

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 553 OF 2022

(Arising from Land Appeal No. 27 of 2020 of the District Land and

Housing Tribunal for Kinondoni before Hon. Kigarabamu L.R.

dated 07th February 2020)

ALMASI ABUBAKAR MLEWA APPLICANT

VERSUS

LAZARO PETER MGANGA RESPONDENT

RULING

Date of last Order 08.12.2022

Date of Ruling 08.12.2022

A.Z.MGEYEKWA, J

This ruling is in respect of an application for an extension of time to lodge an appeal out of time against the decision of the District Land and Housing Tribunal for Kinondoni in Land Appeal No. 27 of 2020. The application, preferred under the provisions of section 38 (1) of the Land Disputes

Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deponed by Almasi Abubakar Mlewa, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter-affidavit deponed by Lazaro Peter Mganga, the respondent.

When the matter was called for hearing on 8th December, 2022, the applicant and respondent appeared in person, unrepresented.

In his submission, in support of the application, the applicant urged this court to adopt the affidavit and form part of his submission. He submitted that the delayed filing an appeal because the District Land and Housing Tribunal for Ubungo was introduced thus he had to file an appeal at Ubungo District Land and Housing Tribunal. The appellant went on to submit that he had a case at the District Land and Housing Tribunal for Ubungo was withdrawn and the Chairman advised him to file an appeal before this Court. He argued that the Ward Tribunal had no pecuniary jurisdiction to determine the case because the value of the suit land is more than Tshs. 3,000,000/=, the matter was supposed to be lodged at the District Land and Housing Tribunal.

In reply, the respondent urged this court to adopt his counter-affidavit and form part of his submission. The respondent submitted that the appellate tribunal decision was delivered on 7th February, 2022 and the applicant was informed that if he is dissatisfied he can file an appeal within 60 days. The respondent stated that the applicant in his Memorandum of Appeal referred to the impugned decision in Land Appeal No. 27 of 2020 while there was no such Application. To support his submission he referred this Court to annexure LPM1 attached to his affidavit.

The respondent asserted that the dissatisfied party was required to file an appeal before this Court, not before the District Land and Housing Tribunal for Ubungu. He went on to state that he disputed the ground of pecuniary jurisdiction since the value of the suit land was below Tshs. 3,000,000/=. He valiantly argued that the grounds for extension of time are baseless and taking to account that there is no evidence that the Chairman advised him to file an appeal before this Court. He claimed that the applicant was negligent and had no intention to file an appeal from the date of delivering the Judgment on 7th February, 2022, he lodged the instant application on 3rd September, 2022.

On the strength of the above submission, the respondent beckoned upon this court to dismiss the application with costs.

In his brief rejoinder, the applicant reiterated his submission in chief. He added that the Land Appeal No. 27 of 2020 is well stated in his affidavit. He admitted that it is a typo error made on the Memorandum of Appeal. Ending, the applicant urged this court to grant his application.

Having carefully considered the submissions made by the learned counsels in their oral submission and examined the affidavit and counter-affidavit, the issue for our determination is *whether the application is meritorious*.

The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, Tanga

Cement Company Ltd v Jumanne D. Massanga and another, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter-affidavit, I have shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decisions of both tribunals. The applicant alleges that the decisions of both tribunals are tainted with illegality since the trial tribunal determined the matter while the value of the suit land was above Tshs. 3,000,000/=.

I have opted to address the second limb of illegality since the applicant has totally failed to account for each day of delay. It has been held in times without number that where illegality exists and is pleaded as a ground the same as well constitute a good cause for an extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported) and **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported). In

Principal Secretary, Ministry of Defence and National Service v Devram Valambhia (supra) the Court of Appeal of Tanzania on page 89 held 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 is established, to take appropriate measures to put the matter and the record straight.**" [Emphasis added].*

Therefore, I fully subscribe to the submission of the applicant that the ground of illegality is a sufficient cause for an extension of time to rectify the raised anomaly. See also the case of **Badru Issa Badru v Omary Kilendu** (supra) the Court of Appeal of Tanzania held that:-

" ...I am of the considered view that even though there is a considerable delay in the application, pertinent issues have been raised. First,.. there is an allegation of illegality, irregularities, and impropriety... which cannot be brushed aside."

The illegality is alleged to reside in the powers exercised by the Ward Tribunal in hearing the case. I have perused the judgment of the appellate tribunal and found that this ground was raised before the District Land and

Housing Tribunal. The applicant in his affidavit especially in paragraph 9 stated that the Ward Tribunal had no pecuniary jurisdiction to determine the case because the value of the suit land is more than Tshs. 3,000,000/=. The respondent stated that the value of the suit land was below Tshs. 3,000,000/=. Since the one who lodged the suit at the trial tribunal was the respondent then I find that this ground of illegality is a good ground that attracts the attention of this Court.

The legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same may constitute the basis for an extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaiambia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted an extension of time if he applies for

one. The Court there emphasized that such a point of law must be of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process." [Emphasis added].

Applying the above authorities, it is clear that the ground of illegality that has been cited by the applicant touches on jurisdiction. In my considered view, this point of illegality meets the requisite threshold for consideration as the basis for the enlargement of time and this alone is weighty enough to constitute sufficient cause for an extension of time.

In sum, based on the foregoing analysis I am satisfied that the above grounds of illegality are evident that the present application has merit. Therefore, I proceed to grant the applicant's application to lodge an appeal thirty days from today. I have considered the fact that the Court vacation starts on 15th December, 2022, therefore, the applicant is allowed to lodge his appeal not beyond 15th February, 2023.

Order accordingly.

Dated at Dar es Salaam this date 08th December, 2022.



Z. MGEYEKWA

JUDGE

08.12.2022

Ruling delivered on 08th December, 2022 in the presence of parties.




A.Z.MGEYEKWA

JUDGE

08.12.2022