

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 461 OF 2022**

*(Arising from the decision of the High Court, Land Division in Misc. Land  
Appeal No. 11 of 2020)*

**MERCHADES O. L KALEMERA ..... APPLICANT**

**VERSUS**

**AWADHI ABDALLAH (K.N.Y. NIZAR IKBAR) ..... RESPONDENT**

**RULING**

*Date of last Order 09.09.2022*

*Date of Ruling 19.09.2022*

**A.Z.MGEYEKWA, J**

This Court is called upon to grant extension of time for the applicant to file an application for leave to appeal to the Court of Appeal of Tanzania. The impugned Judgment was in respect of Misc. Land Appeal No. 11 of 2020 which was dismissed with costs. The application is preferred under the provisions of section 14 (1) of the Law of Limitation Act Cap. 89 [R.E 2019]. The application is supported by an affidavit deposed by Merchades O. L Kalemera, the applicant. The application was opposed by the

respondent who filed a counter-affidavit sworn by Mr. Awadhi Abdallah, the respondent.

When the matter was called for hearing on 30<sup>th</sup> August, 2022, the applicant appeared in person and the respondent had the legal service of Mr. Jacob Minja, learned counsel. The applicant urged this Court to argue the application by way of written submission. The Court acceded to the applicant's request to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

The applicant began by tracing the genesis of the matter which I am not going to reproduce in this application. The applicant stated that the governing principles in extending time are based upon the Court's discretionary powers of extending time where the applicant has shown sufficient cause for an extension of time. The applicant submitted that the impugned Judgment is tainted with irregularities and illegalities which should not be left to stand. The applicant wants to challenge the illegality depicted in paragraphs 5, 7, 8 and 9 of his affidavit. He claimed that he has raised serious illegalities involved in the determination of the applicant's application before this court.

The applicant insisted that the question of illegality is a good reason for an extension of time. To fortify his position he referred this court to the cases of **Principle Secretary Ministry of Defence and National Service v Devram Valambhia** (1992) TLR 182, **Kashinde Machibya v Hafidhi Saidi**, Civil Application No. 48 of 2009 (unreported), **Edward Msago v Dragon Security Ltd**, Civil Application No. 560/01 of 2020 (unreported) and **Yara Tanzania Ltd v DB Shapriy & Co. Ltd**, Civil Application No. 498 /16 of 2016 (unreported).

On the strength of the above submission, he urged this court for the interest of justice to allow the applicant's application to file leave to appeal to the Court of Appeal of Tanzania out of time.

Submitting in rebuttal, the respondent's counsel through his Advocate urged for this court to adopt the respondent's counter affidavit and form part of his submission. Mr. Ngole invited this court to pay attention to the following issues which are pertinent for the determination of the application at hand;

1. The only reason that the applicant is putting forward to justify the relief in his application is illegality and it has neither been pleaded nor the applicant has not explained the nature of the said illegality.

2. The Judgment sought to be appealed against was delivered on 14<sup>th</sup> July, 2021 and the applicant has not demonstrated the reasons for the delay.

Mr. Ngole went on to submit that the applicant has premised on fatal irregularities and illegalities and the same does not suffice to justify an extension of time at all. he added that illegalities are required to be pointed out and they must exist on the face of the record. Mr. Ngole further contended that the applicant's affidavit specifically paragraphs 6, 7 and 8 are silent on the issue of irregularities, they are not specifically been described in the applicant's affidavit and his entire submission. The learned counsel for the respondent strongly opposed the ground of illegality. To fortify his stance he cited the case of the Principle Secretary, Minsitry of Defence (*supra*).

The learned counsel for the respondent continued to argue that this Court delivered its Judgment on 14<sup>th</sup> July, 2021 while the applicant has lodged the instant application on 10<sup>th</sup> August, 2022 and he has not accounted for each day of delay. He invited this court to be guided by the decision of the Court of Appeal of Tanzania in the case of **Charles Panteleo Kimboka v Abbas Musa Kitoi**, Civil Application No. 71/17 of 2019, **Paul Martin v Bertha Anderson**, Civil Application No. 7 of 2005 at Arusha

HC (unreported). Mr. Ngole distinguished the applicant's cited cases that the same were wrongly applied.

Finally, the learned counsel for the respondent prayed for this court to dismiss the applicant's application.

Having heard the contending submissions of the learned counsel for the respondent and the applicant, it now behooves the Court to determine ***whether the applicant is meritorious.***

It is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for the delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant. It is the legal position ascertainment whether the legal threshold for granting an application for extension of time is met, which entails carrying out a thorough evaluation of the averments made in the supporting affidavit. This implies that my focus in respect of this application will, by and large, be on the parties' depositions, and I will do that mindful of the established principle which recognizes the fact that, unlike submissions made by the parties, orally or in writing, affidavits are evidence.

Again, the application for an extension of time must be on the satisfaction that the applicant has accounted for each day of delay. The requirement of accounting for every day of delay has been emphasized by the Court of Appeal in numerous decisions; examples are such as the recent case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) delivered in May, 2019 and the case of **Karibu Textile Millss v Commissioner General (TRA)**, Civil Application No. 192/20 of 2016, **Tanzania Coffee Board v Rombo Millers Ltd**, AR CAT Civil Application No 13 of 2015 (unreported) the Court reiterated its decision in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported) which had held that:-

*"Dismissal of an application is the consequence befalling an applicant seeking extension of time who fails to account for every day of delay."*

Similarly in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, CAT-Civil Application No. 2 of 2010 (unreported), wherein key conditions on the grant of an application for extension of time were laid down. These are:-

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

I have taken into consideration what has been stated in the affidavit filed by the applicant and the applicant's advocate submission, from the outset that the applicant has not accounted for the days of delay. The applicant's reliance on the quest for an extension of time is entirely on the ground of illegality.

The illegality is alleged to reside in the powers exercised by this Court in Land Application No. 11 of 2020. I have perused the applicant's affidavit particularly paragraph 9, the applicant simply stated that the decision is tainted with fatal irregularities/ illegality and rightly stated by Mr. Ngole the applicant in his submission did not mention where exactly the illegality or irregularity featured in the impugned decision. Therefore, I am in accord with Mr. Ngole that the alleged illegality is not properly pleaded as

a ground. In the case 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 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].*

Applying the above authorities, it is clear that the applicant's alleged illegality and irregularity are not on the face of the record and do not touch on a point of law. In my considered view, the alleged point of illegality does meet the requisite threshold for consideration as the basis for enlargement of time.



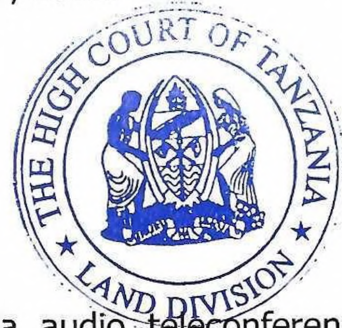
In sum, based on the foregoing analysis I find that the applicant has failed to state sufficient reasons to move this court to grant his application.

Therefore I proceed to dismiss the application with costs.

Order accordingly.

Dated at Dar es Salaam this date 19<sup>th</sup> September, 2022.

  
A.Z.MGEYEKWA  
**JUDGE**  
19.09.2022



Ruling delivered on 19<sup>th</sup> September, 2022 via audio teleconference, whereas both learned counsels were remotely present.

  
A.Z.MGEYEKWA  
**JUDGE**  
19.09.2022

