> July, 2021.

  
A.Z.MGEYEKWA  
**JUDGE**  
28.07.2021

Ruling delivered on 28<sup>th</sup> July, 2021 via audio teleconference, whereas both parties were remotely present.



  
A.Z.MGEYEKWA  
**JUDGE**  
28.07.2021