

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 569 OF 2019

*(Originating from Land Application No. 54 of 2016, before Hon. J.M.Bigambo
delivered on 25th June, 2019)*

MAJUTO RAMADHANI MPUTA APPLICANT

VERSUS

SIJA RAJABU MURO 1ST RESPONDENT

LINUS F. LYERA 2ND RESPONDENT

RULING

Date of Last order: 05.08.2021

Date of Ruling: 05.08.2021

A.Z. MGEYEKWA, J.

In this application, I am called upon to determine whether an extension of time should be granted to enable the applicant institute an appeal against the decision of the District Land and Housing Tribunal for Ilala, at Ilala. The decision sought to be impugned is in respect of the Land Application No. 54 of 2016 which was delivered 25th June, 2019. The application has been enabled by the provisions of section 41 (2) of the Land Disputes Courts Act, No. 2 of 2002, section 96 and 96 of the Civil

Procedure Code Cap. 33 [R.E. 2019]. The application is supported by an affidavit sworn by Mr. Majuto Ramadhani Mputa, the applicant.

When the matter was called for hearing on 23rd April, 2020, by court order the matter was ordered to be argued by written submission, whereby the applicant filed his submission in chief on 1st June, 2020. The respondent was required to file his reply on 15th June, 2020, however, the respondent did not comply with the court order. Therefore this court proceeded to determine the application *ex parte* against the respondent.

In his submission, the applicant's Advocate complained that the applicant's main reason for his delay to file an appeal was due to his serious sickness. To support his ground he referred this court to an attached medical report marked "**SRM2**". The applicant also stated that he delayed to file the appeal because the applicant did not receive a copy of the Judgment within time. He added that the Judgment was delivered on 25th June, 2019, and on 07th July, 2019 the applicant applied for a copy of the Judgment. To buttress his submission he referred this court to "**SRM1**". He further claimed that the applicant received the copies on 5th August, 2019, and after obtaining the copy of Judgment he felt very sick thus, he was out of control to lodge his application on time.

It was the applicant Advocate's further submission that he could not have prepared sound grounds of appeal without obtaining the copy of Judgment and the entire proceedings as provided for under Order **XXXIX Rule 1(1)** of the Civil Procedure Code, Cap. 33 [R.E. 2002]. Now [R.E 2019]. Fortifying his submission he cited the case of **Mariam Abdallah Fundi Vs Kassim Abdallah Farsi** (1991) T.L.R NO 196. The learned counsel submitted that the applicant has shown sufficient reasons. To buttress his position he cited the cases of **Benedict Memello v Bank of Tanzania**, Civil Application No. 12 of 2002, CAT at Dar es Salaam (Unreported) the Court of Appeal of Tanzania cited with approval the case of **Tanga Cement Company Limited v Jumanne D Masangwa & Another**, Civil Application No 6 Of 2001(Unreported).

On the strength of the above submission, the learned counsel for the applicant beckoned upon this court to grant the application for extension of time to file an appeal out of time.

Having carefully considered the submission made by the learned counsel for the applicant and after examining the affidavit, I should state from the outset that the issue for determination is *whether the applicant has established sufficient cause to warrant this court to grant extension of time to file an appeal out of time?*

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.

Additionally, 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 gone through the applicant's affidavit and found that the applicant's Advocate has raised two main limbs for his delay, technical delay, and illegality. Starting with the first limb, he demonstrated the delay on paragraphs 5, 6, 7, and 8 of the applicant's affidavit. The records reveal that the Judgment in Application No.54 of 2016 was delivered on 25th

June, 2019, and on 08th July, 2019 the applicant applied for a copy of Judgment.

The applicant received the said copies on 05th August, 2019, thereafter the applicant fall sick until on 04th October, 2019 when lodged the instant application. To fortify his submission the applicant's Advocate referred this court to a purported medical sheet which was marked as annexure '**SRM2**'. However, after my perusal, I noticed that '**SRM2**' is not a medical sheet rather a copy of Judgment in regard to Land Application No. 54 of 2016. In that regard, the delay due to his sickness cannot stand for lack of proof, therefore, the first ground on account of days of delay cannot hold water because there is no sufficient reason given by the applicant to move this court to grant his application.

On the second limb on illegality, I will determine the issue of whether the issue of illegality was vividly shown in the applicant's affidavit? I have scrutinized the applicant's affidavit and noted that he did not mention any illegality which attracts the Court of Appeal of Tanzania to determine his appeal. Additionally, the learned counsel for the applicant did not mention any disturbing feature or point of law related to Land Application No. 54 of 2016 which merits the consideration of the matter at hand by this court. 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 **Vaiambia'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 has to be stipulated in the affidavit and the same must be on apparent on the face of the record and the applicant is required to raise the same in his/her submission which was not done in the instant application.

That said, I find the application is demerit, as the applicant has failed to show any disturbing feature in the proceedings and decision of the High Court which is worth to be considered by this court.

In the upshot, I proceed to dismiss the application for want of merits. It is so ordered.

Order accordingly.

Dated at Dar es Salaam this date 05th August, 2021.



A.Z.MGEYEKWA

JUDGE

05.08.2021

Ruling delivered on 5th August, 2021 in the presence of the applicant.




A.Z.MGEYEKWA
JUDGE
05.08.2021