

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 335 OF 2021**

*(Originating from the Judgment of the District Land and Housing Tribunal for  
Kinondoni District (Hon. Mlyambina, Chairman) in Land Application No.42 of  
2009 dated 22.01.2013)*

**MONICA MJUNGU ..... APPLICANT**

**VERSUS**

**LEONARD G.KISHALULI ..... 1<sup>ST</sup> RESPONDENT**

**ANUAR R. KISHALULI ..... 2<sup>ND</sup> RESPONDENT**

**ASHURA S. SINGANO ..... 3<sup>RD</sup> RESPONDENT**

**SAMWEL KARUNDE ..... 4<sup>TH</sup> RESPONDENT**

**AYSHA A. KAPELA ..... 5<sup>TH</sup> RESPONDENT**

**ALFAN S. MAHADHI ..... 6<sup>TH</sup> RESPONDENT**

**GOLIATH MBEMBELA ..... 7<sup>TH</sup> RESPONDENT**

**SIMON ANDREA ..... 8<sup>TH</sup> RESPONDENT**

**BIBI MAHIMBO ..... 9<sup>TH</sup> RESPONDENT**

**YUSTO N. MKUMBI ..... 10<sup>TH</sup> RESPONDENT**

**JOSEPH E.MSI ..... 11<sup>TH</sup> RESPONDENT**

**RULING**

*Date of Last order: 19.08.2021*

*Date of Judgment: 15.09.2021*

**A.Z. MGEYEKWA, J.**

I am called upon in this matter to decide whether this court should exercise its discretion under section 41 (2) of the Land Disputes Court Act Cap.216 [R.E 2019] to extend time within the applicant to lodge an appeal to this court against the decision of this District Land and Housing Tribunal for Kinondoni in Application No. 42 of 2009 22<sup>nd</sup> January, 2013. The application is supported by an affidavit deposed by Ms. Monica Mjunga, the applicant. The respondents resisted the application and filed a joined counter-affidavit deposed by all respondents.

When the matter was called for hearing on 19<sup>th</sup> August, 2021, the applicant had the legal service of Mr. Philemon Mujumba, learned counsel whereas the respondents did not show appearance. By the court ordered and consent by the parties, the application was argued by way of written submissions whereas, the applicant submitted her application in chief on 27<sup>th</sup> August, 2021 and the respondent's Advocate filed his reply on 6<sup>th</sup> September, 2021. The applicant filed her rejoinder on 10<sup>th</sup> September, 2021.

In the written submissions in support of the appeal, the applicant stated that she seeks an extension of time to file an appeal to this Court. The applicant's Advocate paraded two reasons for the applicant's delay to file this application timely namely; sickness and illegality.

The learned counsel for the applicant on the first limb argued that the applicant was seriously sick, suffering from paralysis caused failure of such promptness to be effected as evidenced in the attached medical report which is annexure PK-2.

On the second limb, Mr. Mujumba submitted that the applicant has lodged this application to this court because there is great chances to succeed in the appeal if orders herein are granted where as indicated that the Judgment to be challenged in the appeal, the trial Chairman failed to consider the undisturbed existence of the of the applicant in the suit land for more than 12 years, effectively from 1998 to 2009 as per annexure PK-1. Where the respondents trespassed to the land in 2010 as per the admitted sale agreement which is annexure PK-3. To cement his submission, the learned counsel for the applicant cited the cases of **Kalunga & Company Advocates v National Microfinance Bank** (2006) TLR 235 (CAT) and **Engineering & Marketing Limited & Others v Citibank Tanzania Limited**, Consolidated References No.6, 7 and 8 of 2006 (CAT) (unreported) which ruled out that the issue of illegality constitutes sufficient reason to extend time.

The applicant Advocate also argued that the respondent's counter-affidavit is incurably defective for being signed the 11<sup>th</sup> respondent who was recorded to have died and that all the signatures in the counter affidavit is of the same handwriting.

