

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISCELENEOUS LAND APPLICATION NO. 191 OF 2022**

*(Arising from Land Case No.94 of 2013)*

**PRAVINCHANDRA GIRDHARLAL CHAVDA .....APPLICANT**

**VERSUS**

**YASMIN NURDIN YUSUFALI..... RESPONDENT**

Date of last Order: 22/09/2022

Date of Ruling:05/10/2022

**RULING**

**OMARI, J.:**

The Applicant herein is one Pravinchandra Girdharial Chavda, is seeking an extension of time to file a Notice of Appeal to the Court of Appeal of Tanzania (CAT) against the judgment and decree in Land Case No. 94 of 2013 delivered on 04 September, 2015. The Application is preferred under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 (RE 2019). The affidavit deponed by the Applicant shows a long and convoluted journey until this Application came before this court.

At the centre of the said journey is the ownership of Plot No. 263 Msasani Beach Kinondoni Dar es Salaam which he claims Yasmin Nurdin Yusufali, the Respondent herein trespassed into. This is what lead him to institute Land

Case No. 94 of 2013, and as a result the court held that he had failed to prove ownership of the disputed land since he, Pravinchandra Girdhalal Chavda is not Pravin Girdhar Chavda whose name appears on the Certificate of Title and they are two different people. Holding in effect that the plaintiff in the said case had no locus to sue over land that did not belong to him. The suit was dismissed in its entirety.

Shortly after delivery of the judgment of Land Case No. 94 of 2013, the Applicant commenced procedures for appeal which never materialized for reasons stated in his affidavit. Later on in 2017 he instituted Land Case No. 128 of 2017 using his names as they appear on the Certificate of Title for the suit land. The said Land Case No. 128 of 2017 was dismissed for being *res judicata* to Land Case No. 94 of 2013 on 18 August, 2017.

Once again, he commenced procedures for appealing the said decision, including seeking copies of the Ruling and proceedings, filing Notice of Appeal, and at the time application for leave to file an appeal through Miscellaneous Land Application No. 902 of 2017. The later was overtaken by events due to a change in the law which removed the said requirement. The Ruling and other documents were availed to the Applicant on 23 May, 2019

after which he applied for a certificate of delay which was availed to him on 12 June, 2019.

Unfettered he filed his Record of Appeal and Memorandum of Appeal on 17 July, 2019 and the same were served to the Respondent on 18 July, 2019. The said appeal was heard on 16 March, 2022 and Judgement delivered on 5 April, 2022. The CAT held that Land Case No. 128 of 2017 and Land Case No. 94 of 2013 were *res judicata* and in effect confirming that the Appellant and the Defendant in both Land Case No. 94 of 2013 and Land case No. 128 of 2017 were the same as was the subject matter. It is against this background that the Applicant has approached this court beseeching it to grant extension of time so that they can file an appeal before the CAT in respect of Land Case No. 94 of 2013.

As submitted by the learned advocate for the Applicant, Mr. Abdallah Gonzi this court has powers to grant extension of time for appeal to the CAT from a decision of the High Court. The learned advocate commenced his submission by adopting his client's Affidavit to form part of his submissions. He passionately explained that his client was relying on two reasons in knocking on the doors of this court for an extension of time. The first reason is illegality in the judgment of Land case 94 of 2013. He went on to aver

that the illegality is occasioned in two ways; the first being that the honourable judge raised an issue *suo moto* and decided on it without hearing the parties. The court raised the issue of discrepancy of the names of the then Plaintiff as they appear in his official documents (including the suit) and the name of the certificate of title for the disputed land then decided that these were two people different people, therefore the then Plaintiff had no *locus*, without hearing the parties on this specific issue. The learned advocate argued that not being heard on the new issue was denial of natural justice and the constitutional right enshrined under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977.

