

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND CASE APPLICATION NO. 279 OF 2020**

*(Arising from the judgment of District Land and Housing Tribunal for Kibaha vide Land Appeal No. 118 of 2017, originating from Originated from Visiga Ward Tribunal, Land Case No. 131 of 2015)*

**WAZIRI BUKUKU ..... APPLICANT**

**VERSUS**

**HALIMA KONDO ..... RESPONDENT**

**RULING**

*Date of Last Order: 09.08.2021*

*Date of Ruling: 18.10.2021*

**OPIYO, J.**

This application was brought under section 38(1) of the Land Disputes Courts Act, Cap 216 R. E. 2019. The applicant is seeking for extension of time in order to file an Appeal out of time, against the decision and orders of the District Land and Housing Tribunal for Kibaha, Hon. S.L Mbuga, learned chairperson in Land Appeal No. 118 of 2017, dated 20<sup>th</sup> of April, 2018. The Application was accompanied by the affidavit of the applicant, Waziri Bukuku. The application was heard by written submissions. The applicant appeared in person while the respondent was represented by Advocate Symphorian Revealian Kitare.

In his submissions, the applicant maintained that his delay to file his intended appeal was not caused by negligence on his part. That, he once filed an

application of the same nature vide Misc. Land Case Application No. 911 of 2018, the same was struck out on technicalities. However, because the impugned judgement to which the appeal is sought is tainted with illegalities, he felt obliged to file this application to have the technicality dealt with. That the 1<sup>st</sup> appellate tribunal denied the applicant's request to remeasure the land. he cited the case of **Principal Secretary, Ministry of Defense and National Service versus Devram Valambhia (1992) TLR 182** for authority that when the point at issue is one alleging illegality of the decision being challenged the court has duty, even if it means extending the time for the purpose of ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right.

He continued to argue that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however must be exercise judicially and the overriding consideration is that there must be sufficient cause for so doing. He cited the case of **Yusuph same and another versus Hadija Yusufu, Civil Appeal No. 1 of 2002, Court of Appeal of Tanzania (unreported)** to substantiate his argument.

The applicant insisted that, because he has provided the reasons for his delay, then his application should be considered as the said reasons are sufficient to allow the same. He also cited the case of **Felix Tumbo Kissima versus Tanzania Telecommunication Co. Ltd and another (1997) TLR 57** where the court stated that:-

*"It should be observed that "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all*

*reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step"*

In reply, the respondent's counsel argued that, firstly, the ground of illegality was not pleaded in the application, rather under paragraph 6 of his affidavit, the applicant stated that the appellate tribunal conducted some irregularities when entertaining the appeal. That, illegality and irregularity are two different things. By illegality as per Black's law dictionary it means a thing that is not authorized in law whereas irregularity refers to an act or practice that varies from normal conduct or action. Since the issue of illegality was not pleaded then the applicant cannot rely on it as stated in the case of **Said Issa Ambunda versus Tanzania Harbours Authority, Civil Application No. 177 of 2004 Court of Appeal of Tanzania at Dar es salaam, (unreported)**.

He went on to argue that, the applicant also failed to state the particulars of illegality so claimed to be contained in the 1<sup>st</sup> appellate judgement as required by Order VI Rule 4 of the Civil Procedure Code, Cap 33 R. E 2019. Therefore, his application lacks merit and should be dismissed with costs. In his brief rejoinder, the applicant maintained that since he is a layman, he is was not conversant with the procedures. The court should play its role to rescue him for the interest of justice in terms of the holding in **Ramadhani Nyoni versus M/S Haule & Company Advocates (1996) TLR 91** where the court had a view that in a case where a layman, unaware of the process of the machinery of justice, tries to get relief before the courts, procedural rules should not be used to defeat justice.

I have considered the arguments of the applicant and the respondent through his learned Advocate Kitare. I also went through the affidavit in support of the application as well as the counter affidavit. It is a settled rule in applications of this nature that, what the court need is to see that the applicant has provided a sufficient reason that led to his delay to pursue his intended cause. On top of that, he has accounted well for all the days he delayed to take the needed action, see **Exim Bank (T) Limited versus Jacqueline A. Kweka, Civil Application No. 348/18 of 2020, Court of Appeal of Tanzania, (unreported)**. In this case, the applicant has failed this test. He did not provide any reason as to why he failed to present his appeal against the impugned decision on time. His reason as stated in his submission is that the said decision is tainted with illegalities that can only be corrected on appeal if the extension to file the same is granted. In my considered view, the applicant also failed to account for each date of his delay to take the intended action. The decision upon which the intended appeal is sought was delivered in April 2018 and the application at hand was filed in 2020 June. There is a period of two years that elapsed in between that needed to be accounted for by the applicant.

Either, in his affidavit at paragraph 7 he stated that the reason he is applying for this application is that he needs to add new evidence on appeal. There is nowhere in the affidavit where the applicant stated the issue of illegality. As submitted by Mr. Kitare, since that was not pleaded, then the applicant is precluded in relying on it as his reason for allowing the application at hand. It is settled that parties are bound by their pleadings and no one is allowed to present a case contrary to what he or she pleaded see **Said Issa Ambunda versus Tanzania Harbours Authority Supra** and also the

case of **YARA Tanzania Limited vs. Charles Aloyce Msemwa and 2 others; Commercial Case No. 5 of 2015 High Court Commercial Division DSM (Unreported)**. Applicant pleaded ignorance of the law as lay person. However, in law, the mere fact that the applicant is a layman does not automatically excuse him from observing the rules. In the application for extension of time sufficiency of the reasons for delay in what gives a court a room for lenience in some cases involving lay persons as in the case of **Ramadhani Nyoni** (supra). The applicant in our case lacks these reasons in the first place keeping outside the parameters of the Ramadhani's case he cited. In the end and for the foregoing reasons I find this application to be devoid of merit and the same is hereby dismissed with costs.



A handwritten signature in blue ink, appearing to be 'M. P. Opiyo', written over a horizontal line.

**M. P. OPIYO,  
JUDGE  
18/10/2021**