

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.551 OF 2021**

(Originating from the District Land and Housing Tribunal for Ilala in Land
Application No.171 of 2013 and 309 of 2015)

NEHEMIA STEPHEN KEKEZA APPLICANT

VERSUS

ADAM SALUM LIBUNDA 1ST RESPONDENT
RAYMOND GILBERT URONU 2ND RESPONDENT
MARIA MELKIOR EKSAVER 3RD RESPONDENT
ZELDA PAUL BAKAMA 4TH RESPONDENT
SOSTENES KARUMUNA 5TH RESPONDENT
ALBERT JOHN PETER 6TH RESPONDENT
TAUSI SHABAN KISENGA 7TH RESPONDENT
SAMOYE SAID KAMBONA 8TH RESPONDENT
FREDY OWINO OGUDE 9TH RESPONDENT
SIWEMA ABIBU 10TH RESPONDENT
MIRAJ MOHAMED LISONGOLE 11TH RESPONDENT
STELA LEONARD BASHANGE..... 12TH RESPONDENT
ELIKILA A. MWANGA 13TH RESPONDENT
EDWARD POTDAS PONSIAN 14TH RESPONDENT
RAMADHAN JOSHWA SULTAN 15TH RESPONDENT
JAIDA ADAM MTABAZI 16TH RESPONDENT
KHALIFA ABDUL KINASHA 17TH RESPONDENT

RULING

22nd November & 22nd November, 2021

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under sections 51 (1) and 41 (2) of the Land

Disputes Courts Act, Cap. 216 [R.E 2019] to extend time to file an appeal out of time against the decision of the District Land and Housing Tribunal in Land Application No.171 of 2013 and 309 of 2015. The application is supported by an affidavit deponed by Ms. Nehemia Stephen Kekeza, the applicant. The respondents resisted the application and have demonstrated their resistance by filing a joined counter-affidavit deponed by Ms. Josephine Boniphace, learned counsel for the respondents.

When the matter was called for hearing on 22nd November, 2021, the appellant enjoyed the legal service of Mr. Daniel, learned counsel whereby the respondents enjoyed the legal service of Mr. Abraham, learned counsel.

In support of the application, Mr. Daniel urged this court to adopt the applicant's affidavit and form part of his submission. The learned counsel for the applicant was brief and straight to the point. He submitted that their reasons for application for extension of time are based on two main reasons; technical delay and irregularities of the impugned decision of the District Land and Housing Tribunal. Starting with the technical delay, it was his submission that it was not deliberate since, after the delivery of the decision on 07th July, 2021, the applicant wrote a letter to obtain copies for purposes of preparing and filing his appeal. To fortify his submission,

Mr. Daniel referred this court to paragraphs 7, 8, and 9 of the applicant's affidavit.

Mr. Daniel went on to submit that the applicant wrote a reminder letter on 28th June, 2021 requesting copies of judgment and decree and he received the said copies on 28th September, 2021. He added that on 12th October, 2021 he filed the instant application. Mr. Daniel stated that the applicant was not negligent since he promptly filed the instant application. Insisting, he argued that technical delay is a sufficient cause of action. To buttress his position referred this court to the case of **Fortunatus Masha v Willian Shija** TLR 154 (1997).

Regarding the issue of irregularity, the learned counsel for the applicant submitted that they want to challenge the impugned decision of the District Land and Housing Tribunal. Supporting his submission he referred this court to paragraphs 6 (1) to 5 (4) of the applicant's affidavit. The learned counsel said that good cause is a sufficient reason for an extension of time. To bolster his submission he cited the case of **Samwel Munsiro v Chacha Mkwabe**, Civil Application No.539 of 2019. He went on to state that the 1st respondent had no *locus standi* in land Application No. 171 of 2013. He added that the 1st respondent introduced himself as an administrator of the estate of the late Salum Shomori Linbunde but he has

not lodged the suit as an administrator of the estate. He referred this court to paragraph 6 (2) and annexure Kekeza1.

