

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 466 OF 2022

(Arising from Judgment in Land Application No. 172 of 2010 District Land and Housing Tribunal for Kinondoni Hon. C. T. Mnzava-Chairperson dated 19th October 2012)

TUNU MUSSA.....APPLICANT

VERSUS

ZENA S. KURINGWA.....RESPONDENT

Date of last order: 17/10/2022

Date of ruling: 25/10/2022

RULING

A. MSAFIRI, J.

In this application the applicant prays for an order of the court for extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Kinondoni (the DLHT) delivered on 19th October 2012. The application has been preferred under Section 41(2) of the Land Disputes Courts Act [CAP 216 R.E 2019] (the Act). The application has been taken at the instance of the applicant and it is supported by the affidavit deposited by the applicant herself. *Alls.*

The applicant appeared in person, she had no legal representation while the respondent had the services of Mr. Sweetbert Eligidius learned advocate.

On 19th September 2022, I ordered the application be disposed of by way of written submissions the order was duly complied with by the parties hence this ruling. In her submission, the applicant has given a brief historical account of the matter. She submitted that following the decision of the LDHT which was determined *ex parte* against her and judgment was pronounced on 19/10/2012, she filed an application to set aside the *ex parte* judgment but the said application was dismissed for being preferred out of time on 14/8/2015.

The applicant contended that she again filed another Application before the DLHT for extension of time which was registered as Misc. Land Application No. 721 of 2018 but it was as well dismissed on 24th July 2019. On further submission the applicant stated that she lodged an appeal in this Court to challenge the dismissal order in respect of Land Application No.721 of 2018 but the same was dismissed for lack of merits on 5th May 2022. *Aelle*

The applicant has urged me to grant this application citing material illegalities on the face of the judgment of the DLHT. The applicant contended that the house in dispute was a matrimonial home sold by her husband to the respondent without her (the applicant's) consent.

The applicant submitted further she was not negligent or sloppy in pursuing her rights in different courts and Tribunals and she being unrepresented and a laywoman she ended up taking wrong channels. To fortify her stance the applicant has referred to me several decisions such as **Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 Court of Appeal of Tanzania at Arusha as well as **Paskal Arusha v Mossel Mollel** Civil Application No. 574 of 2017 Court of Appeal of Tanzania at Arusha (both unreported).

The applicant submitted that Section 59 (1) of the Law of Marriage Act [CAP 29 RE 2019] prohibits alienation of matrimonial house without spouse consent.

On reply the respondent forcefully resisted the application by both counter affidavit as well as reply submission. She contended that no

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sufficient reasons have been advanced by the applicant for the court to exercise its discretion for extension of time. On the applicant's claim that she is a lay and unrepresented woman, the respondent has submitted that ignorance of law cannot be a ground for extension of time. To fortify her stance the respondent has referred to me the decision of this Court in **Josephine Lumuli Kassim v Nyange Hamisi Nyange** Misc. Land application No. 635 of 2021 (unreported) to the effect that ignorance of law has never been an excuse.

The respondent has submitted further that the applicant has not accounted for each day of the delay which is mandatory requirement before the court can exercise its discretion for extension of time. The respondent contended that taking into account the entire circumstances, the applicant has been very negligent in pursuing her rights as most of her applications were dismissed for either her non appearance or lack of merits. The respondent has referred to me some of the applications filed by the applicant.

On the allegation of illegality, the respondent has submitted there is no such illegality in the decision of the DLHT which has been pointed out by the applicant. According to the respondent to constitute illegality it must

Alles.

be apparent on the face of record and not such to be discovered by long drawn argument or process. The respondent has referred the principle laid down in the decision of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania** [supra] on what constitutes illegality.

