IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND CASE APPLICATION NO. 549 OF 2020

(Originating from Ruling and drawn order of Temeke District Land and Housing Tribunal before Hon. A. Rashid-Chairperson dated 26th March 2020 in Misc. Land Application No. 460 of 2018)

DOTO HAMZA MWINYIMVUA ..... APPLICANT

VERSUS

MOHAMED HASSANI MTONGA ..... RESPONDENT

RULING

Date of last Order: 04.08.2021

Date of Ruling: 11.08.2021

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 to institute an appeal against the decision of the District Land and Housing Tribunal for Temeke, at Temeke. The decision sought to be impugned is in respect of Misc. Land Application No. 460 of 2018 was delivered on 26th March 2020.

The applicant is brought under section 38 (1) of the Land Disputes Courts Act, Cap. 216. The applicant is seeking an extension of time to file an appeal out of time. The application has hit a snag. On 30th October, 2020 the respondent lodged a preliminary objection against the appeal which sought to impugn the decision of the tribunal on two points of preliminary objection which read:-

1. *That the application is grossly misconceived and bad in law.*
2. *That it is backed by inapplicable provisions of the law hence this court is not properly moved to hear the application.*

When the matter was called for hearing on 23rd March, 2021 by court order the matter was ordered to be argued by written submission, whereby the applicant filed his submission in chief on 06th April, 2021. The respondent was required to file his reply on 20th April, 2021. The respondent in his reply raised the said preliminary objections.

It was the applicant who started to kick the ball rolling. Submitting for his application, the applicant stated that judgment of the District Land and Housing Tribunal was delivered on 27th August of 2019. He added that

immediately he wrote a letter to the Chairman requesting copies of the Judgment, Decree, and proceedings to enable him to appeal to the High Court. He went on to state that he was not supplied with any copies instead he was informed that the requested documents are yet to be typed. The applicant complained that the ruling was not dated but was certified on 27th May, 2020, and signed by Chairperson A. Rashid. He added that the drawn order was signed by R. L Chenya showing the judgment was delivered on 26th March 2020. To fortify his submission, the applicant cited the case of **COSMAS CONSTRUCTION CO. LTD v ARROW GARMENTS LTD** (1992) TLR 127, the Court of Appeal of Tanzania held that:-

> *"He has to be told when the judgment is delivered so that he may, if he wishes, attend to take it as certain consequences may follow".*

Regarding the issue of illegality, the applicant pointed out the irregularities and illegalities found in the proceedings; that the District Tribunal disregarded the decisions of the Court of Appeal of Tanzania, therefore, reached an erroneous decision. That the District Tribunal as Revisional Tribunal failed to rectify errors which is apparent on the face of the record of the Ward Tribunal. That the illegalities and irregularities which have been committed by Ward Tribunal make even its decree to be

unexecuted as a dimension of the said disputed piece of land is not known. To support his submission, he cited the cases of **Transport Equipment LTD v D.P Valambhia** (1993) TLR 9, **Principal Secretary, Ministry of Defence and National Service v Duramp P. Valambhia** (1992) TLR 387 and **Kalunga and Company Advocate v National Bank of Commerce LTD** (2006) TLR 235.

On the strength of the above submission, the applicant beckoned upon this court to grant his application with costs.

In reply, the respondent submitted that the decision was delivered on 27th August 2019 and therefore computation of 60 days started from that day. He continued that the applicant misconceived the import of section 38 (i) of the Land Disputes Courts, Cap.216 [R.E 2019] and forgets the proviso of section 14 (i) of the Law of Limitation Act, Cap.89 [R.E 2019] to support his prayer for an extension for time hence application is against the applicant and hence this application is rendered naked and hence the court has to decide suo moto.

He went on to state that the doctrine of sufficient cause as provided under Section 14 (1) of the Law of Limitation Act is the same as the

condonation of delay. In order to seek condonation of delay, one must show the "sufficient cause" of delay. The general rule is to approach the court within the prescribed period of limitation.

The learned counsel for the respondent insisted computing time from a period of limitation stating from date of delivery of judgment is obvious that the applicant's application was filed beyond 60 days hence time barred. He went on to submit that in the absence of an application for extension of time to appeal out of time, the present application remains time barred and should be dismissed with costs.

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of application. That is the practice of the Court founded upon prudence which I could not overlook. Considering the respondent raised the preliminary objection earlier before the hearing of this application.

