

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

**MISC. LAND CASE APPLICATION No.467 OF 2021**

(Arising from Misc. Land Appeal No. 65 of 2015, High Court Land Division)

|                              |                                 |
|------------------------------|---------------------------------|
| <b>FRANCIS KONASI .....</b>  | <b>1<sup>ST</sup> APPLICANT</b> |
| <b>DOTO KONASI.....</b>      | <b>2<sup>ND</sup> APPLICANT</b> |
| <b>SARAFINA KONASI.....</b>  | <b>3<sup>RD</sup> APPLICANT</b> |
| <b>CHESKO KONASI.....</b>    | <b>4<sup>TH</sup> APPLICANT</b> |
| <b>ESTHER KONASI.....</b>    | <b>5<sup>TH</sup> APPLICANT</b> |
| <b>MARGARETH KONASI.....</b> | <b>6<sup>TH</sup> APPLICANT</b> |
| <b>JOHN KONASI.....</b>      | <b>7<sup>TH</sup> APPLICANT</b> |

**VERSUS**

**FELEX SHIRIMA.....RESPONDENT**

Date of last Order: 08.12.2021  
Date of Ruling: 21.12.2021

**RULING**

**V.L MAKANI, J:**

The applicants named above are seeking extension of time within which to apply for certificate on points of law to appeal to the Court of Appeal on a matter originating from the Ward Tribunal. The application is made under section 11(1) of the Appellate Jurisdiction Act CAP 141 RE 2019 and supported by the affidavit of FRANCIS KONASI, the 1<sup>st</sup> applicant herein. The respondent opposed the application and filed his counter-affidavit accordingly.

Mr. Zake who appeared for the applicants and he submitted that the applicants are applying for extension of time in respect of the judgment of this court Misc. Land Appeal No. 65 of 2015 (Hon. Mkuye, J as she then was) dated 20/11/2015. He said the counter-affidavit cannot stand to oppose the application as it is full of admissions, general denials and argumentative averments. He further went on to say that this matter has a long history from the Ward Tribunal to the High Court and there are points of law to be remedied by the Court of Appeal. He said the points of law to be taken care of are under paragraph 22 of the affidavit. These points according to Mr. Zake are sufficient to warrant extension of time. He said in the counter affidavit the respondent has raised the issue of negligence and the need for advocates Juma Kimwaga and Rweyongeza to file their affidavits. But he said, according to the case of **Foun vs. Registrar of Cooperative Societies [1995] TLR 75**, where sources of information are specified, there is no such need of the affidavit. Mr. Zake also relied on the case of **Yusuf same vs. Hadija Yusuf, Civil Appeal No. 1 of 2002 (CAT-DSM)** (unreported) and **Dr. A Nkini & Associates Limited vs. National Housing Cooperation, Civil Appeal No. 72 of 2015 (CAT-DSM)** (unreported) and **Joseph Sylivester Maaingwe vs. Paulina Samson Ndawavya, Misc.**

**Land Application No. 63 of 2021 (HC-Mwanza)** (unreported)

that it would be bad for the applicant to be condemned for the delay by the negligence of the previous advocate.

Mr. Zake pointed out the issue of pecuniary jurisdiction which is the main complaint by the applicant and the issue as to when time starts to run which is not clear in the judgment. He observed that there is also another issue to be addressed at the Court of Appeal, that is, there were no assessors in the High Court according to section 39 of the Land Disputes Court Act CAP 216 RE 2019. He also observed illegality as a point to be considered by the court in granting extension of time and he relied on the case of **TANESCO vs. Mufungo Leornard Majura & 15 Others, Civil Application No. 94 of 2016 (CAT-DSM)** (unreported). He prayed for extension of time to be granted and costs be in the cause.

Mr. Mrindoko for the respondent attacked the application to have no merit. He said the record is clear that the decision subject of the application was delivered on 20/11/2015. He said according to section 72 of the Land Disputes Court Act as amended, the applications ought to have filed their application within 14 days which would have been

on 04/12/2015 but no application was filed. He said the applicants filed Misc. Land Application No. 715 of 2015 for leave and Certificate on a point of law which was dismissed on 03/05/2017 for being filed out of time (paragraph 10 of the affidavit of the applicant). He said the applicants filed another application Misc. Land Application No. 557 of 2017 for extension of time to apply for leave on the reasons of electronic filing delayed by the registry. The application was heard on merit and was dismissed on 22/05/2019 (paragraph 13 of the affidavit). Mr. Mrindoko said after the dismissal, the applicants filed a Notice of Appeal and a letter requesting for proceedings, drawn order and ruling in Misc. Land Application No. 557 of 2017. These documents were supplied by the court on 03/03/2020 but while the Notice of Appeal was still pending in the Court of Appeal the applicants filed another application Misc. Land Application No. 293 of 2020 which was struck out on 24/08/2021 after the striking out of that application the current application has been filed.