In the matter at hand the respondent refutes the applicant's contention that house in dispute was a matrimonial property because in her affidavit she did not attach certificate of marriage to show that she was indeed married to the seller of the property namely Rashid Chekatuta. Hence this will invite long drawn argument to discover such illegality because several issues will require an answer. These issues are whether the applicant was married to the seller of the house who sold the same to the respondent, whether the house was a matrimonial home, whether there was consent or not.

To fortify her stance, the respondent has referred to me another decision of this court in **Francis Julius Semwaiko v Johari Mohamed Mnondwa** Application No. 535 of 2020 (unreported) in which it was observed that;

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In my adventure, I observed that much as illegality is a good ground for extension of time, in the instant case it does not suffice as good ground as the illegality if any can only be discovered after a long drawn argument.

Basing on her reply submission, the respondent therefore prayed the application be dismissed with costs.

On rejoinder the applicant essentially reiterated her submission in chief.

Having gone through the parties' submissions rival and in support of the application at hand, the sole issue that calls for determination by the court is whether the application has merits.

The present application has been preferred under Section 41 (2) of the Act. The said provision reads;

An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

*Provided that, the High Court may, **for the good cause,***

extend the time for filing an appeal either before or after *Alle.*

the expiration of such period of forty five days. [Emphasis added]

From the foregoing provision of the law, for the court to exercise its discretion for extension of time, good cause must be shown.

However, what constitutes good cause as required under the above cited provision has not been defined. In a number of decisions 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).

In the application at hand the applicant is seeking for extension of time against the decision which was delivered on 19th October 2012 after expiry of almost over **11 years**. Hence the applicant was required to strictly account for each day of the delay. In the present application the

Alls.

reasons advanced by the applicant is presence of illegality as well as numerous applications which she preferred but in vain.

Rightly as pointed out by the respondent there is a requirement that before the Court can exercise its discretion for extension of time the applicant is required to strictly account for each day of the delay. From the date the impugned decision was delivered i.e. 19th October 2012 to 12th August 2022 the period of over 11 years should have been strictly accounted.

Going by the affidavit in support of the application, the applicant could not give a detailed account on what transpired on each day. She has submitted that several applications were preferred in an attempt to challenge the decision of the DLHT. However as it could be gathered from the record after the applicant's Appeal No. 40 of 2021 was dismissed on 5th May 2022 it took the applicant over 3 months to prefer the present application. Suffice it to say there is no detailed account of each day ever since the DLHT decision was delivered.

However the applicant has alleged presence of illegality on the impugned decision. Allegation of illegality is sufficient irrespective of the fact that the applicant has not accounted for each day of the delay. This

Alles.

position was underscored in case of **The Principal Secretary, Ministry Of Defence And National Service Vs. Devram Valambhia** [1992] TLR

"Where the point of law at issue is the illegality or otherwise of the decision being challenged, that is a point of law of sufficient importance to constitute a sufficient reason.."

However as pointed out by the respondent and the decisions she has referred, 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 by the Court in a number of cases including; **The Principal Secretary, Ministry Of Defence And National Service v Devram P. Valambhia** [supra], **Lyamuya Construction v Board Of Young Women Christians Association**, Civil Application [supra].

In the application at hand, the applicant has alleged that the house in question was a matrimonial property which was disposed to the respondent by the applicant's husband. I am of the settled opinion that such allegation cannot be safely termed as illegality because it is not apparent on the face

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of the decision sought to be appealed against and it can only be determined after a long drawn argument.

I agree with the respondent that there are several issues which will have to be determined in order to establish the applicant's allegations. Such as whether the applicant was truly married to the seller of the property in dispute which entails production of marriage certificate, the extent of contribution and whether the house was being used by applicant and her husband. These are not errors apparent on the face of record. Hence whether or not consent was given by the applicant it is a matter that needs long argument and therefore not an illegality within the purview of the referred authorities.

It is for the foregoing reasons that I hold the application lacks merits and it is hereby dismissed with costs.



A. Msafiri

A. MSAFIRI,
JUDGE
25/10/2022