

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

MISC. LAND CASE APPLICATION NO. 291 OF 2021

(Originating from the decision of Kibaha District Land and Housing Tribunal
in Land Appeal No. 31 of 2020)

ZAITUNI HUSSEIN MGUNGE..... APPLICANT

VERSUS

MARRY KITURURU..... RESPONDENT

Date of Last Order: 29.10.2021
Date of Ruling 13.12.2021

RULING

V.L. MAKANI, J

The applicant ZAITUNI HUSSEIN MGUNGE has filed this application seeking for extension of time to file an appeal against the decision of Kibaha District Land and Housing Tribunal (the **Tribunal**) in Land Appeal No. 31 of 2020 (Hon. S.L. Mbuga, Chairman).

The application has been made under section 38(1) of the Land Disputes Court Act CAP 216 RE 2019 and it is supported by the affidavit of the applicant. The respondent has filed a counter-affidavit opposing the said application.

With leave of the court the application was argued by way of written submissions. Mr. Africa Mazoea, Advocate drew and filed submissions on behalf of the applicant. The main reasons for the delay as explained by Mr. Mazoea is illegality. He said the applicant's affidavit clearly shows that the previous proceedings and judgment were tainted with illegality based on failure by the Tribunal to address jurisdiction and giving vacant possession order without having execution case. He said this court has the discretion to grant extension of time as per the case of **Enock Kalibwana vs. Ayoub Ramadhani & 2 Others, Civil Application No. 491/17 (unreported)**. He prayed for the application to be granted with costs.

The respondent personally drew and filed submissions in reply. She said instead of the applicant stating the reasons for failure to file an appeal within the statutory time he has submitted on grounds of appeal. He said the copy of the judgment was issued on the same date when the judgment was delivered and it is not known why the applicant did not appeal within time. The respondent prayed for the application to be dismissed with costs.

Mr. Mazoea reiterated his submissions in chief and emphasized that the court can exercise its discretion to grant extension of time on the ground of illegality irrespective of any other reason. He cited the case of **Modestus Daud Kangarawe (Administrator of the Estate of the late Daudi Temaungi Kangarawe) vs. Dominicus Utenga, Civil Application No. 139 of 2020** and **Mgobembeka Investment Company Limited & 2 Others vs. DCB Commercial Bank Plc, Civil Application No.500/16 of 2016.**

It is now an established principle of law that the determination of an application for extension of time is purely on the discretion of the court. However, that discretion has to be exercised judicially by considering whether the applicant has given sufficient cause to account for the delay. This position was stated by the Court of Appeal of Tanzania in the case of **Yusuf Same & Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002) (CAT-DSM)** (unreported), where the Court stated:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to "sufficient cause" has not been defined. From decided cases a

number of factors have to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant".

The applicant's only reason for delay is illegality in the proceedings and the judgment of the Tribunal. Illegality was discussed extensively in the case of **Moto Matiko Mabanga vs. Ophir Energy PLC & Others, Civil Application No.463/01 of 2017 (CAT-DSM)** (unreported) where the Court of Appeal stated that once it is established that illegality is clearly visible on the face of record, then it can be termed as a sufficient cause to warrant extension of time. However, in the present case illegality that has been raised by the applicant is not apparent on the face of the record (see also **Omary Ally Nyamalege (as Administrator of the estate of the Late Seleman Ally Nyamalenge) & 2 Others vs. Mwanza Engineering Works, Civil Application No. 94/8 of 2017 (CAT-Mwanza)** (unreported).

According to the affidavit and the submissions by the applicant, the alleged illegalities require detailed interpretation regarding the points of law raised. Addressing the facts would mean determining the appeal which cannot be termed as an obvious illegality apparent on

the face of record. I am therefore not persuaded that, the alleged illegality in this application constitutes a good cause for the delay in filing the appeal.

For the reasons I have endeavored to demonstrate above, I am of the considered view that the applicant has failed to establish sufficient reasons to warrant this court to exercise its discretionary powers to grant extension of time to file her appeal. Subsequently, the application is hereby dismissed with costs for want of merit.

It is so ordered.


V.L. MAKANI
JUDGE
13/12/2021