Mr. Mrindoko said the main reason for the delay of six years according to the affidavit is ignorance of the law, legal procedure, lack of diligence and negligence of the previous advocate. He said it is trite law that ignorance of law or Counsel's negligence or mistakes can be

a reason for extension of time. He relied on several cases including **Omari R. Ibrahim vs. Ndege Commercial Services Limited, Civil Application No. 83/01 of 2020 (CAT-DSM)** (unreported) and **Ngao Godwin Lesoro vs. Julius Mwarabu, Civil Application No. 10 of 2015 (CAT-Arusha)** (unreported). Mr. Mrindiko pointed out that the decision of **Yusuf Same** (supra) is a decision of 2006 so it has been overtaken by events, so the current decisions must be applied as was said in **CRDB Bank PLC vs. True Colour Limited & Another, Civil Appeal No. 29 of 2019** which states that where there are conflicting decisions the recent decision takes precedence.

Mr. Mrindoko said the current position is that mistake or negligence of an advocate does not warrant extension of time. He further said the ground of mistake or negligence by Counsel cannot stand because it is hearsay. He said without the affidavit of Mr. Juma Kimwaga, Advocate who is alleged to be negligent the deposition made in paragraphs 11 to 17 of the affidavit remain to be hearsay with no assistance to account for the delay. He relied on **Sabena Technics Dar Limited vs. Michael J. Luwunzu, Civil Application No. 451/18 of 2020 (CAT-DSM)** (unreported).

As for the ground of illegality Mr. Mrindoko said the envisaged illegality has to be that of the decision sought, the illegality has to be visible and which does not need a lot of drawn issues to get into the illegality alleged. He said sections 38 and 39 of the Land Disputes Court Act does not state that the judgment should show that the court shall sit with an assessors. He said illegality should not also be used to cover the delay of six years. He said the applicants have failed to account for delay from when the last application was struck out on 24/08/2021 to 07/11/2021 when this application was filed. He prayed for the application to be dismissed for lack of sufficient reasons with costs.

In rejoinder Mr. Zake said the question of ignorance of law was not raised but only the negligence of the advocate. He said the issue of illegality still stands and jurisdiction of the court can be raised at any time even at the Court of Appeal. The issue of visibility of the point of law and the issue of sections 38 and 39 of the Land Disputes Court Act are matters to be discussed at the Court of Appeal. He reiterated his submissions in chief and the prayers therein.

It is the principle of law that in determining an application for extension of time the court examines if the applicant has adduced sufficient reasons for the court to grant the application sought. The court must exercise its discretion in granting such an application. In the case of **Yusuf Same** (supra) the Court of Appeal 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".*

According to the applicants' affidavit, the reasons for the delay were the negligence of the advocate, Mr. Kimwaga who previously had conduct of the matter and illegality based on sections 37, 38 and 39 of the Land Disputes Courts Act.

In the outset I would agree with Mr. Mrindoko that the issue of ignorance of law or negligence on the part of the advocate is no longer a valid reason for extension of time as was stated in the recent case of **Omari R. Ibrahim** (supra) where the Court of Appeal stated:

*"It should be stated once that, neither ignorance of the law nor counsel's mistake constitutes good cause in terms of Rule 10 of the Rules.... In the case of Umoja Garage v. National Bank of Commerce [1997] TLR, the Court stated that lack of diligence on the part of the counsel is not sufficient ground for extension of time."*

Paragraphs 11 to 18 of the affidavit of the applicants are all talking of the negligence of the previous advocate Mr. Juma Kimwaga who was representing the applicants. And most unfortunate the affidavit of Mr. Kimwaga is not annexed to show that he was the one who committed the omissions. In that respect as observed by Mr. Mrindoko the alleged facts in the affidavit are hearsay. In that respect the negligence of Mr. Juma Kimwaga cannot stand as sufficient reason for extension of time.

Mr. Zake also pointed out the issue of illegality and in response Mr. Mrindoko pointed out that the illegality is not visible in the decision subject of the extension of time. It is now settled that for illegality to be the basis of the grant of extension of time, it must be apparent on the face of the record and of significant importance to deserve the attention of the court. (See **Moto Matiko Mabanga vs. Ophir Energy PLC & Others, Civil Application No.463/01 of 2017 (CAT-DSM)** (unreported) and **Arunaben Chaggan Mistry vs.**

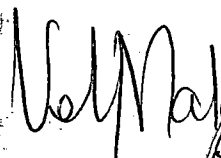


**Naushad Mohamed Hussein & Mohamed Raza Mohamed  
Hussein, Misc. Land Application No.23 Of 2018 (HC-Arusha)**

(unreported). In the present application the illegality is pegged on the pecuniary jurisdiction and assessors as in section 37, 38 and 39 of the Land Disputes Courts Act. To address these issues, one must go into the details of the facts and the law and this cannot be termed as an obvious illegality apparent on the face of record to warrant extension of time.

In view of the above, it is apparent that the applicants have failed to establish sufficient reasons to warrant the court to exercise its discretionary powers to grant extension of time within which to apply for certificate on points of law to appeal to the Court of Appeal. Subsequently, the application is hereby dismissed with costs for want of merit.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**21/12/2021**

