

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 386 OF 2022

(Originating from the Judgment and Decree of Temeke District Land and Housing Tribunal Hon. R. Mbilinyi, Chairperson in Land Appeal No. 24 of 2013 dated 30th April, 2014)

NUNUU ALLY LUNGA APPLICANT

VERSUS

NUSURA KAFUNGO 1ST RESPONDENT

SHABANI ALLY KHATIBU 2ND RESPONDENT

RULING

Date of last Order: 19.12.2022

Date of Ruling: 21.12.2022

A.Z.MGEYEKWA

In this application, the Court is called upon to grant an extension of time to lodge an application for revision against the decision of Temeke District Land and Housing in Land Appeal No. 24 of 2013. The application is preferred under the provisions of section 14 (1) of the Law of Limitation Act, Cap.89

[R.E 2019]. And section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deposed by Nunuu Ally Lunga, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondents have stoutly opposed the application by filing separate counter-affidavits.

When the matter was called for hearing on 19th November, 2022, the applicant and the 2nd respondent appeared in person. The Court ordered the matter be disposed of by way of written submissions. Pursuant thereto, the applicant and the 2nd respondent complied with the Court scheduling. Filing written submissions are tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution. The attendant consequence of failure to file written submissions is similar to those of failure to appear and prosecute or defend, as the case may be. See the cases of **National Insurance Corporation of (T) Ltd & Another v Shengena Ltd**, Civil Application No. 20 of 2007 at DSM (unreported), it was held that:

"The applicant did not file submission on the due date as ordered.

Naturally, the Court could not be made impotent by the party's

inaction. It had to act. ... it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."

In consequence of the foregoing, it is ordered that the matters be determined *ex-parte*, by considering the application based on the submission filed by the applicant and 2nd respondent.

Having adopted the contents of the Chamber Summons as well as his affidavit, the applicant submitted that the respondent instituted Land Application No. 15 of 2011 at the Ward Tribunal of Pemba Mnazi in Kigamboni District Land and Housing Tribunal against the 2nd respondent as an invader in the suit premises. The applicant submitted in length on the background of the application which I am not going to reproduce in this application. The applicant submitted that the applicant intends to challenge the decisions of the trial tribunal and the District Land and Housing Tribunal which are tainted with illegalities and irregularities and commonship is worth consideration by this Court. To buttress his submission he cited the cases of **Transport Equipment Ltd v DP Valambhia** (193) TLR 9 CAT DSM, **Principal Secretary, Ministry of Defence and National Service v Duram P. Valambhia** (1992) TLR 387 CAT at Dar es Salaam, **Kaunga & Co. Advocate v National Bank of Commerce Ltd.**(2006) TLR, **Attorney General v Tanzania Ports Authority and Another**, Civil Application No. 87 of 2006.

He continued to submit that the Court of Appeal of Tanzania at Tanga that since the applicant has alleged that there are illegalities and irregularities =, the Court has to find merit in the application, fortifying his submission he cited the case of **Ramadhani Omary Mbuguni v Ally Ramadhani & another**, Civil Application No, 112 of 2017. It was his submission that the alleged illegalities and irregularities have been clearly and sufficiently established by the applicant to warrant the grant of an order for an extension of time.

In conclusion, the applicant urged this Court to find that he has arguable grounds supported by the CAT decisions, hence he urged this Court to grant his application with costs.

In his reply, the 2nd respondent began to narrate the background of the matter which I am not going to reproduce in the matter at hand. He urged this Court to adopt the counter affidavit to form part of his submission. He submitted that the court has discretionary power to grant the application for an extension of time but the applicant must satisfy the court that there exists a good cause, accounting for the days of delay, and there exist other factors such as promptness in taking action. The 2nd respondent went on to submit that regarding illegality, the alleged illegality must be notable and manifest on the face of records. He valiantly argued that illegality is a serious

allegation that must be dealt with cautiously and judiciously otherwise illegality will be used as a panacea for every unaccounted delay. To buttress his contention he cited the case of **Hassan Ramadhani v Republic**, Criminal Appeal No. 160 of 2018 (unreported). The 2nd respondent continued to argue that the applicant has failed to show the alleged illegalities whether the same exists and if so where the said illegalities premised for them to be notable. He strongly argued that this Court cannot be moved by a mere assertion and or allegations of illegality. He went on to submit that it is settled principle that whoever seeks for the court to enlarge time in his favour must account for the delay even if it were a single day. He stated that this position was arrived by the Court of Appeal of Tanzania in the case of *Airtel Tanzania Ltd v Waterlight Electrical Installation Co, Ltd & Amord Mulaathani* (unreported) the Court of Appeal of Tanzania quoted with approval the case of *Bushiri Hassan v Latifa Lukilo Mashayo*, Civil Application No. 03 of 2007 (unreported).

The 2nd respondent went on to submit that the applicant has failed to account for the days of delay. The 2nd respondent submitted that the applicant and 2nd respondent have a mother–daughter relationship and the applicant has not stated the reasons why he should own the property on behalf of other

family members. He beseeched this Court to note that the applicant has failed to act promptly to take steps, months taken before applying for an extension of time.

In conclusion, he urged this Court to dismiss the instant application with costs.

In his brief, rejoinder, the counsel for the applicant reiterated his submission in chief. He claimed that the counsel for the 2nd respondent is evading commonship committed at the trial tribunal proceedings. She stressed that the 2nd respondent knows well the illegality which has been committed. He insisted that the proceedings of the trial tribunal are tainted with illegality and the same is a good cause for an extension of time. The applicant claimed that the impugned decision affected her rights of ownership. She valiantly argued that the circumstances of the case at hand is not based on accounting for the days of delay.

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 it 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 2nd respondent's counter affidavit, The applicant in his written submission raised one main limb for his delay; illegality. The applicant alleges that the decision of the trial and appellate Tribunals are tainted with illegality. The applicant in his affidavit that the trial tribunal proceedings are tainted with illegalities and the same was blessed

by the appellate tribunal. The applicant in his submission insisted the same and in his rejoinder, he stated that the 2nd respondent is aware of the commonship committed by the trial tribunal.

The legal position, as it currently obtains, is that where illegality exists, pleaded as a ground, and is on the face of the record, 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). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185 at page 89 thus:

*"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].*

Similarly, in the cases of **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, CAT-Civil Application No. 6 of 2016 (unreported), and

Lyamuya Construction (supra), 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 foregoing statement of principle to the case at hand, I am not persuaded that the alleged illegality is clearly apparent in the face of the impugned decision. In my view, the alleged illegality as stated by the applicant in paragraph 10 of his affidavit is not on the face of the record that bears sufficient importance. Certainly, it will take a long-drawn process to decipher from the impugned decision the alleged misdirections or non-directions on points of law. The termed illegality as rightly pointed out by the 2nd respondent does meet the requisite threshold for consideration as the

basis for the enlargement of time. To that end, I must conclude that the applicant has not demonstrated any good cause that would entitle her to an extension of time. In the circumstances of the application of the hand, the applicant was required to account for the days of delay instead of basing on the alleged point of law which was not well articulated in his affidavit and written submission.

In the result, this application fails and is, accordingly, dismissed without costs.

Order accordingly.

Dated at Dar es Salaam this date 21st December, 2022.



Ruling delivered on 21st December, 2022 in the presence of the applicant and 2nd respondent.

