

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISIO)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO.692 OF 2022

(Originating from Judgment and Decree of Counterclaim of the District
Land and Housing Tribunal for Temeke at Temeke in Land Application
No. 149 of 2014)

JOHN ONESMO WILSON APPLICANT

VERSUS

ALYOCE CHACHA KENG'ANYA RESPONDENT

RULING

Date of last Order: 19.12.2022

Date of Ruling: 19.12.2022

A.Z.MGEYEKWA, J

In this application, the Court is called upon to grant an extension of time to enable the applicant to institute an appeal to this Court, against the decision of the District Land Housing Tribunal of Temeke at Temeke in Land Application No. 149 of 2014. The application, preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216

[R.E 2019]. The affidavit is supported by an affidavit deposed by John Onesmo, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondent counsel has stoutly opposed the application by filing a counter-affidavit deposed by Alyoce Chacha Keng'anya, the respondent.

When the matter was called for hearing on 1st December, 2022, the applicant enlisted the legal service of Masinde Kisomo holding brief for Mr. Mwita, Emmanuel learned counsels and the respondent enjoyed the legal service of Mr. Masinde Kisomo, learned counsel.

Having adopted the contents of the Chamber summons as well as the applicant's affidavit, Mr. Chagaluma took the floor to make elaborations in support of the order sought. He argued that the applicant wants to file an appeal out of time against a decision emanating from a Counter Claim in Land Application No. 149 of 2014. The counsel submitted that the applicant in his affidavit has demonstrated the reasons for his delay to file an appeal within time that it was based on technical delay that after being aggrieved by the decision of the trial tribunal he immediately appealed before this Court, however, his appeal was struck out for misjoinder of parties. The counsel went on to submit that the applicant applied for a copy of the Judgment, consulted his counsel for drawing the instant application, and filed the same in less than a month from the date of

striking out the said appeal. To buttress his contention he cited the case of **Sostantine Victor John v Muhimbili National Hospital**, Civil Appeal No. 64 of 2021 (unreported) and **Kahongo Moseti & Another v Mulega Peter Moholya**, Misc. Land Application No. 64 of 2021 HC at Mara (unreported). The counsel for the applicant went on to submit that this Court has the discretion to grant an extension of time and while exercising such power the Court has to ensure that the same is exercised judiciously upon the applicant disclosing sufficient cause which prevented the later from filing his appeal within the underlined time. He added that what constitutes sufficient cause has been given judicial interpretation To support his submission he cited the cases of **Lyamuya Construction Vo. Ltd v the Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

The counsel did not end there, he also stated that the trial tribunal decision was tainted with illegality since the tribunal granted relief that was not pleaded by the respondent and in its decision it relied in a sale agreement in forming its decision while the same was not attached in the written statement of defence. To support his ground of illegality he cited the case of **The Principal Secretary Ministry of Defence and National Service v Devram P. Vallambia** (1992) TLR 387.

On the second limb objection, the learned counsel for the applicant submitted that the applicant made a follow-up and he wrote a reminder letter which is annexed to his affidavit and they collected the Ruling of this Court on 30th July, 2021. Mr. David stated that it is a technical delay. Fortifying his submission, he cited the case of **Emmanuel Rurihafi & another v Jonas Mrema**, Civil Appeal No. 314 of 2019 at Dar es Salaam (unreported). He added that the delay was not inordinate since he made a follow-up to receive the application which was struck out. He stated that they were idle but took immediate action.

On the strength of the above submission, Mr. Chagaluma beckoned upon this court to grant the applicant's application.

Objecting to the application, Mr. Mwita, learned counsel for the respondents urged this Court to adopt the counter affidavit to form part of his submission. Mr. Mwita argued that there are plethora of authorities on the issue of extension of time. To buttress his submission he referred this Court to the cases of **Jubilee Insurance Company (T) Ltd v Mohamed Sameer Khan**, Civil Application No. 439/01 of 2020, and **Lyamuya Construction Co. Ltd** (supra). The learned counsel contended that the applicant has not only failed to account for the days of delay but also he is misleading this Court, he referred this Court to page 5 of this Court Judgment in Land Appeal No. 167 of 2021 which was delivered on 6th

October, 2022 and paragraph 6 the applicant claimed to have applied for copy of the said Judgment immediately which he did not get until 25th October, 2022 and there is no proof of the letter addressed to the Deputy Registrar. It was his submission that the same means from 6th October, 2022 to 25th October, 2022 there are 25 days uncounted for days which is also inordinate. He valiantly argued that this Court cannot assume that indeed the said copy of the Judgment was timely applied for but the Court delayed supplying the same to him. He spiritedly argued that it is untrue since the Court timely after the delivery of the Judgment the copies were ready for collection.

Mr. Mwita continued to submit that in paragraph 7, the applicant claims that he consulted his counsel for preparing and filing the instant application, giving him a benefit of the doubt, he contracted his counsel on the date he secured the said copy on 25th October, 2022, he filed the instant application on 1st November, 20202, a delay of 6 days. He stated that the application was filed by the applicant himself thus the name of the consulted counsel is a myth. In his view, the 6 days in accounted for, are inordinate and misleading. He stressed that an affidavit that contain untruthful information is defective, offending, and hence should be struck out.

The learned counsel for the respondent continued to submit the issue of Haji Mwikalo, the applicant asserted that he was not part of the counterclaim even though records show that the applicant and Haji Mwikalo had the same counsel. He went on to submit that the ground of technical delay is inapplicable in the matter at hand.