The learned counsel for the applicant went on to submit that the 1st respondent was not included in Application No. 309 of 2015 while he was a necessary party since the remaining respondents claimed that they bought the suit land from the 1st respondent. He faulted the Chairman faulted himself for dismissing the counter claim for want of prosecution thus it was illegal to proceed with another case since the applicant had no *locus standi* with the evidence of 2nd to 17th respondents in land Application No. 309 of 2015. He claimed that in the two cases the applicant was impleaded by 2 different parties, in the Land Applicant No. 171 of 2013 the parties are Adam Salum, who had no *locus standi*, and in Land Application No. 309 of 2015, the party is Raymond & 15 others.

The learned counsel for the applicant did not end there, he claimed that the applicant was not afforded the right to be heard. Supporting his submission he referred this court to paragraph 6.4 of the applicant's affidavit. He went on to state that the applicant was not informed when the judgment was scheduled to be delivered. He further stated that it is trite law that where there is illegality on the face of the record in the impugned decision, it is a good reason for an extension of time. Fortifying his submission he cited the cases of **Principal Secretary Ministry of**

Defence and National Service v Devram Valambhia (1992) TLR 182 and **Transport Equipment LTD v D.P Valambhia** (1993) TLR 91.

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

Objecting to the application, Mr. Abraham strongly objected to the applicant's application. He lamented that the applicant has not stated good reasons to move this court to grant his application for an extension of time to file an appeal out of time. The learned counsel for the respondent argued that a notice of appeal is not lodged and the applicant has not attached a letter from the District Land and Housing Tribunal requesting copies of Judgment and Decree. He spiritedly argued that the technical delay is not supported by any letter. He distinguished the cited case of **Fortunatus** since the applicant in the recent application has not attached a copy of the notice of appeal.

Concerning an issue of illegality, Mr. Abraham argued that a counter claim is a suit. It was his submission that consolidating the Land Application No. 171 of 2013 and Land Application No. 309 of 2015 was correct since the same had the same subject matter. He added that the Chairman joined the cases to reach a proper decision. He insisted that after the tribunal dismissed the Land Application No. 171 of 2013, the counter claim remained. He contended that the applicant was heard, he

filed written submission and he prayed for the tribunal to adjourn the case several times.

Regarding the issue of the necessary party. He argued that the parties did not want to join the 1st respondent in their case. He added that there was a letter of administration of estate therefore the applicant cannot claim that the 1st respondent had no *locus standi*. Insisting he claimed that it was important to consolidate the two cases therefore there was no any illegality in the impugned decision of the tribunal.

In rejoinder, the learned counsel for the applicant maintained his submission in chief. He stated that there is no any requirement to file a notice of appeal at the District land and Housing Tribunal to the High Court. Stressed that there are issues of illegality that attracts the attention of this court and insisted that there were two cases

On the strength of the above submission, Mr. Daniel urged this court to allow the applicant's application with costs.

Having carefully considered the submissions made by the learned counsels in their written submission and examined the affidavits and counter-affidavits, the issue for our determination is ***whether the applicant is meritorious.***

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit with relevant authorities. 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, it is settled law that an application for extension of time is grantable where the applicant presents a credible case to warrant a 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 in an equitable manner. This requirement had a broadened scope in the impressive decision of the Court of Appeal in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, the Court of Appeal of Tanzania in Civil Application No. 2 of 2010 (unreported), wherein key conditions for the grant of an application for extension of time were laid down. These are:-

- " (a) The applicant must account for all the periods 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 he intends to take.
- (d) If the Court feels that there are 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."

The applicant's reliance on the quest for extension of time is based on technical delay and irregularities and illegalities. As amply submitted by Mr. Daniel, he has convinced this Court to find that the applicant's delay falls under technical delay which is explicable and excusable as stated in the case of **Fortunatus Masha** (supra). Since the learned counsels for the applicant and learned counsels for the first and second respondents are in unison concerning technical delay, I find it proper to determine the issue whether the delay in the instant application qualifies as a technical delay.

