

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC LAND APPLICATION NO. 405 OF 2022**

BETWEEN

MWAJUMA ALLY AMRI APPLICANT

VERSUS

HASSANI ALLY OMARI1ST RESPONDENT

GASTO AKUSYUSI LUYANJI2ND RESPONDENT

RULING

18/10/2022 & 26/10/2022

A. MSAFIRI, J.

The applicant Mwajuma Ally Omari is seeking for this Court's order that, the Court be pleased to grant leave for the applicant to file an appeal out of time. The application is filed under section 41(2) of the Land Disputes Courts Act, Cap. 216 R.E 2019 and is supported by the affidavit of Dickson Matata, advocate of the applicant. The respondents vehemently opposed the application and also have filed their counter affidavits to that effect.

The application was heard by way of written submissions.

The applicant's written submissions were drawn and filed by Dickson Matata, learned counsel for the applicant, while the 1st respondent's submissions was drawn and filed by Mr. George Anyosisye Timoth, learned

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advocate, and the 2nd respondent's submissions were drawn and filed by Mr. Geoffrey Luyanji, learned advocate.

I have considered the submissions by all parties along with the authorities which were referred by the parties in cementing their submissions.

Brief background of this matter is that the 2nd respondent instituted an Application No. 8 of 2020 before the District Land and Housing Tribunal of Mkuranga District at Mkuranga (trial Tribunal). The 2nd respondent was seeking to be declared the lawful owner of the suit land located at Vianzi Mkuranga, claiming that the now applicant who was then the 2nd respondent has trespassed on the said suit land. After hearing the parties, the trial Tribunal decided in favour of the 2nd respondent and declared him the lawful owner of the suit land. The applicant was aggrieved and intended to appeal but since she was out of time, she is first seeking for an extension of time, hence the application at hand. The impugned judgment was delivered on 05/11/2021. The current application was lodged in this Court on 21/7/2022 about eight (8) months from the date of judgment.

In the supporting affidavit which was sworn by Mr. Matata, the reasons for delay has been stated to be first, financial hardship of an applicant where by she was seeking for legal assistance in several Legal Aid Centres, and that she is a pauper. That, despite efforts to seek for legal assistance, she only met endless promises with no action. That it was until sometimes in April 2022 when she met Mr. Matata, Advocate and Mr. Matata wrote a letter to the trial Tribunal seeking for the perusal of a file.

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The second reason, is one of illegalities. Mr. Matata submitted that, upon perusal of Court proceedings, judgment and decree, he became aware that the impugned decisions was tainted with illegalities and irregularities as follows;

- a) Counsel who prepared pleadings and represented the respondent did not have practicing certificate at the material time.
- b) The trial Tribunal acted and reached its decision based on the contract which has no stamp duty contrary to the law.
- c) Honourable trial Tribunal wrongly admitted and acted on copies as exhibit to reach its decision.
- d) Honourable trial Tribunal failed to determine the counter claim raised by the applicant hence was condemned unheard.
- e) The Honourable trial Tribunal failed to observe the standard of proof of fraud as there are two existing contracts on the same plot, by the same seller to both parties save for different dates.

The applicant prayed for the application to be granted.

In reply of the applicant's submissions, the respondents submitted that the applicant's claims has no basis and should be disregarded. On the first reason of financial hardship, the respondents contended that it was not proved, and the applicant has not accounted for each day of delay. On the second reason of illegalities, they argued that, the said illegalities are not apparent on the face of record. They prayed for the dismissal of the application as the applicant had not shown sufficient reasons within which the Court can exercise its discretionary powers.

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It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

This principal has been set in numerous cases by the Court among them being the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002, where the Court of appeal held that;

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension may only be granted where it has been sufficiently established that the delay was with sufficient cause

What amount to sufficient cause has not been defined. From decided cases, a number of factors have been taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence on the part of the applicant".

The pertinent issue here is whether the applicant has advance sufficient reasons to warrant the court to exercise its discretion.

Beginning with the first reason, the one of financial constraint, there is no sufficient proof on that. It is said that, the applicant made several efforts to seek legal assistance in several legal aid centres, but she encountered endless promises. The only indication that the applicant visited legal aid

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centre is attendance form of Tanzania Women lawyers Association (TAWLA), which shows that the applicant visited on 10/11/2021.

There is no further information on what happened and later, what are other legal aid centers the applicant visited as it is claimed in the affidavit and when did she visited them.

The applicant has not accounted for the dates from 10/11/2021 when she said to have visited TAWLA Offices to April 2022 when she was purportedly directed at the advocate Matata's offices.

As this ground has been raised by the applicant through her advocate, she ought to have adduced more evidence or explanation, in the affidavit supporting the application.

It is a settled law that in an application for extension of time to do an act, the applicant is supposed to account for each day of delay. As pointed earlier, the applicant has failed to do so. Hence, I find this first reason not sufficient one and I reject it.

On the second reason of illegalities, it is not in dispute that, this is a good and sufficient reason for the court to extend the time sought. However, those pointed illegalities must be apparent on the face of record, and not one that would be discovered by a long drawn argument or process. (See the Court of Appeal case of **Lyamuya Construction Company Limited vs. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported).

Guided by the above set principle, I have read the illegalities raised by the applicant in the affidavit. It is my view that the raised illegalities are not

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apparent on the record of the decision to be challenged. The fact that the counsel who prepared pleadings and represented the respondent did not have practicing license is not apparent on face of record. It have to be argued to be proved. The rest of the illegalities also invite a long drawn argument, as it is not apparent whether the Contract acted upon by the trial Tribunal had stamp duty or not as there is no any evidence whether this legal point was raised during the trial and refused; similarly to the fact that the trial Tribunal wrongly admitted and acted on copies as exhibits, it is not clear as the record shows that the documents were tendered by parties and admitted. Whether they were copies or original ones, this fact remains to the knowledge of the applicant as it is not shown clearly on the record.

In totality, the illegalities raised are not apparent on face of record and they can be ascertained by the long drawn arguments between the parties. I find that this second reason also not to be sufficient cause for extension of time.

Basing on the analysis of the available evidence, the applicant has failed to establish sufficient cause to warrant this Court to exercise its discretionary powers.

I find the application to have no merit and I dismiss it.

No order for costs.





A. MSAFIRI
JUDGE
26/10/2022