

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 146 OF 2019**

*(Arising from the decision of District Land and Housing for Temeke at Temeke  
in Application No. 48 of 2009)*

**RAHEL JEFTA ULOMI AND GODLACK JEFTA ULOMI**

**(Administratrix and Administrator of the estate**

**of JEFTA SHIKE ULOMI ..... APPLICANT**

**VERSUS**

**GLORIA MICHAEL OTARU & Jimmy Michael Otaru**

**(Administratrix and administrator of the estate of**

**Of the late MICHAEL JOHN OTARU) ..... 1<sup>ST</sup> RESPONDENT**

**YOHANE KIPANDE @ MAPANDE ..... 2<sup>ND</sup> RESPONDENT**

**PROSPER PETER ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of last Order: 16.11.2021*

*Date of Ruling: 19.11.2021*

**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 Courts Act Cap. 216 [R.E 2019] to extend time within the applicant to lodge an appeal against the District Land and Housing Tribunal in its judgment delivered on 13<sup>th</sup> October, 2017. The application is supported by an affidavit and supplementary affidavit deposed by Gifta Olomi, the applicant. The respondent resisted the application and has demonstrated their resistance by filing a counter affidavit deposed by Mr. Mussa Omari Mwinduchi, Managing director of the first respondent. The second respondent's counter affidavit was deposed by Mr. Mwasema Bakari Omari, the second respondent. The third respondent's counter affidavit was deposed by Mr. Joseph Richard Vungwa, the learned Solicitor.

When the matter was called for hearing on 16<sup>th</sup> November, 2021, 2021, the appellant enjoyed the legal service of Mr. Lutufyo Mvumbagu, learned counsel, the respondent had the legal service of Mr. Joseph Mwanzi, learned counsel. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents were dully been summoned to appear through Mwananchi Newspaper dated 13 May, 2021 but they opted not to appear in court. Therefore, this court granted the applicant's Advocate to proceed with *ex parte* hearing against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

In support of the application, Mr. Lubavu submitted that stated that the applicant seeks an extension of time to file an appeal before this court against the decision of the District Land and Housing Tribunal in Application No. 48 of 2009. He submitted that in accordance with section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] a party who seeks extension of time requires to state good cause. He avers that consequent to the delivery of the decision of the tribunal on 13<sup>th</sup> October, 2017, the applicant instructed his Advocate to file an appeal before this court. He added that the learned Advocate was not aware that the law was amended whereby 45 days lapsed.

Mr. Lubavu went on to state that the applicant filed his appeal after 57 days but the same was rejected by the Deputy Registrar then he filed an application for extension of time and the same was struck out *suo motu* by Hon. Awadhi Mohamed, J. Stressing, the learned counsel for the applicant submitted that the applicant's delay to file the instant application was attributed by his Advocate, who was not diligent. He submitted that it was out of the applicant's control.

Mr. Mvumbagu insisted the applicants' delay is within the context of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. He urged this court not to punish the applicant for his Advocate's mistakes.

To fortify his submission he referred this court to the case of **Felix Tumbo Kisima v TTC LTD and Another**, Civil Application No.1 of 1997 CAT (unreported).

On the strength of the above submission, the learned counsel for the applicant beckoned upon this court to grant extension of time to the applicant to file an appeal out of time.

Objecting to the application, Mr. Mwanzi strongly opposed the application. He raised a preliminary objection that the administrator of the estate of the late deceased Jefta Ulomi is not a real administrator of the estate since the name of the late Jefta Ulomi is not the same appearing in the document which is submitted in court. He added that in the Land Application No. 48 of 2009 parties were Michael Otaru v Jefta Olomi, Yohane Kipande @ Mapande, and Prosper Petr while in the instant application the names are Jefta Olomi v Michael Otaru & 2 others.

Stressing, Mr. Mwanzi contended that the applicant has not stated good cause to warrant this court to extend time to file an appeal out of time. He went on to state that there are no instructions from the applicant to his Advocate and the previous application before Hon. Awadhi Mohamed, J was filed out of time. He insisted that the 57 days of delay were not accounted for.

On the strength of the above submission, Mr. Mwanzi Urged this court to dismiss the application with costs.

In his brief rejoinder, the learned counsel reiterated his submission in chief. He valiantly argued that the issue of anomalies appearing in Form No. 68 in the letter of administration are minor. He added that as long as there is a ruling of the primary court which shows that the applicant's son was appointed to administer the estate of his late father the same suffices. He stated that parties to the application are proper parties to be joined. Stressing, he stated that the applicant has raised good cause to warrant this court to grant his application. In the interest of justice, he urged this court to grant the applicant's application.

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.***

Before generally canvassing the grounds of application, I have dispassionately considered the so-called preliminary point of objection. With due respect to Mr. Jospeh, I do not think most of what he terms as preliminary points of objection has been raised at the right instant. He tried to move this court by raising a point of objection that the

administrator of the estate of the late Jefta Ulomi is not the real administrator of the estate since the name of the deceased appearing in the document tendered in court is different from the real name of the deceased. He also raised a point on the names of the parties at the tribunal.

