

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 523 OF 2022
(Arising from Misc. Land Application No. 4 of 2021, By the District Land and Housing Tribunal for Kinondoni District, dated 10th June 2022)

PRIMI ALOYCE MUSHI.....APPLICANT

VERSUS

KASINDE SAID MZEE.....RESPONDENT

R U L I N G

Date of Last Order: 29.09.2022
Date of Ruling: 25.10.2022

T. N. MWENEGOHA, J.

The applicants are seeking for an order of extension of time so that they can lodge an appeal out of time, against the decision given in Misc. Land Application No. 4 of 2021, decided by the District Land and Housing Tribunal for Ilala District. The application was brought under Section 41(2) of the Land Disputes Courts Act, Cap 216, R. E. 2019. It was accompanied by the affidavit of Primi Aloyce Mushi, the applicant here in above. The same was heard by way of written submissions Advocate Jesca Felichism Massae appeared for the applicant and the respondent enjoyed the legal services of Advocate Bitaho B. Marco.

In her submissions, Advocate Massae gave two reasons and according to her, the same are sufficient to allow the application at hand. Firstly, is the delay by the trial tribunal to supply necessary documents (impugned

ruling and drawn order) to the applicant for him to pursue his intended appeal. She argued that, the decision in question was delivered on 10/06/2022. On 14/06/2022, the applicant applied for the copies of the ruling and drawn order for the purpose of filling an appeal. He was not supplied with the said documents regardless his efforts to remind the tribunal for the same, up until the 09th August, 2022. At the time the documents reached his hands, the time for his intended appeal had already lapsed. She cited the cases of **Bank of Tanzania vs. Lucas Masigwaza & 2 Others, Civil Application No. 322/02 of 2017, Court of Appeal of Tanzania at Arusha (unreported)** and **Oswald Masatu Mwizarubi versus Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010, Court of Appeal of Tanzania(unreported)**.

Secondly, that the decision of the trial tribunal is tainted with illegalities. The same has concealed some facts, including the applicant's assertion in his pleadings that the respondent agreed to settle the debt to the tune of 85,196,799/=. She insisted that, where a point of illegality has been mentioned in an application for extension of time, it constitutes a good cause for allowing the same. This was observed in several cases, including the case of **Principle Secretary of Defence and National Service vs. Devran P. Valambia (1992) TLR 387**.

In reply, Mr. Marco for the respondent maintained that, the applicant has failed to provide evidence that he made such follow-ups for this court to believe that he was delayed by the act of the trial tribunal upon failure to supply him with the copy of the decision and drawn order within time. He insisted that, it took 4 days for the applicant to apply for the copies of the decision and drawn order as shown in the submissions in chief. After all

the said documents were ready for collection since 15/7/2022, but the applicant went to collect them on the 09th of August 2022 and filed this application on 02/09/2022. He is supposed to account on the days especially the period from 09/08/2022 to 02/09/2022 when this application was filed. Also, he needs to account for the period from the date he applied for the copies up to the date when he went to collect the same. He cited the case of **Abraham Ford Mwakatundu versus Godlistern Uromi & Zuhura A Mohamed, High Court of Tanzania, Land Division at Dar es Salaam, Civil Application No. 707 of 2021.** On the 2nd reason that the impugned decision is tainted with illegalities.

The respondent's counsel insisted that, the illegality so complained should be apparent on face of records. It should not be discovered by long drawn arguments or process. What has been shown by the applicant's counsel are not illegalities, rather they are allegations.

In her rejoinder, the applicant's counsel reiterated her submissions in chief.

Having gone through the submissions of both parties as well as the affidavit in support of the application and the counter affidavit, the question for determination is whether the application has merits or not.

Starting with the first reason, I agree with the applicant that, the delay to be supplied with the copies of judgment and decree constitutes a sufficient cause in an application for extension of time, see **Bank of Tanzania vs. Lucas Masigwaza & 2 Others and Oswald Masatu Mwizarubi versus Tanzania Fish Processing Ltd, supra.** However, in the instant application as shown by annexure "BBM-2", the copies were certified on the 15th July, 2022 (35 days after the delivery of the decision

in question). The applicant did not give any reason or proof showing he made follow-ups to the tribunal to obtain the same. He was supposed to show concrete evidence in this court that he made efforts to obtain the copies within time, what is before me shows the copies were ready within time, but the applicant went to collect them after expiry of the time to appeal. Therefore, it is not the tribunal that caused the delay, rather the negligence of the applicant himself. He did not act within time in obtaining the said copies.

As for the illegalities so pointed out in the impugned decision of the trial tribunal. I will join hands with the counsel for the respondent; that, the said illegalities should be apparent on face of records. I have gone through the orders annexed (BBM-2) and found nothing suggesting any illegality on the face of it see **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010, Court of Appeal of Tanzania**. Therefore, this reason too lacks merits.

To that end, the application is dismissed with costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

25/10/2022