

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. APPLICATION NO.330 OF 2020

(Originating from Civil Case No. 11 of 2013 Mbezi Juu Ward Tribunal and
Land Appeal No. 119 of 2014 of the District Land and Housing Tribunal for
Kinondoni at Mwanyamala)

TERESIPHORY MUGANYIZI ANTHONY APPLICANT

VERSUS

MERCHADES OSWALD KALEMELA RESPONDENT

RULING

Date of last Order: 15.09.2021

Date of Ruling 20.09.2021

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under the provisions of section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] to extend time within the applicant to file an appeal before this court against the Judgment of the District Land and Housing Tribunal for Kinondoni in Land Appeal No. 119 of 2014.

The application is supported by an affidavit deposed by Teresiphory Muganyizi Anthony, the applicant. The application was not opposed by the respondent for failure to file a counter affidavit.

When the matter was called for hearing, the applicant urged this court to dispose of the application by way of written submissions whose filing was to conform to the court schedule. The applicant was to prefer his submission in chief on 2nd September, 2021 whereas the applicant conformed to the filing schedule. The applicant enjoyed the legal service of Mr. Robert Rutaihwa, learned counsel.

In his submission in support of the application, Mr. Rutaihwa, learned counsel for the applicant, has begun by praying for this court to adopt the applicant's application and form part of his submission. The learned counsel for the respondent started with a brief background of the facts which led to the instant application which I am not going to reproduce in this application.

Mr. Rutaihwa asserted that there is an issue of illegality of the decision of the Ward Tribunal that it had no jurisdiction to determine the matter. The learned counsel for the applicant contended that there was improper composition of members of tribunal which goes to the root of the matter. To support his submission he referred this court to paragraph 9 of the applicant's affidavit. he went on to submit that the composition of the

Ward Tribunal has been looked at by the courts in our jurisdiction as the one vesting jurisdiction to the tribunal. He added that such improperness is interpreted to render the proceedings a nullity. Fortifying his submission he cited the case of **Mwita Waring v Pilly Sicha**, Misc. Land Appeal No. 70 of 2020 HC (Musoma) (unreported). The Court of Appeal of Tanzania observed that where proceedings are marred with irregularities for want of quorum of members, the same is null and void.

Mr. Rutaihwa continued to submit that another illegality pertinent on the face of the record worth determination by this Court by way of revision is the question of the validity of the judgment of the Ward Tribunal which is lacking in substance. He added that there is no factual analysis to form the basis of the decision nor are there reasons for the decisions. Insisting, he claimed that the judgment lacks the essential ingredients of a judgment. It was his view that the omission constitute illegality worth scrutiny by this court. He claimed that the said illegality is substantiated by revision for that reason he seek the indulgence of this court.

The learned counsel also raised the issue of non-joinder of necessary party who is the seller of the disputed premises. He claimed that the involvement of the necessary party was necessary as the consequence should not have remained to the purchasers only. Mr. Rutaihwa submitted that it is a legal requirement that non-joinder of the seller vitiates the suit

and the previous proceeding. To bolster his submission he cited the case of **Money Bridge Properties (E.A) Ltd v Meru District Council**, Land Case No. 24 of 2019 HC (unreported) whereas the court ruled out that the seller of the suit land is a necessary party to the suit. Stressing, Mr. Rutaihwa submitted that the ground of illegality is a good ground for extension of time. To support his position he cited the cases of **Principal Secretary Ministry of Defence and National Service Ltd v Devram Valambhia** (1992) TLR 185 and **TANESCO v Mufungo Leonard Majura & 15 Others**, Civil Application No. 94 of 2016 CAT (unreported).

On the strength of the above submission, Mr, Rutaihwa, the learned counsel for the applicant beckoned upon this court to grant the applicant's application with costs.

Having carefully considered the submissions made by the learned counsels in their oral 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.

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 keenly followed the application and the grounds deposed in the supporting applicant's affidavit, Mr. Rutaiwa has shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decision of the District Land and Housing Tribunal for Kinondoni. The applicant's Advocate has based his submission on the ground of illegality whereas the applicant's Advocate alleges that the decision of the Ward Tribunal in Case No. 11 of 2013 is tainted with illegality.

The applicant in paragraph 9 stated that the illegality resides in the powers exercised by the trial tribunal whereby the composition of the

Ward Tribunal members was contrary to the requirement of the law. The judgment missed the essential ingredients of a valid judgment and necessary parties were joined in the case. Mr. Rutaihwa in his submission cemented that the intended revision stands overwhelming chances of success since the trial tribunal proceedings and judgment were tainted with irregulars and illegalities.

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].*

Applying the above authorities, in my view, the raised illegality of necessary parties to join the suit has meet 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.

In sum, I proceed to grant the applicant's application to lodge a revision before this court within twenty-one days from today.

Order accordingly.

Dated at Dar es Salaam this date 20th September, 2021.




A.Z.MGEYEKWA

JUDGE

20.09.2021

Ruling delivered on 20th September, 2021 whereas both parties were present.




A.Z.MGEYEKWA

JUDGE

20.09.2021