

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 507 OF 2021

(Originating from Land Application No.25 of 2020 of Mkuranga District Land
and Housing Tribunal by Hon. Chairman Mwakibuja)

ALBERT THOMAS MWANGAMA APPLICANT

VERSUS

PILY MWAKASEGE RESPONDENT

RULING

Date of last Order: 22.03.2022

Date of Ruling: 25.03.2022

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 38 (1) of the Land Disputes Courts Act, cap. 216 [R.E 2019], section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019] to extend the time for the applicant to lodge an appeal to this court against the decision of the District Land and Housing Tribunal in Land Appeal No. 25 of 2020. The application is supported by an affidavit deposed by Albert Thomas Mwangama, the applicant. The respondent

resisted the application and has demonstrated his resistance by filing counter affidavit deponed by Pily Mwakasege, the respondent.

When the matter was called for hearing on 17th February, 2022, the appellant appeared in person and the respondent had the legal service of Mr. Amando Swenya, learned counsel. By the court order, the application was argued the application by way of written submission whereas, the applicant filed his submission in chief on 9th March, 2022 and the respondent filed her reply on 14th March, 2022.

In support of the application, the applicant's Advocate begun to narrate the genesis of this application which I am not going to reproduce in this application. Ms. Happiness submitted that the power of this Honourable Court in granting an extension of time to file an appeal out of time is justified under the provision of section 38(1) of the Land Disputes Courts Act, Cap 216 [R.E 2019] and section 14 of the law of Limitation Act, Cap. 89 [R.E 2019]. It was her submission that the applicant is required to state good cause for an extension of time. Fortifying her submission, Ms. Happiness cited the case of **Tanga Cement Company Ltd v Jumanne Masanawa & Another**, Civil Application No. 6 of 2001, HC. Dar es Salaam (unreported) the High Court had the following to say on this point. To bring his point home, he referred this court to the case of **Tanga Cement Co. Ltd** (supra), which

was confirmed by the Court of Appeal in the Case of **Elias Msonde v Republic**, Criminal Appeal No. 93 of 2005.

The applicant's Advocate went on to submit that the applicant's delay to file his appeal against the decision of the trial tribunal did not result from the negligence of the applicant but rather, resulted from circumstances that were beyond the applicant's control. She added that the applicant was searching for legal aid services. To support her submission Ms. Happiness referred this court to paragraphs 7 and 8 of the applicant's affidavit. The applicant added that the preparation of legal documentation for lodging an appeal required a legal person to prepare them. The applicant submitted that at the time when the applicant met Advocate Chuwa, the time for appeal was already lapsed, hence Advocate Chuwa advised the Applicant to apply for an extension of time in which he can file his appeal out of time. Ms. Happiness continued to submit that in processing an appeal, the Advocate spent 4 days and on 6th September, 2021, the applicant filed the instant application before this Court.

The applicant's counsel also raised a ground of illegalities against the impugned decision of the District Land and Housing Tribunal for Mkuranga at Mkuranga due to the fact that the tribunal erroneously upheld the decision of the Ward Tribunal for not affording the applicant the right to produce witnesses for the purchase of going to inspect the disputed land on 5th

September, 2019. Ms. Happiness added that the respondent was given such an opportunity. He added that the tribunal also failed to consider evidence produced by the applicant with respect to the measurements of the disputed land. It was her further submission that the errors committed by the District Land and Housing Tribunal are of the point of law which need further determination by this Honourable Court. Insisting Ms. Happiness submitted that in case this application will not be granted, then he will suffer irreparable loss than the respondent. Ms. Happiness added that the Constitution directs the Court to avoid technical provisions that are likely to cause a miscarriage of justice in one part. To support his submission, the applicant's counsel cited section 107A (2) (D) of the Constitution of the United Republic of Tanzania, 1997 as amended from time to time.

On the strength of the above submission, Ms. Happiness beckoned upon this court to grant the application sought based on the reasons and grounds stated above with costs.

