

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 498 OF 2020

*(Originating from the Judgment of Mkuranga District Land and Housing
Tribunal in Land Application No. 36 Of 2016)*

**JUMA JUMA ZIGO (as administrator of the Estate
of the Late JUMA ZIGO) APPLICANT**

VERSUS

MIHARABI J. KIPANGA 1ST RESPONDENT

MOHAMED ABDALLAH 2ND RESPONDENT

RINJINO KAVEGA 3RD RESPONDENT

FAUSTINE MTWEVE 4TH RESPONDENT

PROTAS MTWEVE 5TH RESPONDENT

ADAM IBRAHIM ZUBERI 6TH RESPONDENT

MKOMBOZI KILEO 7THRESPONDENT

MAMA VICTOR 8TH RESPONDENT

IDD SEIF ZIGO 9TH RESPONDENT

RULING

Last Date of Order 17.08.2021

Last Date of Ruling 20.08.2021

A.Z. MGEYEKWA, J

This ruling is in respect of an application for extension of time for filing an appeal against the decision of the District Land and Housing Tribunal for Mkuranga at Mkuranga, in Land Application No. 36 of 2016. The

application, preferred under the provisions of Section 41 (1) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by the applicant's affidavit in which grounds on which extension of time is sought are set out. The respondents have stoutly opposed the application by filing a counter affidavit.

When the matter was called for hearing on 17th August, 2021. The applicant enjoyed the legal service of Mr. Abel Mangalaba, learned counsel and the respondent had the legal service of Mr. Mumwi Sadoki, learned counsel.

Submitting in support of the application, Mr. Mangalaba stated that the applicant has filed the instant application for extension of time to appeal out of time challenging the decision of the District Land and Housing Tribunal for Mkuranga. He urged this court to adopt the applicant's affidavit and form part of his submission. Mr. Mangalaba contended that the District Land and Housing Tribunal is tainted with illegality. He went on to state that the tribunal judgment did not disclose what was opinioned by the assessors and if the same were read over to the parties. Fortify his argumentation he referred this court to the case of **Kalunga and Company v NBC Ltd** [2006] TLR 235. He insisted that the court is required to take appropriate measures to put the matter straight. To

support his position he cited the case of **Attorney General v Tanzania Harbour Authority & Alex Msana Mwita**, Civil Application No.87 of 2016.

On the strength of the above argumentation Mr. Mangalaba urged this court to grant the applicant's application to enable the applicant file an appeal to this Court.

In his reply, Mr. Sadoki urged this court to adopt the respondent's counter affidavits. He strongly opposed the application by stating that there was no any illegality in the tribunal decision. He stated that the Chairman recorded the assessors' opinions. Fortifying his submission he refereed this court to page 8 of the District Land and housing Tribunal. Rebuking the applicant's Advocate sloppiness, Mr. Sodik contended that the affidavit that supports the application has not stated the issue of illegalities. Instead Mr. Mangalaba included the ground in his orally submissions from the bar. He claimed that the learned counsel for the applicant has raised a new issue while the same was supposed to be mentioned in the applicant's affidavit. To support his position he cited the case of **The Registered Trustees of St. Joseph Da es Salaam v The Chairman Bunju Village Government & 4 others**, Civil Appeal No. 147 of 2016 (unreported).

Mr. Sadoki did not end there he contended that the applicant on paragraph 15 of his affidavit claimed that he was sick. He lamented that the Judgment was delivered in May, 2020 and the applicant was admitted in August, 2020, 40 days lapsed. He added that the applicant was discharged on 05th August, 2020, and lodged the instant application on 17th August, 2020 almost 15 days elapsed from the date when he was discharged. Insisting, Mr. Sadoki stated that each day of delay must be accounted for and state reasons thereof. To bolster his position he cited the case of **FINCA (T) Limited and another v Boniphace Mwalukisa**, Civil Application No. 589/12 of 2018.

He further claimed that the applicant has failed to disclose the grounds for his delay therefore the application is required to be dismissed for failure to raise sufficient reasons. To fortify his position he cited the **Cristabella Ludovick Mtani v Nimrod Sospeter Kajeri & another**, Land Revision No. 10 of 2019 HC at Mwanza. Mr. Sadoki did not end there, he claimed that the applicant was not sick, the respondent took effort to write a letter to Mwananyamala Hosipital they replied and stated that the applicant was not admitted in their hospital.

He continued to submit that the applicant has no greater chances to succeed in the said appeal because the applicant received a letter of administration after 30 years after the demise of his late father as a result

he suit was out of time. To buttress his position he cited the case of **Lucy Lange v Samwel Meshack Mollel & 2 others**, Land Case No. 323 of 2016 (unreported), whereas this court dismissed a case after a lapse of 20 years.

On the strength of the above submission, Mr. Sadoki beckoned upon this court to dismiss the applicant's application with costs.