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As for the second limb of the illegality, the learned counsel for the Applicant went on to submit that the courts decision in Land Case No. 94 of 2013 stands yet there is a CAT decision in Civil Appeal No. 165 of 2019 that held that the two are one and the same person. The CAT decision emanated from Land Case No. 128 of 2017 as filed by the Applicant using the name Pravin Girdhar Chavda, the court held that this was *res judicata* and when the matter reached the CAT as Civil Appeal No. 165 of 2019, it held the same. The learned advocate argued that because the CAT held that the two were variations of the same name, this contradicts Land Case No. 94 of 2013. He

pointed out that the said contradiction had to be cured. He went on to make reference to the case of **Swabaha Mohamed Shosi vs. Saburia Mohamed Shosi**, Civil Appeal No. 98 of 2018, Court of Appeal of Tanzania at Dar es Salaam (unreported) where the court stated that where there is an illegality it has to be cured. He went on to say that it was a settled position in our jurisdiction that an illegality is sufficient to move the court to grant an extension of time. He prayed that this court be persuaded by the authority and grant the said extension of time.

At the commencement of his reply to the above submission the learned advocate for the Respondent, Mr. Eliwanza Nkurlu began by also adopting the affidavit deposed by his client while praying that the application was not meritorious and it should be dismissed. He went on to aver that he was aware and knew that it was a settled position that the court can extend time under section 14 (1) of the Law of Limitation Act, Cap 89 (RE 2019) (hereinafter LLA). However, it is not without conditions; for the court to extend time there must be reasonable and sufficient cause. The learned advocate submitted that this was decided in the **Micah Mrindoko T/A New BP Kilwa Road Service Station vs Bank of Africa Tanzania Ltd**, Misc. Commercial Appeal No. 18 of 2020, High Court Commercial Division where

the court explained what constitutes reasonable and sufficient cause for grant of extension of time. This includes the length of the delay, account of time, demonstrating diligence and not laziness, sloppiness etc and whether the court has found other grounds like existence of a point of law. The learned advocate went on ahead to explain that in the same case the court observed that each day of the delay had to be accounted for. The court also made reference to the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2003 which also held that delays have to be accounted for otherwise it would be futile to have laws on limitation.

On the issue of illegality, the learned advocate submitted that there was none. He explained that on page 5 of the said judgment of the court made reference to the matter being heard *ex parte* and that the plaintiff had not proved ownership since the names in the Certificate of Title were not his, this cannot be termed as an illegality asserted the learned advocate for the Respondent. He concluded his submission on this point by saying that nothing in submission falls within the confines of Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977.

In his brief rejoinder the learned advocate for the Applicant asserted that the Application they were making was not under section 14 (1) of the LLA

as suggested by the Respondent's learned advocate rather it is under section 11 (1) of the Appellate Jurisdiction Act as can be seen on the Chamber Summons. He went on to state that the LLA does not apply in the CAT. He finished off by saying the two provisions were not similar nor do they have the same conditions. He concluded by explaining that the **Micah Mrindoko T/A New BP Kilwa Road Service Station vs Bank of Africa Tanzania Ltd** case (supra) could not be applicable in the circumstances of this Application since it was based on the LLA. On the issue of illegality, the learned advocate for the Applicant reminded the learned Advocate for the Respondent that the matter was in the Applicant's Affidavit and they (the Respondents) had not disputed it in their Counter Affidavit.

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Having heard the above submissions by the learned advocates, it is my considered view that they both make strong arguments for their clients. However, I am inclined to agree with the learned advocate for the Respondent that the discretion to grant extension of time is conditional as I shall spell out when dealing with the second ground. I am also in agreement with the learned counsel that there is no illegality in the impugned judgment. Illegality has been the subject of discussion many a times in the courts. If in fact there was an element of illegality I would not hesitate or wave it off. In

the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1999] TLR 182 it was held that alleged illegality if established, is sufficient reason to extend time. To ensure this is done properly the court has to make a finding of the alleged illegalities raised bybaha the applicant (also see **Swabaha Mohamed Shosi vs. Saburia Mohamed Shosi** *supra*). In this Application the CAT has already ruled that there was no illegality and more so in the form that the Applicants are alleging (see **Pravinchandra Girdharlal Chavda vs. Yasmin Nurdin Yusufali**, Civil Appeal No. 165 of 2019, Court of Appeal at Dar es Salaam (unreported)).

