

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 516 OF 2021

*(Arising from Judgment and decree in Land Case No. 111 of 2016 Hon. Mrango, J.
dated 14th April, 2016)*

EMILY JONATHAN SEBA.....APPLICANT

VERSUS

PRIDE TANZANIA.....1ST RESPONDENT

MWAFRIKA GROUP LIMITED.....2ND RESPONDENT

Date of last order: 06/10/2022

Date of ruling: 18/10/2022

RULING

A. MSAFIRI, J.

On the 25th day of September 2021, the applicant lodged an application in this Court by way of chamber summons under section 5(1)(a) of the Appellate Jurisdiction Act [CAP 141 R.E 2002], section 47 (1) (4) of the Land Disputes Courts Act [CAP 216 R.E 2019] and Rule 10 of the Tanzanian Court of Appeal Rules 2019. The applicant's prayers can be summarized as follows;

- i. *That this Honourable Court be pleased to grant an extension of time within which the applicant may lodge*

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a notice of intention to appeal to the Court of Appeal of Tanzania.

- ii. *Any other relief or order that this Honourable Court may deem fit and just to grant.*

The application is supported by an affidavit sworn by the applicant herein. It is on record that this application was ordered to proceed ex-parte against the respondent as per order of the court. The 1st respondent attempted to set aside the order to proceed ex parte but in vain. When the application was called on for hearing on 6th October 2022 the applicant appeared in person, she had no legal representation.

The applicant adopted her affidavit in support of the application to form part of her submission. She simply stated that the reason for her delay to file Notice of intention to appeal was that her advocate did not inform her on time about the outcome of the case after the impugned judgment was delivered. She prayed for the court to grant the prayed orders.

Before going to the merits or otherwise of the present application, a brief background giving rise to the present application is apposite. The applicant instituted Land Case No. 111 of 2012 before this Court against

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the respondents herein claiming for assortment of reliefs which arose from the loan agreement entered into by the applicant and the 1st respondent.

The applicant failed to honour her obligation on the loan agreement hence the 1st respondent engaged the 2nd respondent to sell the mortgaged property. The applicant therefore wanted the court to restrain the 1st respondent from selling the mortgaged property.

After hearing the parties this court dismissed the said suit on 14th April 2016 for lack of merits. The applicant therefore intends to challenge the said decision hence she preferred the present application for extension of time to file notice of appeal to the Court of Appeal of Tanzania.

I have gone through the applicant's affidavit in which she is complaining on presence of illegalities and irregularities on the impugned decision. This application was lodged in court after expiry of more than **five (5) years.**

It is settled law that the applicant must show good cause in application for extension of time for failing to do what was supposed to be done within the prescribed time. There are decisions both of this Court as well as the Court of Appeal of Tanzania which requires good cause to be shown before the Court can exercise its powers for extension of time.

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These are; **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014 (both unreported).

However, what constitutes good cause has not been codified although in various instances a number of factors have to be considered. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant. (See for instance the cases of **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another**, Civil Application No. 6 of 2001, **Tauka Theodory Ferdinand v. Eva Zakayo Mwita (As Administratrix of the Estate of the Late Aibanus Mwita)** and **Wambura NJ. Waryuba v. The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 225/01 of 2019 (all unreported).

The instant application as stated before was filed after expiry of more than five years. The applicant's affidavit is silent on what transpired during that period. She has neither accounted for each day of the delay nor state any reason for failure to lodge the notice in time. She has however alleged presence of illegalities and irregularities on the impugned decision.

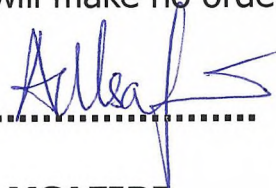
Atts.

I am aware that illegality alone can be sufficient reason for extension of time regardless of whether the applicant has accounted on each day of the delay. But in order to constitute illegality, it must be apparent on the face of the record such as the question of jurisdiction, not one that would be discovered by long drawn argument or process. This position of law has been restated in a number of cases including; **The Principal Secretary, Ministry Of Defence And National Service v Devram P. Valambhia** [1992] T.L.R387, **Lyamuya Construction v Board Of Young Women Christians Association**, Civil Application No. 2 of 2010 (Unreported).

In the instant application the applicant could not state specifically the illegalities or irregularities complained against. Hence I am of the settled mind that no illegality has been established to warrant the court to exercise its discretion for extension of time.

It is for the foregoing reasons that I hold that the application lacks merits and it is hereby dismissed. I will make no order as to costs.





A. MSAFIRI,
JUDGE
18/10/2022