In case, Mr. Joseph wanted to challenge the instant application then he was supposed to follow proper procedure, in case the respondent's Advocate wanted to challenge the instant application then he was supposed to challenge the same by filing a proper preliminary objection before the hearing of the application. Otherwise, the respondent's Advocate wants to prejudice the applicant's application.

For the aforesaid reasons, the respondent's points of law are disregarded. Therefore, I proceed to determine the application on merit.

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, the law requires the applicant to act in an equitable manner (See the Supreme Court of Kenya's decision in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others*, Sup. Ct. Application 16 of 2014). This requirement got a broad explanation in the celebrated decision of the Court of Appeal in **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), wherein key conditions on the grant of an application for extension of time were laid down by the Court of Appeal of Tanzania. These are:-

- "(a) The applicant must account for all the period 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 illegality of the decision sought to be challenged."

As stated earlier on, the applicant's reliance in the quest for extension of time is that the applicant instructed his Advocate to file an appeal. Unfortunately, the statutory period of 45 days filing an appeal lapsed. The applicant's Advocate filed an application which was rejected by the Deputy Registrar thus he had to file another application for extension of time the same was struck out *suo motu* by Hon. Awadhi, J on 07<sup>th</sup> March, 2019. When the application was struck out the applicant was represented by one Allen William Olomi. The applicant in his supplementary affidavit has stated that after the application was struck out the deceased applied for copies of the court order and received the same on 16<sup>th</sup> March, 2009 and on then on 19<sup>th</sup> March, 2019, the same month the applicant filed the instant application.

The applicant's delay to file the application timely was based on two main limbs for his delay, the applicant's Advocate acted negligently and illegality. On the first ground that, the applicant's Advocate was not aware of the amendment of the law which set the time for appealing to be 45 days instead of 60 days. The applicant's Advocate was required to state good reasons for his delay and to account for the days of delay. The applicant's reason that the learned Advocate acted negligently is not a good reason. The law is to the effect that ignorance of the law is never



a reason for extension of time and this position has been stated in many Court of Appeal of Tanzania decisions. See the case of **Nalogwa Zakaria v Wandoa Msunza**, CAT Civil Appeal No. 27/1995 (unreported), wherein it was held that:-

*"Ignorance of the law is not a justifiable cause for extending time of appeal".*

A similar stance was taken in the case of **Calico Textile Industries Ltd (1983) v Pyaraliesmail Premji (1983)** TLR 28 in which it was held that:-

*"Failure of a party's advocate to check the law is not sufficient ground for allowing an appeal out of time".*

Borrowing a leaf from the above-cited decisions, I am convinced that the reason cited as the basis for extension of time does not have what it takes to amount to a sufficient cause. Consequently, I take the view no material has been placed before this Court to trigger its discretion and grant an extension of time based on the first ground.

Regarding the ground of irregularity which is stipulate in the applicant's supplementary affidavit. The applicant has stated that the impugned decision of the District Land and Housing Tribunal is tainted

with irregularities. The same is alleged to reside in the suit property which was purchased from a person who did not have any title to pass. Another irregularity according to the applicant is that, the document which was relied upon to buy the suit land was quite different from the property in dispute. The same is stated in the applicant's supplementary affidavit specifically in paragraph 9.

On his side, the learned counsel for the respondent did not submit on the ground of irregularity.

The raised irregularity mentioned by the applicant goes to the legality of the decision sought to be faulted, therefore I will determine whether the said illegality was sufficient cause for extension of time. 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:-

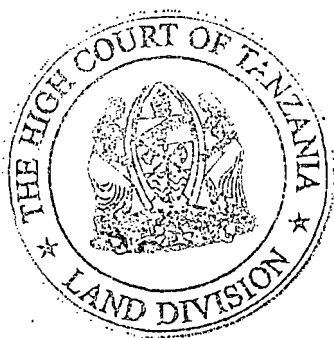
*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaambia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, 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 irregularity which amounts to illegality cited by the applicant touches on suit property whether the purchaser bought it from a person who has no legal title to pass. The applicant also claims that the documents used to purchase the suit land was not related to the disputed plot. In my view, the raised irregularities bear sufficient importance, and its discovery does not require any long-drawn argument or process. In my considered view, this point of illegality meets 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.

In my considered view, this is are points of law in respect of which an extension of time may be granted. In consequence of all this, I hold that this application has met the threshold for granting an extension of time. Accordingly, the same is granted. Costs to be in the cause.

Order accordingly.

DATED at DAR ES SALAAM this date 19<sup>th</sup> November, 2021.



  
A.Z.MGEYEKWA

**JUDGE**

19.11.2021

Ruling delivered on 19<sup>th</sup> November, 2021 in the presence of Mr. Joseph Manzi, learned counsel for the 1<sup>st</sup> respondent and the applicant.



A.Z.MGEYEKWA

**JUDGE**

19.11.2021