

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 566 OF 2021
(Arising from the Land Appeal No. 56 of 2018)

EMMANUEL ELIAZARAY APPLICANT

VERSUS

EZIRON NYABAKARI RESPONDENT

RULING

Last date of Order 16.03.2022

Last Date of Ruling 18.03.2022

A.Z. MGEYEKWA, J

This ruling is in respect of an application for extension of time to file a Notice of Appeal out of time against the decision of this court in Land Appeal No. 56 of 2018. The application, preferred under the provisions of section 14 of the Law of Limitation Act, Cap. 89 [R.E 2019], section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] and section 95 of the Civil Procedure Code Cap. 33 [R.E 2019]. The affidavit is supported by an affidavit deponed by Emmanuel Eliazary, the applicant. The applicant has set out the grounds on which extension of time is sought.

The respondent has stoutly opposed the application by filing a counter affidavit.

When the matter was called for hearing on 28th February, 2022, the applicant enjoyed the legal service of Ms. Neema Massame, learned counsel and the respondent had the legal service of Mr. Baraka Maugo, learned counsel. Ms. Neema urged this court to argue the application by way of written submission and by the leave of this court, the application was argued by way of written submission whereas, the applicant filed his submission in chief on 4th March, 2022 and the respondents filed their reply on 11th March, 2022. The learned counsel for the applicant waived her right to file a rejoinder.

Ms. Neema started by tracing the historical background of the matter which I am not going to reproduce in this application. Reiterating what was deposed in the supporting affidavit, the learned counsel for the applicant asserted that the Land Appeal No.56 of 2018 was dismissed while the same was filed after obtaining leave to refile. Ms. Neema concentrated to submit on the issue of whether it was proper to dismiss Land Appeal No. 56 of 2018 which was filed after leave granted by the same court. I will not dwell much on this issue instead I will summarize her submission as follows: Ms. Neema contended that the impugned order of this court is tainted with illegality she argued that in a situation where the court grants

leave without specifying time then computation period of limitation for filing shall start to accrue on the day such leave was so granted. To buttress her contention, she cited the cases of **Mount Meru Hotel v Florah Michael Ruhanya**, Revision Application No. 57 of 2019 HC, Labour Division at Arusha and **Tanzania Ports Authority, and Attorney General v Leighton Offshore PTE Limited**, Misc. Commercial Application No. 144 of 2020 HC at Dar es Salaam.

It was her further submission that the decision of Hon. Maghimbi is tainted with illegality for the reason that once leave is granted the period of limitation starts to run from the date when leave was granted thus the dismissal of Land Appeal No. 56 of 2018 was not correct. Ms. Neema submitted that the legal position is settled that in order for the court to extend time one has to put forward sufficient cause.

Ms. Neema went on to submit that this court has held in various decisions that illegality is a good cause for an extension of time and the same is considered as a fit ground for extension of time. To fortify her submission she cited the case of **James Anthony Ifada v Hamis Alaw**, Civil Application No. 482/14 of 2019, CAT at Shinyanga (unreported) and **Arunaben Chaggan Mistry v Naushad & others**, Civil Application No. 6 of 2006 CAT at Arusha (unreported). Stressing on the point of illegality, she submitted that illegality is a sufficient cause for the court to extend

time. To bolster her stand she cited the cases of **The Principal Secretary Ministry of Defence and National Service v Devram Valambia** (1992) TLR 182 and **VIP Engineering and Marketing Limited v Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2008 (unreported).

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

Opposing the application, the learned counsel for the respondent began by tracing the genesis of the matter which I am not going to reproduce in this application. The learned counsel argued that the applicant has not assigned any account for each day of his delay. He submitted that the ruling in Misc. Application No. 629 of 2020 was delivered in August, 2021 in favour of the Respondent. The Applicant then decided to file a Misc. Application No. 566 of 2021 on the 18th day of October, 2021.

The learned counsel for the respondent went on to submit that the applicant did not take any action to apply for an extension of time to lodge a Notice of Appeal, as a result, the time lapsed. Therefore, it was his submission that the applicant has not given any sufficient reason for his delay. Fortifying his submission, he referred this court to the case of **Ferdinand Nzyungu v Cledo Nkanga**, Land Appeal No. 25 of 2020.

Regarding the issue of illegality. Mr. Baraka strongly argued that the illegality does not hold water since the applicant was required to account for the days of delay.

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

So much for the submissions of the learned counsel for both parties. The ball is now in my Court. I wish to start by underscoring, first, that it is settled law that applications of extension of time will only succeed upon the applicant showing good cause for the delay. This is a requirement of the law under which the present application has been made. To grant or not to grant extensions is within the unfettered discretion of the Court. This unfettered discretion is only subject to the obvious fetter of all discretions; that is, it must be exercised judicially. See the case of **Lalji Gangji v Nathoo Vassanjee** [1960] 1 EA 315 and **Noormohamed Abdulla v Ranchhodbhai J. Patel & another** [1962] 1 EA 447.

Reverting to the merits of the application, it is worth noting that Ms. Neema did not account for the days of delay instead she relied on the ground of illegality. It is the position of the law that illegality can be a good reasons for extension of time.

In the instant application, the applicant's Advocate alleging existence of illegalities in the impugned order of this court. The appellant's gravamen of the complaint is that the illegality is alleged to reside in the powers exercised by this court in dismissing the appeal. The illegality in question is whether it was proper to dismiss the Land Appeal No. 56 of 2018 which was filed after leave had been granted by the same court. Reading paragraph 13, the applicant alleges that the ruling of this court dated is tainted illegality and irregularities which attracts the attention of the court of appeal on whether the Hon. Judge had jurisdiction to review his fellow Judge revision.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter affidavit, Ms. Neema has shown the path navigated by the applicant and the backing she has encountered in trying to reverse the decision of this court. The applicant's Advocate has raised one limb for his delay that is illegality. The applicant's Advocate alleges that the decision of this court is tainted with illegality.

On his side, the learned counsel for the respondent opposed the application, on paragraph 3 of the counter affidavit, the learned counsel for the respondent argued that there is no any illegality in the Land Appeal No. 56 of 2018 which is sought to be appealed against. In his submission,

Mr. Baraka stated that the applicant was supposed to state good reasons for her delay. He valiantly argued that the illegality has no any relationship with the delay.

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 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 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**; 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 point of law as to whether it was proper to dismiss the Land Appeal No. 56 of 2018 which was filed after leave had been granted by the same court. In my considered view, this point of illegality meets the requisite threshold for consideration as the basis for enlargement of time and that this alone, weighty enough to constitute sufficient cause for extension of time.

In sum, based on the foregoing analysis I am satisfied that the above ground of illegality is evident that the present application has merit.

Therefore, I proceed to grant the applicant's application to lodge a Notice of Appeal within twenty-one days from today. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 18th March, 2022.




A.Z. MGEYEKWA

JUDGE

18.03.2022

Ruling delivered on 18th March, 2022 via audio teleconference, whereas Ms. Neema Massame, learned counsel for the applicant and Mr. Baraka Maugo, learned counsel for the respondent were remotely present.




A.Z. MGEYEKWA

JUDGE

18.03.2022