

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

MISCELLANEOUS LAND APPLICATION NO. 21 OF 2019

**(C/O Land Appeal No. 9/2017 and Land Application No. 8/2008
District Land and Housing Tribunal for Rukwa)**

JANUARY KISI..... APPLICANT

VERSUS

NORBERT KANYOKA..... RESPONDENT


27/07/2021 & 12/08/2021

RULING

Nkwabi, J.:

The applicant in this application is seeking extension of time so as to allow him to apply for leave of appealing out of statutory time. He is also praying for leave of appealing to the Court of Appeal. The chamber summons is supported by the affidavit of the applicant. The application is brought under S.41 (2) of the Land Dispute Act 2016 read together with S. 47(2) of the Act as amended by Act No. 3/2018.

The respondent resisted the application. He filed a counter affidavit while battling the application brought to the court by the applicant.

1 

I having gone through the record of this application (affidavit and the counter-affidavit) as well as the submissions of both parties I am of the view that there is one issue which need be considered and determined by this court in this application. This is whether good cause has been established for this court to extend time which is prayed for.

When the application was called upon for hearing, hearing proceeded by way of oral submissions. Mr. Chambi learned counsel, appeared for the applicant while the respondent appeared in person. I am grateful for their submissions.

I have keenly looked at the record of the application as well as the submissions of both parties on whether good cause has been established for this court to extend time. The affidavit of the applicant is to the effect that in order to appeal to the Court of Appeal, there is a need for obtaining leave to appeal, he lodged the same but only to be struck out or withdrawn due to various reasons. He said there are points of law which need be determined by the Court of Appeal, (1) A person who occupied the land for over 27 years from the death of the owner now moved out of the same that the land be collected by the administrator of the estate. (2) The 2nd is more or less than the first point of law. (3) whether the judge had any right of using the

2 

judgment of the parties in another case who were not in dispute there over in deciding the present case.

As I have indicated above, in his counter affidavit, the respondent resisted the application. The respondent strongly disputed paragraph 2, 3, 4 in which he averred that the advocate of the applicant is misusing court process as this is the 3rd application of the same nature just to delay justice, and paragraph 5 is also strongly disputed and the respondent averring that the point of law by the applicant has not been provided in the chamber summons. The respondent said the application ought to be dismissed.

In submission in chief, Mr. Chambi learned Advocate for the applicant attributed the delay as a technical delay which makes the court to grant extension of time. He cited **Yunus Seif Kaluguda v. Razaq Seif Kaduguda & Another Appeal No.12/2020** at p.3 of the typed judgment.

Mr. Chambi further argued that there are points of law which need be determined seen on the 5th paragraph. The issues of time. The respondent was appointed 25 years later and distributed the land afresh. The areas concerned are two different areas, but the judgment combined the two areas.

Mr. Chambi submitted further, another point of law to be determined is the learned judge used appeal case No. 49/2006 between Philipo Kisi & Bruno

Kisi that, in that case the applicant lost so had no right. If that were the case, then the two cases ought to be resjudicata. To back that argument, Mr. Chambi referred this court to the case of **Arunaben Chaggan Mistry v. Naushad Mohamed Hussein & 3 Others** Civil Application No. 6/2016 at P.10 – 12.

He prayed this court to grant extension of time to lodge an appeal to the Court of Appeal out of time so that justice is done. The illegalities could be seen in the judgment of the High Court. He prayed that this application be granted with costs.

In reply submission, the Respondent argued that Bruno Kisi and January Kisi are relatives. Philipo Kisi died in the year 1980. He does not know how that case proceeded.

January Kisi had dispute with Bruno Kisi over the shamba which was claimed to be the property of their father who is Philipo Kisi. The District Land and Housing Tribunal determined the matter. The shamba was ordered to be in the estate. He was appointed to be the administrator of the estate. January Kisi was satisfied.

He argued it is not true that January Kisi bought the piece of land. The dispute arose in 2006 when January wanted to hold the whole area from his relatives.

The respondent further argued that even today all relatives own and till the land just like that. He prayed the court to be careful with this matter. He was

4 

satisfied with the decision of the court. He further argued that the submissions of the Learned Counsel, is false. He is the administrator of the estate. The one who ought to be prosecuted is Bruno Kisi. He prayed the application to be dismissed.

Mr. Chambi was very brief in rejoinder wherein he argued that, the case No. 49/2006 is between Bruno Kisi v. January Kisi.

Mr. Chambi further argued that, the shamba has two parties – See page 6 of the judgment of the High Court. It is not true that the shamba is one, but rather it had two positions, and one is the property of the applicant. When the respondent was distributed the applicant was not present. The respondent distributed the portion of land which was not part of the estate. There are questions in respect of ownership. He prayed that this application be granted.

It is trite law that where there is allegation of illegality in an impugned decision, illegality amounts to sufficient reason for extension of time even where the applicant has not accounted for each day of the delay to give an opportunity to the party making such allegation to have the issue considered, see **Civil Application No. 6/2016 Arunaben Chaggan Mistry v Naudhad Mohamed Hussein & 3 Others** (CAT) (Unreported) at Arusha".

"However it is upon a party to provide the relevant material in order for the Court to exercise its discretion."

In the above case the application for extension of time was granted and the applicant was given 14 days from the date of the ruling to file an application for leave to appeal.

In his supporting affidavit, the applicant averred in paragraph 5 some point of laws (illegalities) just as I have indicated above. The allegation of illegality in decisions sought to be challenged is sufficient ground to give extension of time where the applicant establishes them albeit on the face of the record. In this application, the applicant has placed before this court the materials that this court needs to extend time for filing an appeal out of time just as per **Regional Manager TANROAD Kagera v Ruaha Concrete Co. Ltd, CAT Civil application No. 96 of 2007, at DSM (Unreported):**

"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules."


6 

In the present application, and in the circumstances of this application, I think that the legal points complained about by the applicant needs the consideration and determination of the Court of Appeal. In the circumstances, this is a proper application which ought to be granted since the points of law (illegalities) establish good cause for extension of time.

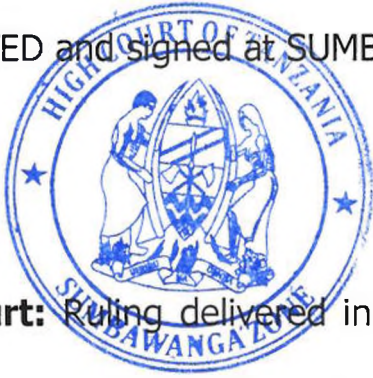
The respondent failed to challenge this application. The claim by the respondent that the applicant is misusing the court is meritless. Further, it is not the procedure, as tries to persuade the court, that the applicant ought to have indicated the points of law (illegalities) on the chamber summons. His prayer that this application be dismissed is rejected. Consequently, the application is granted. Time for appealing out of the statutory time is extended for 10 days from today.

As to the prayer in the chamber summons for leave to appeal to the Court of Appeal found under item (ii) seems to be silently abandoned by the counsel for the applicant because the learned counsel for the applicant did not submit on the same as such it is struck out. In the circumstances of this application, each party to bear their own costs.

It is so ordered.

7 

DATED and signed at SUMBAWANGA this 12th day of August, 2021.




J. F. Nkwabi

JUDGE

Court: Ruling delivered in chambers this 12th day of August 2021 in the presence of both parties in person.




J.F. Nkwabi

JUDGE