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

In reply, the learned counsel for the respondents contended that the applicant had filed an Application No. 17/2021 seeking the same relief in the instant application, later the applicant withdrew the application before Hon. K.T.R.Mteule J. The learned counsel wondered why the applicant has decided to file the same application of the same relief for grant of extension of time. Submitting on the grounds for extension of time, the counsel for the respondents Advocate argued that this court needs to determine the following:-

- 1) That the applicant has not adduced any sufficient ground that warrant's grant for the sought extension of time*
- 2) The delay is ordinate*
- 3) The applicant has failed to account for delay of each day.*

*4) That there is no illegality at all in the Judgment of the District Land and Housing Tribunal*

On his submission, the learned counsel for the respondents argued that applicant's the reason for "long illness due to paralysis" cannot amount to sufficient reason in terms of section 41 (1) of the Land Disputes Courts Act , Cap. 126, [R.E 2019]. Mr. Said Aziz contended that the Judgment was delivered on 22<sup>nd</sup> January, 2013 and that this application was lodged on 08<sup>th</sup> July, 2021 a lapse of 9 years. He went on to argue that the applicant did not indicate when she admitted to the said hospital, the extent how the alleged paralysis disabled her from pursuing her appeal for a period of 9 years. It was his view that the purported delay of illness is not sufficient to warrant this court to extended time to the Applicant.

Fortifying his position, Mr. Aziz referred this court to the case of **Victoria Real Estate Development Limited v Tanzania Investment Bank & 3 Others**, Civil Application No.225 of 2014. (Unreported), the Court held that the applicant is duty-bound to show good cause for having failed to do what ought to do within the prescribed time.

The learned counsel for the respondent further submitted that the applicant's affidavit statements are silent on when she fell sick and therefore he stated that the applicant has failed to meet the legal and

jurisprudential test set in the case of **Athuman Rashid v Boko Omar** (1997) TLR 146.

On the strength of the above submission, the applicant stressed that there is no any illegality on the intended appeal. He urged this court to dismiss the applicant's application with costs for want of merit.

In rejoinder, the learned counsel for the applicant reiterated his submission in chief. And added that the withdrawn order does not restrain a party to file another application.

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 and the respondent's counter-affidavit, Mr. Said Aziz 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. The applicant's Advocate has raised two main limbs for his delay, failure to account for each day of delay, and illegality. On the first limb of delay. The applicant's main ground for her delay is based on sickness and the same are mentioned in paragraphs 3 and 4 of the affidavit. To prove her assertion she tendered a letter dated 10<sup>th</sup> May, 2021 with the following content *"Above named patient has been our patient for more than 10 years to current, attending regular Medical Clinic and Physiotherapy regularly"*. As per the wording of the letter it shows

that the applicant was attending regular checkups and the said letter is a photocopy that does not show the Hospital name. In my view the alleged hospital letter does not suffice to prove that the applicant's sickness prevented her from attending his case and the same does not mention the specific dates when the applicant was unwell. The learned counsel for the applicant in his rejoinder insisted that the applicant's illness was serious, she was paralyzed. The same was required to be proved by the Doctor, reading the alleged hospital letter the Doctor's observation was generally and the same cannot move this court to grant her application based on this first limb. In that essence, I have to say that the applicant has not accounted for each and every day of delayed.

With respect to the second limb, the illegality is alleged to reside in the powers exercised by the District Land and Housing Tribunal for Kinondoni. In paragraph 5 of the applicant's affidavit, the applicant alleges that the decision of the District Land and Housing Tribunal for Kinondoni is tainted with illegality. In his submission, the learned counsel for the applicant alleged that the tribunal failed to consider the undisturbed existence, use, and development made upon the suit land which needs evidence to prove it is not on the point of law.



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 that has been cited by the applicant is not on point of law. In my view, the raised illegality is not a good ground for extension of time to file an appeal challenging the decision of the District Land and Housing Tribunal for Kinondoni in respect to Land Application No. 42 of 2009, its discovery requires long-drawn argument or process. The same does not 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.

Concerning the issue of defective counter-affidavit, the same was required to be raised before the hearing of this application, thus, I cannot determine it at this juncture because the said point of objection requires the court to go through the records of the court to ascertain whether the 11<sup>th</sup> respondents passed away. Therefore this point is disregarded.

In sum, I hold that the applicant has not passed the legal threshold set for extension of time. Accordingly, the application is hereby dismissed.

Order accordingly.

Dated at Dar es Salaam this date 15<sup>th</sup> September, 2021.



  
**A.Z.MGEYEKWA**  
**JUDGE**  
15.09.2021

Ruling delivered on 15<sup>th</sup> September, 2021 in the presence of the applicant and Mr. Kiwango, learned counsel holding brief for Mr. Said Azizi, learned counsel for the respondent.



  
**A.Z.MGEYEKWA**  
**JUDGE**  
15.09.2021