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Submitting on the second ground in support for the Application of extension of time to file a Notice of Appeal, the learned advocate advanced that the Applicant has accounted for his delay and the delay is in fact a technical one. He went on to explain that it has been the position of the courts to grant extension of time where the delays are deemed technical. This was the position of the court in **Fwanda Limited vs. Marmo E. Granito Mines (T) LTD**, Misc. Land Application No. 01 of 2019, High Court of Tanzania at Mbeya where the court observed that a technical delay deserved extension



of time. In another case of **Zuberi Mussa vs. Shyinyanga Town Council**, Civil Appeal no. 3 of 2007 CAT at Tabora, the CAT held that where a litigant was pursuing his rights even if by error, he is still considered diligent and can still be granted an extension of time. The learned advocate concluded his submission by stating that as can be seen in the Applicant's Affidavit in support of the Chamber Summons the actual land dispute has never been heard on merit in the case against the Respondent; this is what sent the Applicant to court in the first place. Giving him an extension of time is the only way which can pave the way for his case to be decided on merit. He prayed for the Application to be granted.

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In reply the learned advocate for the Respondent argued that his learned brother talked of the Applicant accounting for the delay and that same was a technical delay, in his view this too cannot stand. He lodged a Notice of Appeal but consequently did not pursue it so it expired as he deponed in his affidavit. He went on to argue that no such notice had been tendered as proof. He relied on the **Fwanda Limited vs. Marmo E. Granito Mines (T) LTD** case (*supra*) to argue that technical delays deserve extension of time in the same case the court explains what a technical delay is and its applicability.

The learned advocate went on to explain that in this particular Application the delays as referred to by counsel in the Applicant's Affidavit prove that this matter does not fall within the confines of what was discussed by the court in the **Fwanda Limited vs. Marmo E. Granito Mines (T) LTD** case (*supra*). He concluded his submission by averring that the Respondent has the high moral ground to say that there are no sufficient reasons to grant an extension of time. He prayed for the court to dismiss the Application with costs.

In his rejoinder about accounting for delay the counsel for the Applicant reiterated that his client has accounted for the delay and pointed out Paragraph 7 and 22-28 of the Affidavit. He went on to explain that a copy of the Notice of Appeal that was filed has actually been annexed as part of the Affidavit.

As for the delay not being technical the learned advocate explained that his client filed Land Case No. 128 of 2017 that ended up being held to be *res judicata* as did the Civil Appeal No. 165 of 2019 which was also filed by the Applicant and ended up being dismissed, he concluded by averring that he thought that would suffice as wrong procedure and therefore rendering the delay technical.

After consideration of the arguments made by both learned advocates on the second reason for extension of time. I wish to be guided by the interpretation of the CAT in the famous **Lyamuya Construction Company Ltd vs Board Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 where the court formulated the guidelines for exercising the discretion to extend time judiciously. For the sake of clarity, I will reproduce the guidelines as follows:

- a. The Applicant to account for the delay.
- b. The delay 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 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.

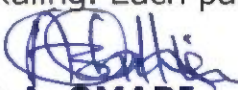
If I am to use the above as a benchmark in the Application before me, the Applicant has to a great extent tried to account for the delay, as for the same delay not being in ordinate this application does not meet the said guideline. The Applicant has met the threshold of the third guideline to a great extent though he started on a wrong footing with the expired Notice of Appeal but

later redeemed himself. As for the fourth guideline I have already observed that there is no illegality as already decided by the CAT.

Additional to the above, in the **Zuberi Mussa vs. Shyinyanga Town Council** case (*supra*) the CAT among other things observed that one has to look at the circumstances in each case, guided only by principles of justice, equity and common sense when called upon to grant extension of time. This, coupled with the wisdom of the court in the **Fwanda Limited vs. Marmo E. Granito Mines (T) LTD** case (*supra*) that where the party did not sit on his matter, he was pursuing it even if in the wrong forums or invoking wrong procedures which resulted to dismissal or trucking out of the matter amounts to a technical delay.

It is for this reason that I will agree with the learned advocate for the Applicant that in the Applicant has been able to account for the delay and having sufficiently demonstrated the reasons for the technical delay he is therefore given an extension of time to file Notice of Appeal within fourteen days (14) from the date of this Ruling. Each party to bear its own costs.



  
**A.A. OMARI**  
**JUDGE**  
**05/10/2022**

Ruling pronounced and dated 5<sup>th</sup> day of October, 2022 in the presence of Lilian Apolinary learned advocate, holding brief for Mr. Abdallah Gonzi and the advocate for the Respondent.



A handwritten signature in blue ink, appearing to read "A.A. Omari".

**A.A. OMARI**  
**JUDGE**  
**05/10/2022**