**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC.LAND APPLICATION NO. 118 OF 2021**

*(Arising from Land Application No. 80 of 2011 of the District Land and Housing Tribunal for Kibaha at Kibaha)*

**ALOIS THADEO ..... 1ST APPLICANT**

**ALLY ABDALLAH MTENGA ..... 2ND APPLICANT**

**VERSUS**

**RICHARD BAMBA SENI ..... RESPONDENT**

## RULING

**I. ARUFANI, J.**

The applicants filed in this court the application at hand seeking for extension of time to file appeal in the court out of time to challenge the judgment and decree issued by the District Land and House Tribunal for Kibaha at Kibaha in Land Application No. 80 of 2011. The application is made by way of chamber summons and is made under section 41(2) of the Land Disputes Courts Act [Cap 216 R.E 2019] and section 95 of the Civil Procedure Code [Cap 33 R.E 2019]. The application is supported by joint affidavit sworn by the applicants and is opposed by the respondent.

During hearing of the application, the applicants were represented by Mr. Pasensa Dickson Kurubone, learned advocate and the respondent was represented by Mr. Raphael David, learned advocate. When the

application came for hearing the court ordered the application be argued by way of written submissions.

In supporting the application, the counsel for the applicant stated in his submission that, the power of the court to grant extension of time is discretional and is supposed to be exercised by the court judiciously by considering whether the applicant has adduced sufficient reasons for the delay or not. To support his argument, he cited the case of **Selina Chibago V. Finihas Chibago**, Civil Application No.182 of 2007, CAT at DSM (unreported) where it was stated that, there is no particular reasons or reason which has been set out as standard sufficient reason for granting extension of time. It depends in particular circumstance of each application.

He argued that, one of the grounds for extension of time adduced by the applicant in their joint affidavit is that the decision of Land Application No. 80 of 2011 of the District Land and Housing Tribunal was tainted with illegality. He stated that, the respondent neglected to join Kerege Village Council in the suit while is the one allocated the disputed land to the respondent. He submitted that, there could be no effective judgment that would legally stand in absence of the Kerege Village Council. He argued that, non-joinder of necessary party in the suit is an illegality need to be addressed by the court.

To fortify his submission, he cited the case of the **Principal Secretary, Ministry of Defence and National Service V. Devram Valambia** [1992] TLR 182 where it was stated inter alia that, when the point at issue is one alleging illegality of the decision being challenged the court has a duty of extending time for the purpose of putting the record right. He also cited the case of **Godfrey Kunzugala V. Abdulrahim Peter Shangashi,** Misc. Land Appeal No. 120 of 2019, HC land Division at DSM (unreported) where it was stated that, where non joinder is of a necessary party, the position of law is such that the judgment and proceedings therefore became null and void. He submitted that, if the application will not be granted the alleged illegality will not be rectified by this appellate court and instituting a suit without joining the necessary party remains to be a nightmare in terms of proceedings and judgement.

The applicants' counsel submitted further that, another reason for the delay is technicalities. He argued that, in 2011 the respondent filed land application No. 80 of 2011 in the District Land and Housing Tribunal at Kibaha against the applicants which finally was determined on 20th October 2017 in favour of the respondent. He argued that, after the pronouncement of the said judgement, the applicants were aggrieved and filed land revision No 36 of 2018 in this court but it was dismissed on 6th May, 2020 on the ground that, the orders sought were appealable and

could not be brought by way of revision (he referred annexure AA2 to the applicants' joint affidavit). He supported his submission by citing the case of **Fortunatus Masha V. Willium Shija & Another,** [1997] TLR 154 where it was held inter alia that, where delay was not actual but rather a technical delay the application for extension of time ought to be granted.

He added that, since when the Land Application No. 80 of 2011 was filed in the District Land and Housing Tribunal of Kibaha up to date the applicants have always been in the corridors of the court seeking for justice on the ownership of the disputed land. He said it was until 22nd February, 2021 when the applicant obtained money and instructed their advocate to take necessary steps to appeal against the said impugned judgment.

He finalised his submission by adding another reason that, there is an overwhelming chance of success in the intended appeal in case the time to appeal will be enlarged by this court because of the stated reasons of illegality and non-joinder of necessary party in the suit which constitutes sufficient ground for granting the sought prayers. He added that, the applicants delay in filing the intended appeal was neither calumniated by the negligence nor sloppiness in action on the part of the applicants.

On the other hand, the counsel for the respondent submitted that, an appeal to this court originating from the District Land and Housing Tribunal is supposed to be filed in the court within 45 days from the date of the judgment. Therefore, the applicants were supposed to file their appeal in the court on or by 3rd November, 2017 as required by section 41 (2) of the Land Dispute Court Act. He argued that, the records of the matter at hand shows the application was filed in the court on 11th March, 2021 that is after the elapse of 1,219 days (3 years and 4 months) after the last date for filling their appeal in the court.

The counsel for the respondent submitted that, the applicants have not accounted on every day of the delay in filling their appeal in the court. He went on submitting that, there are factors which are to be considered if the applicant deserves leniency and discretion of the court in extending time and these are; (i) whether or not the application has been brought promptly, (ii) whether there is a valid reason for such delay, (iii) whether the applicant has acted diligently, and (iv) whether the applicant never acted negligently.

He submitted further that, in paragraph 3 of the applicants' affidavit they are deposing that, after the judgment of the tribunal being delivered, they opted to file in this court Revision No.36 of 218 but it was dismissed on 6th May 2020 on the ground that the orders they were seeking were

appealable. Now from 20th October, 2020 to 11th March, 2021, what were they doing? He submitted that, lack of diligence cannot warrant a person to procure an extension of time and that was stated in the case of **Umoja Garage V. NBC,** [1997] TLR 118.