Objecting to the application, the respondent's Advocate prayed for this court to adopt her counter-affidavit to form part of her submission. The respondent contended that the applicant has failed to establish the four conditions which were set forth for the Court to exercise its discretionary power to grant extension of time which are as follows:-

- a. The applicant must account for all the period of delay*

- b. The delay should be inordinate.*
- c. The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- d. If the court feels that their other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

The learned counsel for the respondent insisted that the applicant has failed to establish the four guide lines which were set forth for the court to exercise its discretionary power to grant an extension of time. He went on to submit that the applicant in his affidavit together with submission did not account for every single day of delay which constitutes delay. He added that the reason that he was looking for legal aid cannot stand. To buttress his contention, Mr. Sweya cited the case of **Dr. Ally Shabby v Tanga Bohora Jamaat** [1997] TLR 305. He argued that the applicant's in his affidavit specifically paragraphs 7 and 8 stated that after delivery of the judgment he started to look for a lawyer who could interpret the judgment. He valiantly argued that the judgment attached to his affidavit annexure ATM1 shows that the same was delivered on 18th February, 2021 and the applicant lodged the instant application on 6th September, 2021. He added that 140 days of delay after deducting 60 days within which he was required to file the appeal and the judgment was delivered in plain Kiswahili.

The learned counsel for the respondent went on to submit that on the above-listed conditions. On the first condition, *whether the applicant has accounted for all days of delay*; he firmly stated that the applicant has failed to account for days of delay as provided for under section 38 (1) of the Land Disputes Courts Act, Cap. 216. He added that the applicant in paragraph 6 of his affidavit claimed that he was making follow-up to obtain the judgment and decree copies without any proof of letter requesting for the said copies.

On the second condition, *whether the delay was inordinate*, Mr. Sweya submitted that the applicant obtained the copies of the judgment and decree on 3rd March, 2021 thus it is assumed that 170 days were used to interpret the judgment and decree in Kiswahili language. In regard to the third condition, *whether the applicant has shown diligence in the prosecution of the action that he intends to take*, Mr. Sweya argued that the applicant in his affidavit did not state any fact in respect of this issue only that he was looking for legal aid expertly.

Concerning the fourth condition, whether there are sufficient reasons, such as the existence of a point of law of sufficient importance, such as illegality. Mr. Sweya submitted that the issue of illegality is baseless because nowhere in the proceedings and judgment showed that the applicant requested and was denied his chance to call a witness to attend

the locus in quo instead it was the applicant's negligence to prosecute his case. To bolster his stand he cited the cases of **Metal Product Limited v Minister for Lands** [1989] TLR 5 CAT, **Calico Textile Industries Limited v Pyaraesmail Premji** [1983] TLR 28.

Mr. Sweya did not end there, he submitted that it is a settled principle of law that, failure to meet the four conditions enumerated above, the judicial power cannot be exercised simply because there is an illegality. Fortifying his position he referred this court to the case of **Tanzania Rent a Car v Peter Kimuhu**, Civil Application No. 226/01 of 2017 (unreported) CAT at Dar es Salaam.

On the strength of the above submission, Mr. Sweya urged this court to be guided by the observation of the case of **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 that the illegality of the impugned decision should be clearly visible on the face of the record. He urged this court to dismiss the application with costs.

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

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit with relevant authorities. 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.

The applicant has tried to convince this Court to find that the applicant's delay was justifiable. However, reading the applicant's affidavit, I have noted that the applicant has failed to account for every day of delay. In paragraph 6, the applicant simply stated that after the delivery of the judgment he made constant follow up to the tribunal to secure the impugn

judgment without mentioning when exactly he applied for the said copies, there is no any proof of his allegations. There is no good explanation for his delay specifically from when the judgment was delivered on 18th February, 2021 to 16th September, 2021. In my considered view, the ground of delay of struggling to hire a lawyer is not a *prima facie* panacea for a case of delay whenever it is pleaded.

