

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPLICATION NO. 446 OF 2019

(Arising from the decision of the District Land and Housing Tribunal for
Kinondoni District at Mwanayamala)

JAMES WILSON WEDA APPLICANT

VERSUS

SAID ABDALLAH ALUTE RESPONDENT

RULING

Date of Last Order: 13/08/2021 &
Date of Ruling: 20/08/2021

S.M. KALUNDE, J.:

This is an application for extension of time to lodge an appeal out of time brought under **section 38 (1)** of **The Land Disputes Court Act, cap. 216 R.E. 2019**. The application is supported by an affidavit dully deposed by James Wilson Weda, the applicant. On the other hand, the application has been counterattacked through a counter affidavit deponed by Said Abdallah Alute, the respondent.

The historical background leading to this application is as follows: Before the Msagani Ward Tribunal (**"the ward tribunal"**), the applicant had unsuccessfully sued the respondent claiming to be the suit land. The dispute at the ward tribunal was registered as **Case No. 176 of 2014**. In

its decision handed down on 15th October, 2014, the Msagani Ward Tribunal held that the respondent was the rightful owner of the suit land.

Aggrieved by that decision, the appellant lodged **Land Appeal No 129 of 2014** before the District Land and Housing Tribunal for Kinondoni at Mwananyamala (**"the DLHT"**). Upon hearing both parties, on 17th August, 2015, the DLHT (**Hon Makwandi, P.J.** successor Chairman) upheld the decision of the Ward Tribunal and dismissed the appeal and ordered the applicant to foot the cost for the respondent.

The applicant was not happy with the decision of the DLHT, being out of time, he filed Misc. **Land Application No 42 of 2017**, in which he sought extension of time to lodge an appeal out time. Unfortunately, on 21st March, 2019, this Court (**Hon Masabo, J**) struck out the application for being incompetent. Still desirous to pursue the appeal, the applicant filed the present application.

Hearing of the application was conducted through written submissions. At the hearing **Mr. Robert Rutaihwa**, learned advocate prepared submission of the applicant while **Mr. Alute Saimon Lesso Mughwai** learned counsel drafted and file submissions for the respondent. All submission were filed in accordance with the schedules allotted by the court. Hence the present ruling.

In accordance with the accompanying affidavit and submissions, the main ground for extension of time advanced by the applicant is that there are fundamental irregularities in the decision of the ward tribunal that requires the attention of this Court. The respective paragraph provides as follows: -

*"10. THAT, the latter advocate after perusing the documents advised me that **there are fundamental issues touching the jurisdiction of the ward tribunal and entire proceedings.** Further that the quorum of the tribunal was improperly constituted."*

[Emphasis added]

Submitting in support of the application Mr. Rutaiwa submitted that, the proceedings before the ward tribunal was tainted with illegalities and irregularities that affected the jurisdiction of the ward tribunal. In explaining the irregularities, the counsel argued that, in the proceedings, the secretary of the tribunal was included as a member of the tribunal and that the quorum of members did not indicate the number of female members as required by law. To support the above view the counsel cited the Section 11 of **The Land Disputes Court Act** (Supra) and the case of **Tanzania Electric Supply Co. Limited v. Mfungo Leonard Majura and 14 Others**, Civil Application No. 94 of 2016 (unreported).

On the strength of the above argument and authorities, the counsel asked the court to grant the application so that the illegality may be addressed.

In response, the counsel for the respondent Mr. Alute reminded the court that, in application of the present nature the applicant is duly bound to account for every day of the delay. To support that position he cited the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported).

The learned counsel added that the applicant was duly bound to show "**good and sufficient cause**" for the application to be granted. As to what amounts to "**good and sufficient cause**", the counsel referred the court to the case of **Ngao Godwin Losero vs Julius Warabu**, (Ruling) (Civil Application No. 10 of 2015) [2016] TZCA 10; (13 October 2016 TANZLII) the Court cited the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). In that case, the Court reiterated the following guidelines for the grant of extension of time: -

- (a) The applicant must account for all the period of delay.
- (b) The delay should not be inordinate.

- (c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.
- (d) If the court feels that there other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

On the question of illegality, the counsel argued that the allegations are a mere afterthought as they were not raised before the DLHT. The counsel argued that, for illegality to constitute a good cause, the alleged point of law must be of sufficient importance and must also be apparent on the face of records such as the question of jurisdiction. To support the view he cited the case of **Ngao Godwin Losero Vs Julius Warabu** (Supra) at page 7. The counsel added that the point raised by the applicant did not raise any point of law of sufficient significance nor was raised point apparent on the face of record.

