

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 358 OF 2022**

(Arising from the decision of the District Land and Housing Tribunal for
Temeke in Land Appeal No. 7 of 2019 dated 30th December, 2020)

THE ATTORNEY GENERAL APPLICANT

VERSUS

STELLA RUTAGUZA 1ST RESPONDENT

FUSTINE MANYILLIZU 2ND RESPONDENT

RULING

Date of last Order: 01.09.2022

Date of Ruling: 01.09.2022

A.Z.MGEYEKWA, J

This ruling is in respect of an application for an extension of time to lodge an Application for Revision of a decision of the District Land and Housing Tribunal of Temeke at Temeke in Land Appeal No. 7 of 2019. The

application, preferred under the provisions of section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] and section 95 of the Civil Procedure Code, Cap.33, section 45 of the Land Disputes Courts Act, Cap. 216 and section 17 (1) (a) of the Office of Attorney General (Discharge of Duties) Act, Cap. 268 [R.E 2019] 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019]]. The application is supported by an affidavit deponed by Lukelo Samwel, Principal State Attorney for the applicant. The applicant has set out the grounds on which an extension of time is sought. The 2nd respondent has stoutly opposed the application by filing a counter-affidavit deponed by Faustine Manyillizu, the respondent. The 1st respondent did not file a counter affidavit and she informed the court that she does not oppose the applicant's application.

When the matter was called for hearing through video conferencing, Mr. Lukelo Samwel, Principal State Attorney appeared for the applicant, the 1st respondent appeared in person and the 2nd respondent had the legal service of Mr. Myira Abdallah, learned counsel.

In his submission, in support of the reference, Lukelo urged this court to fully adopt the affidavit and form part of his submission. Mr. Lukelo submitted that the applicant is praying for an extension of time to file an application for

revision against the District Land and Housing Tribunal's decision in Application No. 7 of 2019. The learned Principal State Attorney stated that the main reason for applying extension of time is illegality. He claimed that the tribunal's decision is tainted with illegality. He stated that they were not aware of the matter at the tribunal until when the 1st respondent served them with a 90 days Notice.

Mr. Lukelo went on to submit that the District Land and Housing Tribunal decided without ascertaining from the allocating authority that the land dispute is a public pathway or a residential plot instead the District Land and Housing Tribunal wrongly considered the false evidence of the 2nd respondent. The learned Principal State Attorney averred that the raised illegalities are on the face of the record. It was his view that the applicant's reasons suffice to move this court to grant the applicant's application based on the sole ground of illegality Fortifying his submission he cited the cases of **The Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185 and **Hamza Fakihi Napunda & Another v R**, Misc. Criminal Application No. 1 of 2022. He urged this court to grant the applicant's application based on the ground of illegality.

The learned Principal State Attorney did not end there. He submitted that in accounting for the days of delay, the applicant was aware that there was a matter at the tribunal after being served with a 90 days Notice from the 1st respondent on 15th January, 2021 thereafter they had to collect information and on 11th November, 2021 they filed an Application No. 221 of 2021 the same was withdrawn with leave to refile, hence the instant application.

On the strength of the above submission, Mr. Lukelo beckoned upon this court to grant the applicant's application for an extension of time to file an application for revision out of time.

In reply, the learned counsel for the 2nd respondent urged this court to adopt the 2nd respondent's counter-affidavit and form part of his submission. He valiantly argued that the application has no any legal bases. He refuted that the District Land and Housing Tribunal decision was tainted with illegalities. It was his view that the grounds stated under paragraph 10 of the affidavit are grounds for appeal as there is no any illegality at all. He submitted that the records are clear that the dispute in question was not a fresh case but an appeal against the decision of the Ward Tribunal of Mkangarawe and the authorized institution in land matters was not involved in the said case. He claimed that the applicant has blocked the public pathway and there was no any issue of ownership.

The learned counsel for the 2nd respondent went on to argue that the second point of illegality is based on evidence, hence, the same is not a fit point of law. He insisted that the District Land and Housing decision was sound and reasoned. Regarding the second limb of ground of extension of time, Mr. Mnyira contended that the applicant has failed to account for the days of delay since they lodged their application after a lapse of 4 months, and their reasons for collection information were not accounted for. He claimed that the applicant was required to account for the days of delay from February to April, 2021.

On the strength of the above submission, the learned counsel for the 2nd respondent stressed that no sufficient cause has been advanced and hence the applicant's Application for extension of time is without merit and the same be dismissed.

In his rejoinder, Lukelo reiterated his submission in chief. Stressing that the District Land and Housing Tribunal decision was tainted with illegalities. He stated that the applicant's only way to challenge the impugned Judgment is by way of revision. He insisted that the authorized institution was not involved in the whole saga He insisted that it was not a public pathway. He stressed that the applicant has accounted for the days of delay. to buttress his

submission he referred this court to paragraph 8 of the affidavit. Ending he urged this to grant the applicant's application.

Having carefully considered the submissions made by the learned Principal State Attorney and the learned counsel for the 2nd respondent in their oral submission and examined the affidavit and 2nd respondent's counter-affidavit, the issue for our determination is ***whether the application is meritorious.***

The position of the law is settled and clear that an application for an 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 was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company**

Ltd v Jumanne D. Massanga and another, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the 2nd respondent's counter-affidavit, I have shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decision of this court. The Principal State Attorney has raised two main limbs for their delay, accounting for days of delay, and illegality. I have opted to address the second limb. The applicant alleges that the decision of the District Land and Housing Tribunal is tainted with illegality.

The illegality is alleged to reside in the powers exercised by the District Land and Housing Tribunal in excess of its appeal of the Ward Tribunal decision. Under paragraph 10 of the affidavit, the applicant alleged that the District Land and Housing Tribunal decided without ascertaining from the allocating authority that the land in dispute is a public pathway or a Plot for residential purposes.

On his side, the learned counsel for the 2nd respondent opposed the application, he argued that there is no any illegality in the impugned judgment.

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 is 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].

Based on the above authorities, it is clear that the ground of illegality that has been cited by the applicant is a point of law save for the remaining two grounds which requires this court to examine the evidence on record. In my view, the raised the first illegality bears sufficient importance, and its discovery does not require any long-drawn argument or process, the same 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 sum, based on the foregoing analysis I am satisfied that the above ground of illegality is evident that the present application has merit. Therefore, I proceed to grant the applicant's application to lodge an Application for revision within twenty-one days from today.

Order accordingly.

Dated at Dar es Salaam this date 1st September, 2022.

A.Z. MGEYEKWA
JUDGE
01.09.2022

Ruling delivered on 1st September, 2022 via video conferencing whereas Mr. Lukelo Samwel, learned Principal State Attorney for the applicant, the 1st respondent, and Mr. Mnyira Abdallah, learned counsel for the 2nd respondent were remotely present.

A.Z. MGEYEKWA
JUDGE
01.09.2022