Regarding the ground of illegality, the counsel submitted that illegality raises a point of law of sufficient importance and the same being apparent on the face of the records, not the one that would be discovered by a long-drawn argument. To fortify his submission he cited the cases of **Jubilee Insurance** (supra) and **the Principal Secretary** (supra). Mr. Mwita contended that illegality is not a panacea for negligence, inactivity, and unexplained delay. He stated the three alleged grounds of illegality are not legal issues.

He further argued that the applicant has not specified the relief which he is aggrieved with. Fortifying his stance he cited the case of **Anthony Ngoo and Another v Kitinda Kimaro**, Civil Appeal No. 25 of 2014. He went on to submit that saying that the trial tribunal admitted a sale agreement that was not part of the pleadings is an afterthought because he did not object the tendering of the said document. Mr. Mwita further submitted that the testimony of the applicant and his counsel at the trial tribunal admitted that the vendor was party to the pleadings.

On the strength of the above submission, the learned counsel for the respondent beckoned upon this Court to dismiss the application with costs.

In his short rejoinder, the learned counsel for the applicant reiterated his submission in chief. He claimed that the respondent has submitted on the fact which were not pleaded in his counter affidavit. Mr. Chandaluma submitted that the Judgment of this Court was delivered on 6th October, 2022 and the applicant received the copy on 25th October, 2022 and immediately consulted his lawyer to draft the instant application and managed to file the same online on 28th October, 2022 and presented the hard document on 1st November, 2022. Stressing on the point of accounting for the days of delay, the counsel submitted that the applicant has managed to account for the days of delay. The counsel stated the ground of illegality is contained in the affidavit and it is apparent on the face of the record. Ending, the counsel for the applicant urged this Court to grant the applicant's application.

Having gone through the submissions from both parties it would appear to me to determine *whether the applicant has established sufficient reason for this court to enlarge the time to file an appeal out of time.*

It is trite law that in an application for an extension of time the applicant is required to account for each day of delay. In the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019. In the case of **Bushfire Hassan v Latina Lucia Masanya**, Civil Application N0.3 of 2007 (unreported) the Court of Appeal of Tanzania when addressing the issue of delay held that: -

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken ..."

This stance was followed in many decisions among them being the case of **Mustafa Mohamed Raze v Mehboob Hassanali Versi**, Civil Application No. 168 of 2014 (unreported).

Encapsulated in the applicant submission and per the applicant's affidavit, it is clear that the impugned decision was delivered on 6th October, 2022 and the applicant lodged this application for an extension of time on 21st November, 2022 a delay of one month and five days. The applicant in paragraph 6 stated that immediately after the delivery of the Judgment he applied for a copy of the judgment, however, as rightly stated by Mr. Mwita there is no any proof that the applicant applied for the said copies and there is no proof if the copies were ready for collection on 25th October,

2022. The Court is put in assumption, it was upon the applicant to prove his assertions, however, he did not do so. In his rejoinder the counsel raised a new ground which is not stated in the applicant's affidavit that the instant application was lodged online on 28th October, 2022, this submission is from the bar, therefore, the same cannot be considered.

The applicant in paragraphs 6 and 7 has used the words immediately without stating the dates when he applied for copies and the dates when he consulted his counsel. The technical delay was from the date when the Judgment was struck out which means thereafter he was required to move this Court to show the steps taken within the one month and 5 days to file the instant application. Had he attached the letter to obtain copies and accounted for the days taken to prepare the instant application then the court would have seen that the applicant has accounted for the days of delay.

Having said so, I have no other option than to fully subscribe to the respondent's counsel submission that the applicant has not accounted for each day of delay, therefore, the applicant's grounds for delay cannot hold water.

Regarding the ground of illegalities, 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:-

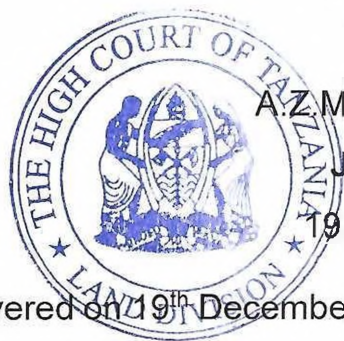
*"In our view, when the point at issue is one alleging illegality of the decision being challenged, **the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record straight.**" [Emphasis added].*

Equally, in the case of **Arunaben Chaggan Mistry v Naushad & others**, Civil Application No. 6 of 2006 CAT at Arusha (unreported), the Court emphasized the ground of illegality must be such a point of law that is of sufficient importance and apparent on the face of the record, such as the question of jurisdiction. The applicant in paragraph 9 (i) to (ii) of her affidavit has stated that the decision of the District Land and Housing Tribunal is tainted with illegalities. I have scrutinized alleged illegalities and found that some are not on the face of the record, they require a long argument.

In consequence, thereto, I am in accord with the respondent's counsel submission that the applicant has failed to advance sufficient reasons to warrant this court to use its discretion to extend the time within which to file an appeal out of time. The application is therefore dismissed without costs.


Order accordingly.

Dated at Dar es Salaam this date 19th December, 2022.



A.Z.MGEYEKWA
JUDGE
19.12.2022

Ruling delivered on 19th December, 2022 in the presence of the applicant.



A.Z.MGEYEKWA
JUDGE
19.12.2022