In determining the preliminary objections raised by the respondent in his submission that the application is grossly misconceived and bad in law and that it is backed by inapplicable provisions of the law. I have scrutinized the applicant chamber summons and noted the same defect that the applicant

has brought his application under section 38(1) of the Land Disputes Courts Act, Cap. 216 []R.E 2019] .while the proper citation for this application for extension of time should be Section 14 (i) of the Law of Limitation Act. Cap.89 [R.E 2019]. For ease of reference, I find it apposite to reproduce both provisions of law hereunder:-

Section 38 (1) of Land Disputes Courts Act, Cap. 216 [R.E 2019] reads as follows:-

> *"Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:*
>
> *Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired."*

Section 14 (1) of Law of Limitation Act, Cap.89 [R.E 2019] reads:-

> *"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension*

may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

Guided by the above provision of the law, the proper provision to move this court to grant the applicant's application is section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019]. It is noteworthy that wrong citation of enabling provision of the law was before a fundamental irregularity as was stated in the case of **China Henan Internationa Co-Operation Group v Salvand K.A Regasirar** (2006) TLR 220, the Court of Appeal was of the opinion that:-

" *Improper citation of an enabling provision of law is not a mere procedural technicality which can be tolerated under Article 107A of the Constitution URT but rather it goes to the improper exercise of jurisdiction.*

However, this has long been not the situation in recent cases after the principle of overriding objective to the effect that justice should not be denied in the long run. Care should be taken though while applying this principle in matters where there is clear negligence on the party who did the wrong or non-citation of proper provision for the law. In the case at hand,

the applicant cited section 38 (i) of the Land Disputes Court Act, Cap. 216 [R.E 2019] which relates to appeals originating from Ward Tribunal rather than citing the proper provision Section 14 (1) of Law of Limitation Act, Cap.89 [R.E 2019] which deals with the application for extension of time to appeal. I see that this is a curable defect on the part of the applicant which cannot deny him the right to be heard on his application for an extension of time. I, therefore, find the two objections raised by the respondent cannot stand, thus I proceed to overrule them and order the applicant to insert the proper citation of the law.

Now, I proceed to determine the application on merit. Regarding the issue of illegality, the applicant submitted that there are irregularities and illegalities in the proceedings at the Tribunal. He complained that the Ruling was not dated but he referred this court to the date when the Ruling was certified on 27th May 2020 and signed by A. Rashid, Chairperson, and the drawn order was signed by R. L Chenya Chairman. In my view, this is an

The legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same must be on the face of the record. 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 an 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 must be on apparent on the face of the record and the applicant is required to raise the same in his/her submission and affidavit. In the instant application, the applicant on paragraph 8 of the affidavit, mentioned that the District Land and Housing Tribunal disregarded the Ward Tribunal decision, I am afraid if this ground amounts to illegality. I am saying so because the

said illegality requires evidence to prove the said allegation. Taking to account that the case originated at the District Land and Housing Tribunal.

The applicant also has stated that he wrote a letter to the tribunal requesting to be supplied with a copy of Ruling so as to proceed with an appeal to High Court. However, the applicant did not attach any supporting document such as a letter requesting for copies. He has not stated when he was supplied with the said Ruling. Section 19 of the Law of Limitation Act, Cap. 89 [R.E 2019] provides that:-

> *"19 (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of the judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."*

Applying the above provision of the law, the period of time requisite for obtaining a copy of the decree or order is exclude. However, this court cannot embark upon granting the applicant's application based on the above provision of the law without been moved by the applicant. It was crucial for the applicant to state clearly the date when he obtained copies of said Ruling

and drawn order to enable this court to establish the days which the delay was made and exclude them when computing the period for application for extension. As was stated in the case of **Henry Leonard Maeda & Another v Ms. John Anael Mongi**, Civil Application No. 31 of 2013 that:-

> *"...the courts may take into consideration such factors as the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted."*

As pointed above the Ruling in question was delivered on 27th August 2019 and the instant application for extension of time to appeal out of time was filled before this court on 28th September 2020. Approximately 397 days elapsed after the delivery of the District Land and Housing Tribunal Ruling. This is an *inordinate delay*, disproportionately large or excessive, and the applicant has not given sufficient reasons and has failed to account for the days of delay.

In the case of **Benedicto S.B Mahela v Tanzania Bureau of Standards,** Misc. Application No. 632 of 2019, the Court held that:-

> *"in an application for extension of time, each day passes beyond prescribed time counts and has to be counted for."*

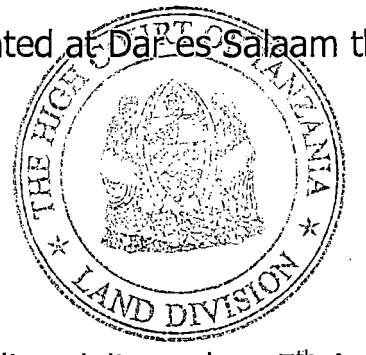
Applying the above provision of the law, the applicant has not shown why the delay of more than 60 days from delivery of Ruling. This court cannot blindly assume that the delay was excessive on the part of the Tribunal itself.

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 District Land and Housing Tribunal for Temeke which is worth being 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