Therefore, I am in accord with the learned counsel for the respondent that the applicant has not accounted for every single day of delay which constitutes delay. Therefore, I am satisfied that the first limb for the delay advanced by the applicant's Advocate is untenable.

On the second ground, the applicant's Advocate alleges the existence of illegalities in the impugned order of this court. The appellant's gravamen of the complaint is that the decision of the District is a product of illegality. The learned counsel for the applicant lamented that the District Land and Housing Tribunal for Mkuranga erroneously upheld the decision of the Ward Tribunal for not affording the applicant the right to produce witnesses for the purpose of going to inspect the disputed land on 5th September, 2019. An opportunity was given to the respondent. In his view, it was a denial of the right to be heard. I have perused the District land and Housing Tribunal decision and noted that this was among the

grounds raised by the appellant. The tribunal found that the applicant was given that right but he was not willing to obey the Ward Tribunal order.

It is worth noting although the issue of illegality is regarded as a sufficient ground in applications for extension of time but the same does not mean that any illegality raised by a party intending to appeal constitutes a point of law. In the case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported), the Court of Appeal of Tanzania held that:-

*“ 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 Valambhia’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 point of law must be that 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, (but), not one that would be discovered by a long drawn argument or process.” [Emphasis added].*

Again, in the case of **Praygod Mbaga v The Government of Kenya and others**, Civil Reference No. 04 of 2019, the Court of Appeal of

Tanzania cited with approval the case of **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (all unreported) the Court emphasized that:-

"The illegality in the impugned decision should be clearly visible on the face of the record." [Emphasis added].

Equally, in the case of **The Commissioner of Transport v The Attorney General of Uganda and Another** [1959] E. A 329, the Court of Appeal held that:-

*" In other words, the Court refused to extend time because the point of law at issue was not of sufficient importance to justify the extension. **The corollary of that is that in some cases a point of law may be of sufficient importance to warrant an extension of time while in others it may not.**"* [Emphasis added].

Applying the above authority, it cannot in my view, be said that 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 it. Each case has to be determined on its own merit and all pertinent circumstances must be considered. In the case of **Moto Matiko Mabanga v Ophir Energy PLC and 2 Others**,

Civil Application No.463/01 of 2017, delivered on 17th April, 2019, the Court of Appeal of Tanzania emphasized that:-

*“... for the ground of illegality to stand, the challenged **illegality of the decision must clearly be visible on the face of the record,** and the illegality in focus must be that of sufficient importance.”*
[Emphasis added].

After taking into consideration what has been stated in the affidavit and the applicant's Advocate submission, I would like to make an observation that in the applicant's affidavit particular paragraph 8 the applicant's ground of illegality is not visible on the face of the record, the same requires this court to go through the court records. In my considered view, the raised illegalities require a long drawn process of hearing to be discovered, thus, the same does not constitute a good cause for grant of extension of time. See the case of **Lyamuya Construction Company** (supra). The Court of Appeal of Tanzania emphasized that a point of law must be that of sufficient importance and it must be apparent on the face of the record, such as a question of jurisdiction; not one that would be discovered by long-drawn argument or process as is being submitted here.

Guided by the above findings, I am in accord with the respondent's Advocate submission that, the question of illegality in the instant

application does not arise. The same cannot, as a matter of law, be termed as illegality thus cannot be a ground for applying for an extension of time. I recapitulate that I accede to Mr. Swenya's views that the applicant's application is devoid of merit.

The upshot of the above is that I am inclined to disallow the application for an extension of time to file an appeal against the District Land and Housing Tribunal for Mkuranga with costs.

Order accordingly.

Dated at Dar es Salaam this date 25th March, 2022. Incompetent




A.Z. MGEYEKWA
JUDGE
25.03.2022

Ruling delivered on 25th March, 2022 in the presence of Ms. Kabibi Kamugisha, learned counsel for the respondent in the absence of the applicant.




A.Z. MGEYEKWA
JUDGE
25.03.2022