

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVISION NO. 96 OF 2022**

*(Originating from the decision of the District Land and Housing Tribunal for Ilala in Land Appeal No. 14 /2021 dated 22<sup>nd</sup> day of November 2021 delivered by hon. A.R.- KIRUMBI Chairman)*

**SOPHIA CHITUNDI .....APPLICANT**

**VERSUS**

**FREDNAND A. CHAMI ..... RESPONDENT**

**RULING**

*Date of last Order: 23/09/2022*

*Date of Ruling: 05/10/2022*

**KHALFAN, J.**

The applicant has applied for extension of time upon which she may file her appeal out of time. The application is made under **Section 41(1) and (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019**, as supported by the affidavit of Sophia Chitundi.

The brief facts leading to this application are such that the appeal before the Appellate Tribunal was heard in the absence of the applicant as no summons was served to the applicant. But the same was served with summons to appear for execution hence this application.



When the matter came for hearing, Mr. Ludovic Nikson, learned advocate, appeared for the applicant. The respondent was represented by Mr. Frank Michael, learned advocate. The main issue to be determined is whether the applicant has proved sufficient cause warranting the grant of extension to the applicant.

In his submission, Mr. Nickson started by adopting the affidavit of Ms. Sophia Chitundi to form part of the applicant's submission. He submitted that, there are illegalities of the judgment and proceedings apparent on the face of record. One, the applicant was never served with any summons to appear at the date of judgment. Hence the applicant had no knowledge of the date of judgment. Secondly, another reason as per paragraph 11 of the affidavit is that she was sick from 5<sup>th</sup> January 2022 to 19<sup>th</sup> February 2022 due to shock. That, from 19<sup>th</sup> February 2022 to 08<sup>th</sup> March 2022, the applicant was busy in search of an advocate.

Mr. Nickson concluded in his submission that, the existence of illegality in a judgment to be appealed against is a good reason for extension of time. He cited the case of **Willow Investment vs. Mbomba Ntumba and Two Others**, [1997] TLR 93. He gave the second reason that the respondent in his counter affidavit has not shown any injury that would

result in case the extension of time is granted. He cited the case of **Langael Sangita Marx vs. Board of Trustees of Medical Stores**, Misc. Civil Cause No. 01 of 2022 (unreported), and prayed the application to be granted.

Mr. Michael took the floor by submitting that the applicant was supposed to account for each and every day of delay of which she failed to do so. He cited the case of **Micah Elifuraha Mrindoko t/a New BP Kilwa Road Service Station vs. Bank of Africa Tanzania Limited**, Misc. Commercial Application No. 18 of 2020, (unreported) specifically at page 7.

He submitted further that he who comes to Court must come with clean hands. He maintained that there was negligence and some sort of recklessness on the part of the applicant. He argued that, the application be dismissed because it does not amount to sufficient reason. He cited the case of **Gideon Mandesi vs. Charles John Mkanga**, Misc Land Application No. 637 of 2020 (unreported) to support his submission. That the applicant's reasons for delay do not apply as good cause.

As for the second ground, he submitted that illegality alone cannot bind the Court to grant extension. He contended that the applicant was served with summons hence there is no illegality to convince the Court.

With regard to the third ground, he cited the case of **Swabaha Mohamed Shosi vs. Saburia Mohamed Shosi**, Civil Appeal No. 98 of 2018 (unreported), where he stated in the said case that the applicant cannot be granted extension of time if the issue of illegality does not exist. He concluded his submission by maintaining that the respondent stands to suffer loss for the time he spent on the case and his property.

In his rejoinder, Mr. Nickson submitted that the respondent's submission has no merits on the following reasons:

There is no time limitation when applying for extension of time and that they have made it clear in their affidavit in that regard. The position of the law is that no matter whether the applicant knew the existence of the case or not, so long as the case was heard *ex-parte*, the respondent must be summoned to attend on the date of Judgment delivery.

He also refuted the fact that the applicant was summoned three times and absconded to appear at the Tribunal. He argued that there is no such

record to prove the applicant was summoned. He maintained the existence of illegality, where the said judgment ought to have shown that the applicant was summoned to attend *ex parte* judgment and that there is neither record on the judgment nor the proceedings.

At the end of his rejoinder, he distinguished all the cited cases provided by Mr. Michael. According to him, they bear different facts. He gave the example of the case of **Gideon Mandesi vs. Charles John Mkanga** (*supra*) at page 8, whereby the applicant was in Court, and was given 14 days to file her application but she delayed. Whereas in the case at hand, he argued that the information was withheld and was only exposed at execution stage.

I have considered the rival submissions from both sides, the authorities and the available record of the Court. I have come to a conclusion that the applicant has shown good cause. The law in the case of **Principal Secretary Ministry of Defence and National Services v. Devram Valambhia** [1992] TLR 185 as quoted in the cited case of **Swabaha Mohamed Shosi v. Saburia Mohamed Shosi**, (*supra*), at pages 11 and 12 of the Judgment has it that:

*'We think that where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is sufficient importance to constitute sufficient reason within the meaning of rule 8 [now rule 10] of the Rules for extending time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand.'*

The Court went on to state at page 12 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 right.'*

In the case at hand, the requirement to give notice to the applicant before a judgment is pronounced is provided under **Order XX Rule 1 of the Civil Procedure Code, Cap. 33 R.E. 2019**. It is thus a mandatory requirement for Trial Court (in this matter Tribunal) to give due notice to the parties or their advocates (see the case of **Ms Casco Technologies Co Ltd vs. Kal Holding Co Ltd, Misc. Civil Application No. 8 of**

2021). In the instant application, I am of the considered view that, the failure of the Trial Tribunal to give notice to the applicant prior to the pronouncement of the *ex parte* judgement resulted into injustice on the part of the applicant.

In fine, I find the application before me with merit. I proceed to grant extension of time to the applicant to file the intended appeal within 30 days from the date of obtaining the copy of this Ruling and Drawn Order. Under the circumstances of this application, I grant no order for costs.

**Dated at Dar es Salaam** this 5<sup>th</sup> day of October, 2022.



  
**F. R. KHALFAN**  
**JUDGE**  
**05/10/2022**

**Court:** Ruling delivered this 5<sup>th</sup> day of October, 2022 in the presence of Ms. Esther Simon, learned Counsel for applicant, Mr. Frank Michael learned Counsel for the respondent, and Mr. Fredinand A. Chami, the respondent.



  
**F. R. KHALFAN**  
**JUDGE**  
**05/10/2022**