

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO.473 OF 2022**

(Arising from the decision of Temeke District Land and Housing Tribunal in  
Land Application No. 251 of 2019)

**MWARAMI SADIKI MTUMBUKA ..... APPLICANT**

**VERSUS**

**ABDULAHMANI SADIKU MTUMBUKA ..... 1<sup>ST</sup> RESPONDENT**

**AMINA MUSA KWEJI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 27.09.2022*

*Date of Ruling: 27.09.2022*

**A.Z.MGEYEKWA, J**

This ruling is in respect of an application for an extension of time to lodge a Notice of Appeal out of time against the decision of the District Land and Housing Tribunal for Temeke in Land Application No. 251 of 2019. The

application, preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The application is supported by an affidavit deponed by Mwarami Sadiki Mtumbuka, the applicant. The applicant has set out the grounds on which an extension of time is sought. The 1<sup>st</sup> respondent conceded to the application. The application has met opposition, fielded by the 2<sup>nd</sup> respondent, through her counter-affidavit deponed by Ms. Amina Musa Kweji, the 2<sup>nd</sup> respondent in which allegations of illegalities are valiantly denied.

When the matter was called for hearing on 27<sup>th</sup> September, 2022 the applicant enlisted the legal service of Mr. Alex Enock, learned counsel, and the 2<sup>nd</sup> respondent appeared in person, unrepresented.

Submitting for the applicant was Mr. Alex Enock, his submission was premised on what is stated in the supporting affidavit. The grounds which are considered to be worth consideration by this Court for an extension of time are because the applicant delayed receiving the Tribunal's certified copy of Judgment. Mr. Alex submitted that the District Land and Housing Tribunal Judgment was delivered on 8<sup>th</sup> December, 2021 and the same was ready for collection on 14<sup>th</sup> February, 2022, a lapse of 65 days. He went on to submit that after receiving the said copy the applicant was dissatisfied by the

tribunal's decision, however, he found himself out of time. The counsel contended that the Chairman of the District Land and Housing Tribunal did not consider and determine the issues of who is the lawful owner of the suit land contrary to Regulation 20 (a), (b), (c), (e) & (d) The Land Disputes Court (The District Land and Housing Tribunal), Regulations, 2003. He went on to submit that the Chairman erred in law and fact for ignoring the evidence of the applicants and instead based its decision on the findings of the District Court of Temeke while it had no jurisdiction to refer to the said decision. To fortify his submission Mr. Alex cited the case of **Amour Habib Salim v Hussein Bafagi**, Civil Application No. 52 of 2009, the Court held that illegality is a good ground for extension of time.

In conclusion, Mr. Alex urged this court to grant the applicant's application without costs.

In reply, the 2<sup>nd</sup> respondent was brief. She urged this court to adopt the counter affidavit to form part of her submission. The 2<sup>nd</sup> respondent asserted that the District Land and Housing Tribunal decision was delivered in 2021 and the applicant filed the instant application in 2022. She went on to submit that the District Land and Housing Tribunal in its decision considered the evidence on record and reached its decision in favour of the respondent.

In his rejoinder, Mr. Alex reiterated his submission in chief. He added that the applicant fall sick therefore he was not in a position to file an appeal in time. He insisted that the Chairman did not consider the evidence of the parties instead he relied on its findings on the previous decision of the District Court of Temeke.

From the parties' rival contentions, the question is whether the application has raised sufficient grounds capable of moving this Court to grant his application.

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 applicants' affidavits and the 2<sup>nd</sup> respondent's counter-affidavit, From the outset, I am in accord with the 2<sup>nd</sup> respondent that the applicant and his counsel have not accounted for each day of delay.

Regarding the ground of illegalities, the applicant in paragraph 7 (a) to (d) of her affidavit has stated that the decision of the District Land and Housing Tribunal is tainted with irregularities and illegalities. I have scrutinized the alleged illegality and found that most of the alleged illegalities are not on the face of the record, they require a long argument. However, I have considered one point of illegality appearing in paragraph 7 (d) of the applicant's affidavit, the applicant has raised an issue of jurisdiction that the tribunal had no jurisdiction to determine the matter. It has been held in times without number that where illegality exists and is pleaded as a ground the same as well constitute a good cause for an 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) and **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** (supra) the Court of Appeal of Tanzania on page 89 held that:-

*"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].*

Equally, in the case of **Arunaben Chaggan Mistry v Naushad & others**, Civil Application No. 6 of 2006 CAT at Arusha (unreported), the Court emphasized the ground of illegality must be such a point of law that is of sufficient importance and apparent on the face of the record, such as the question of jurisdiction. The applicant's point of law touches on jurisdiction. Therefore, I am satisfied that the point of illegality in paragraph 7 (d) of the applicant's affidavit meets the requisite threshold for consideration as the

basis for enlargement of time and this alone, is weighty enough to constitute sufficient cause for an extension of time.

In sum, I proceed to grant the applicants' application to appeal to this court within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 27<sup>th</sup> September, 2022.



  
A.Z.MGEYEKWA  
**JUDGE**  
27.09.2022

Ruling delivered on 27<sup>th</sup> September, 2022 in the presence of Mr. Alex Enock, learned counsel, for the applicant and the 2<sup>nd</sup> respondent.



  
A.Z.MGEYEKWA  
**JUDGE**  
26.09.2022