In his brief rejoinder, Mr. Mangalaba reiterated his submission in chief. He added that the issue of time limitation was not raised at the tribunal. He stated that it is not a legal requirement to state the issue of illegality in the affidavit. He distinguished the cited case of Registered Trustees (supra) from the instant application, insisting he stated that the ground for illegality is sufficient ground for extension of time even if the applicant has not accounted for the days of delay.

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

Having gone through the submissions from both parties it would appear to me to determine as to *whether the applicant has established sufficient reason for this court to enlarge time.*

It is settled law that an application for extension of time is grantable where the applicant presents a credible case to warrant the grant of such

extension. This means that a party asking for an extension of time has a duty to justify the reason for the extension. The law also requires the applicant to act equitably. See the Supreme Court of Kenya's decision in *Nicholas Kiptoo Arap Korir Sa/at v. IEBC & 7 Others*, Sup. Ct. Application 16 of 2014). Gathering from the submissions, the applicant's quest for extension of time is premised on one ground; irregularities in the ruling sought to be impugned.

Addressing the issue of illegality, the Court of Appeal in its numerous authorities stated that a point of law must be that of sufficient importance and must also be apparent on the face of the record. This requirement got a broadened scope in the epic decision of the Court of Appeal in the case of **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 when the Court of Appeal of Tanzania referred to the **Lyamuya's** case, it made the following observations:-

*"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 VALAMBIA'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].

In the case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported), the Court of Appeal of Tanzania held that:-

*" 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 Valambhia'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, (but), not one that would be discovered by a long drawn argument or process." [Emphasis added].*

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter affidavit. The illegality raised by the learned counsel for the applicant touches on the District Land and Housing Tribunal decision. He complained that the Chairman did not consider the assessors' opinion in his judgment. The learned counsel for the applicant has encountered in trying to reverse the decision of the District Land and Housing Tribunal for Mkuranga.

The respondent's Advocate strongly opposed Mr. Mangalaba's submission for the reason that the issue of illegality cannot stand because the Chairman considered the assessors' opinion in his judgment and he also complained that the alleged point of illegality was not included in the supporting affidavit. Instead, it was raised by the learned counsel for the applicant during the hearing. I had to go through the applicant's affidavit to find out whether the applicant included the issue of illegality in his affidavit and found that the applicant did not raise an issue of illegality.

The position in our jurisprudence is settled on the matter. It is to the effect that, in determining whether the application has met the required conditions for its grant, a conclusion is drawn from the affidavit that supports the application. The rationale for this is not hard to find. It stems from the fact that an affidavit is an evidence, unlike submissions which are generally meant to reflect the general features of a party's case and are

elaborations or explanations on evidence already tendered. This was observed by the Court of Appeal of Tanzania in the case of **The Registered Trustees of Archdiocese of Dar es Salaam v Chairman Bunju Village Government and Others**, Civil Application No. 147 of 2006 (unreported).

Thus, while the contention raised by Mr. Sadoki is in sync with the foregoing position, I am convinced that the point of illegality has been raised through a submission from the bar. The alleged illegality is not specifically pleaded in the applicant's supporting affidavit, and what Mr. Mangalaba did, through his submission, was to introduce a new ground of illegality and he did not bother to submit on the reasons for the delay. Instead he completely banked on the ground which was not stated by the applicant in his affidavit. Therefore, I fully subscribe to Mr. Mangalaba submission that the issue of illegality is an afterthought. The question of illegality in the conduct of the trial proceedings does not arise. The same cannot, as a matter of law, be termed as illegality thus cannot be a ground for applying for extension of time.

It should be noted that extension of time is not a right of a litigant against a Court but a discretionary power of courts which litigants have to lay a basis [for] where they seek [grant of it] the same was held by the Supreme Court of Kenya in the case of **Nicholas Kiptoo Arap Korir Salat v IEBC**

& 7 Others, Sup. Ct. Application No. 16 of 2014. I recapitulate that I accede to Mr. Sadoki's views that the applicant's application is devoid of merit.

The upshot of the above is that I am inclined to disallow the application for extension of time to file an appeal against the District Land and Housing Tribunal for Mkuranga. The application is dismissed with costs.

Order accordingly.

Dated at Dar es-Salaam this 20th August, 2021.

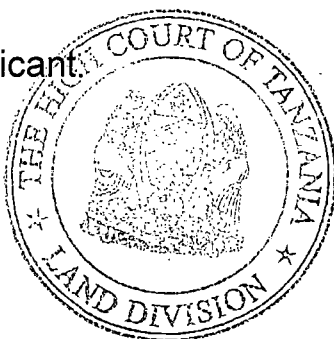



A.Z. MGEYEKWA

JUDGE

20.08.2020

Ruling delivered on 20th August, 2021 in the presence of Mr. Aldof Francis, learned Advocate for the respondent in the absence of the applicant.




A.Z. MGEYEKWA

JUDGE

20.08.2021

Right to appeal fully explained.