Needless to say, the Court has interpreted and distinguished categories of delay between real delay and technical delay for purposes of determining whether the application for extension of time merits granting or not. Technical delay is explicable and excusable in the cases of **Salvand K.A Rwegasira v China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006, **Bank of Tanzania Ltd v Enock Mwakyusa** Civil Application No. 520/18 of 2017 (unreported), **Zahara**

Kitindi & Another v Juma Swalehe & 9 others, Civil Application No. 4/05 of 2017, **Yara Tanzania Limited v DB Shapriya and Co. Limited**, Civil Application No. 498/16 of 2016, and **Samwel Kobelo Muhulo v. National Housing Corporation**, Civil Application No. 302/17 of 2017 (all unreported) and the landmark case of **Fortunatus Masha v William Shija & Another** (supra) in which the Court of Appeal of Tanzania held that:-

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which only involved **technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted.** In the present application, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances, an extension of time ought to be granted."*
[Emphasis added].

I have gone through the applicant's affidavit and found that the applicant has demonstrated his technical delay on paragraphs 2, 3, 7, 8, and 9 of his affidavit. The applicant's Advocate in his submission stated that the applicant's delay was not deliberate since after the delivery of the decision on 07th June, 2021, the applicant wrote a letter to request copies of the judgment and on 28th June, 2021 the applicant wrote a reminder

letter and received the copies on 29th September, 2021 and on 12th October, 2021 the applicant filed the instant application.

I fully subscribe to Mr. Daniel's submission that the applicant's delay was a technical delay up to the date when he received the copies of the judgment and decree on 29th September, 2021. Thereafter, the applicant was required to account for the days of delay from 29th September, 2021 to the date when he lodged the instant application for an extension of time to file an appeal out of time on 12th October, 2021.

It is trite law that the court can only grant an extension of time after the applicant shows good cause which includes the reasons for the delay and to account for each day of delay. As it was held in the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019 and the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) which had held that:-

“Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay.”

Applying the above authority, I find that the applicant did not account for the days of delay from 29th September, 2021 to 12th October, 2021.

Therefore, for this reason, it is clear that this ground of technical ground has no merit.

Regarding the issue of illegality, 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 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, in the instant application, the applicant in his affidavit particularly in paragraphs 6 stated that the District Land and Housing Tribunal decision was tainted with illegalities and irregularities. In his submission, Mr. Daniel among other grounds for illegality pointed out that the 1st respondent was not a legal owner thus he had no *locus standi* in the Land Application No. 171 of 2013. Mr. Daniel added that the applicant lodged the case in his own capacity instead of as the administrator of the estate. The learned counsel for the applicant also contended that the 1st respondent was not a party in the Land Application No. 309 of 2015 while he was a necessary party. Mr. Daniel also argued

that the tribunal weighs the evidence in counter claim in Land Application No.171 of 2013 which was dismissed for want of prosecution with the evidence of the 2nd to 17th respondents as the lawful owners of the suit property in the said cases.

From the reasons stated by Mr. Daniel, learned counsel for the applicant, it is my view that the raised illegality bears sufficient importance, the same meet the requisite threshold for consideration as the basis for enlargement of time and, weighty enough to constitute sufficient cause for an extension of time.

In sum, I proceed to grant the applicant's application to lodge an appeal out of time against the District Land and Housing Tribunal Judgment and Decree in Land Application No.171 of 2013 and 309 of 2015. The applicant has 30 days to institute his application.

Order accordingly.

Dated at Dar es Salaam this date 22nd November, 2021.




A.Z.MGEYEKWA

JUDGE

22.11.2021

Ruling delivered on 22nd November, 2021 in the presence of Mr. Daniel, learned counsel for the applicant, and Mr. Abraham, learned counsel for the respondents.




A.Z.MGEYEKWA

JUDGE

22.11.2021