In the end, the counsel for the responded concluded that there was no **“good and sufficient cause”** for the Court to exercise its discretion in favour of the applicant. He prayed that the application be dismissed with costs.

In rejoining Mr. Rutaiwa cited the case of **Ngao Godwin Losero Vs Julius Mwarabu** (Supra) for an argument that illegality was one of the factors to be considered in determining existence of “**good and sufficient cause**”. The counsel added that, the composition of the ward tribunal was not a mere after thought, but a fundamental irregularity that went to the root of the case as it affected the jurisdiction of the tribunal. The counsel reasoned that, being a jurisdictional, the point may be raised at any stage including appellate stage. The counsel insisted the application be granted with costs.

Having understood the substance of the parties’ arguments, the crucial issue in this application is whether there is good and sufficient cause for this Court to grant the orders sought.

Section 38 (1) of **the Land Disputes Courts Act** (supra) which has been invoked by the applicant to move the Court provides: -

"38.-(1) 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."[Emphasis added]

My understanding of the above provision is that the power of the Court to extend time is discretionary and it can be exercised where the applicant demonstrates "**good and sufficient cause**". As alluded to by the counsel for the respondent, what amount to "**good and sufficient cause**" has not been defined in the statute, instead Court's through judicial decisions, have developed factors to be considered in examining whether or not there is "**good and sufficient cause**". These factors include: whether the applicant has accounted for all the period of delay; or whether the delay not be inordinate; the applicant must also show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and if the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

This stance was emphasized in the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported); **Julius Francis Kessy & Two Others vs Tanzania Commission for Science and Technology**, Civil Application No. 59/17 of

2018, CAT at Dar es Salaam (unreported) and subsequently in **Ngao Godwin Losero vs. Julius Mwarabu** (supra).

In addition to that, as rightly pointed out by Mr. Alute, the applicant is duty bound to account for each day of the delay. That view was expressed in **Bushiri Hassan vs. Latifa Mashayo** (supra) where the Court of Appeal stated that: -

"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing period within which certain steps have to be taken."

That said, the crucial issue for my determination is whether there is **"good and sufficient cause"** to warrant this Court to exercise its discretion to grant extension of time to file an appeal.

In his account for the delay, the applicant has, under paragraph 10 of the affidavit filed in support of the application and submissions in Court, shown that extension of time should be granted to cure the illegalities and irregularities in the proceedings of the Ward Tribunal. Admittedly, the intended appeal is late by almost six (6) years. But Mr. Rutaiwa reasoned that, even if the applicant has failed to account for each day of the delay, the decision of the Ward Tribunal is problematic.

In explaining the illegalities, Mr. Rutaiwa submitted that, the composition of the tribunal was wrongly recorded as it included the secretary as a member of the tribunal; and that the gender of each member was not indicated hence it was difficult to identify whether the Ward Tribunal was properly constituted. The counsel insisted that, the issues was crucial as it went to the root of the case affecting the jurisdiction of the ward tribunal.

On the hand, Mr. Alute argued that the alleged illegality did not raise and point of legal significance and that it was not apparent of the face of records. He insisted that, the application be dismissed with costs for lack of merits.

It is now a settled position of law that where the point of law at issue is an illegality of the decision sought to be challenged, it can constitute a sufficient cause [see **VIP Engineering and Marketing Limited and Three Others vs. Citibank Tanzania Limited Consolidated**, Civil Reference No. 6, 7 and 8 of 2006 TZCA (Unreported)].

In the case of **Principal Secretary Ministry of Defence and National Service vs Duram P. Valambhia** [1992] TLR 182; [[1992] TZCA 29; (03 July 1992); 1992 TLR 185 (TZCA TANZLII)] when the Court of Appeal was faced with the question of illegality, it went to hold that: -

"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 right".

Equally in **Tanzania Electric Supply Co. Limited v. Mfungo Leonard Majura and 14 Others** (Supra) when dealing with an issue of illegality the Court of Appeal concluded that: -

"Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that, there is a complaint of illegality in the decision intended to be impugned, in line with what was held in the above quoted decisions, it suffices to move the Court to grant to grant the extension of time so that, the alleged illegality can be addressed by this Court."

Having considered all the circumstances before me, I am satisfied that there is good and sufficient cause for this Court to exercise its discretion in granting the application so that the alleged illegalities may be addressed in appeal. In that regard, the application for extension of time is granted. The applicant

is to file the appeal within 21 days of obtaining a certified copy of this decision. I make no orders as to costs.

Order accordingly.

DATED at DAR ES SALAAM this 20th day of AUGUST, 2021.




S.M. KALUNDE

JUDGE