He went on submitting that, the applicants failed to comply with the mandatory provision of section 41(2) of the Land Dispute Court Act. He cited the case of **Ratnam V, Cumarasamy**, (1965) 1 WLR 8 the Privy Council where it was stated that, the rules of the court must prima facie be obeyed and in order to justify the court in extending time during which some steps in procedural requires to be taken there must be some materials upon which the court can exercise its discretion. if the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules.

Having gone through the rival submissions from the parties the court has found the issue to determine in the matter at hand is whether the application is meritorious. It is a trite law that, in order for the court to exercise its discretionary power to extend time for the applicant, there must be established sufficient grounds. In the present case the applicants deposed in their joint affidavit that, the reasons for their delay are that; firstly, they were prosecuting revision No. 36 of 2018 which was dismissed on 6th May, 2020, secondly, they did not have money to engage an

Advocate for intended appeal, and thirdly that the judgment delivered by Tribunal is tainted with illegality for non-joinder of a necessary party.

It is not in dispute that, after delivery of the judgment of the land application No. 80 of 2011 and finally determined on 20th October, 2017 the applicants filed Revision No. 36 of 2018 in this court which was dismissed on 6th May, 2020 for the reason that the impugned decision was appealable and could not be brought by way of Revision. However, the applicant did not state when the said Revision was filed in the court. It is a settled position of law that, time spent when prosecuting another civil proceeding is required to be excluded from the time required for filing a matter in the court. That was stated so in the case of **Fortunatus Masha** (supra). Therefore, the time spent by the applicant in prosecuting Revision No. 36 of 2018 is required to be excluded from the period of delay to file the appeal in the court within the time.

Since the Revision No. 36 of 2018 was dismissed by the court on 6th May, 2020, the court has found the applicants were required to account for the period from the stated date to the date of lodging the instant application in the court on 11th March, 2021. The requirement to account for each day of the delay as correctly argued by the counsel for the respondent has been emphasized by our courts in range of cases. That can be seeing in the case of **Daudi Haga v. Jenitha Abdan Machanju**,

Civil reference No. 19 of 2006, Court of Appeal at Tabora, (Unreported) where it was stated that;

> *"A person seeking for an extension of time has to prove on every single day of the delay to enable the court to exercise its discretionary power."*

It was also stated by the Court of Appeal of Tanzania in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007(unreported) 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."*

From the wording of the above quoted excerpts the court has found the applicants were required to account for the period from 6th May, 2020 to 11th March, 2021 which is a period of about ten months and as rightly argued by the counsel for the respondent they have not managed to discharge the said obligation.

Coming to the second reason which states the applicant had no money to engage advocate of assisting them in preparing the intended appeal the court has failed to see any merit in the said reason. First of all, the court has found that, there is no material fact or facts establishing the applicants had no money of engaging advocate of assisting them in their intended appeal and they went to do the alleged agricultural activities to get the money of engaging advocate of assisting them in their intended

appeal. Secondly, the court has found if the applicants had no money, they could have sought for legal aid from the institutions and organizations which renders legal aid to people who cannot pay advocate fees instead of going to do the alleged farming activities while the time for filing appeal was not waiting them. To the view of this court the stated reason cannot be a good cause or sufficient reason for granting extension of time.

With regards to the issue of illegality relating to non-joinder of Kerege Village Council in the suit the court has found it is true as argued by the counsel for the applicants that, as stated in the case of **Devram Valambia** (supra) and other cases the position of the law is very plain that, where the point at issue is one alleging illegality that is a sufficient cause for granting extension of time to enable the court to ascertain it and if it is established to put matter and the record right. However, the court has found the position of the law laid in the case of **Devram Valambia** (supra) was restated in the case of **Lyamuya Construction Community Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where it was stated inter alia that:-

> *"Since every party intending to appeal seeks to challenge a decision either on point of law or facts, it cannot in my view, be said that in Valambia'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].

While being guided by the position of the law stated in the above holding of the Court of Appeal the court has considered the issue of non-joinder of Kerege Village Council in the suit as an illegality which can be taken as a ground for granting extension of time to the applicants to file their intended appeal in the court out of time prescribed by the law but failed to see any merit in the said argument. The court has arrived to the above view after seeing that, the judgment of the tribunal shows clearly that the respondent tendered before the tribunal documentary evidence which were admitted in the case as exhibit PI.

The said documentary evidence are minutes of the meeting and letter of allocation of the suit land by the kerege Village Council to the respondent both dated 29th February, 1996. In addition to the stated documentary evidence the court has found that, the respondent also called the Village Chairman and Village Executive Officer to testify in the

matter and they testified as PW2 & PW4 and said the land was the property of the respondent as it was allocated to him by the Kerege Village Council. In the premises the court has found that even if the Kerege Village Council would have been joined in the case it would have not changed the decision of the tribunal.

The court has considered the position of the law stated by this court in the case of **Godfrey Kuzungala** (supra) but find the said case is distinguishable from the case at hand. The court has found that, non-joinder of party stated in the said case was about a necessary party who without him execution of a decree cannot be executed while in the case at hand it cannot be said Kerege Village Council was a necessary party to the case to the extent that execution of the decree of the tribunal cannot be done without joining them in the case. In the premises the court has found non-joinder of Kerege Village Council in the suit is not an illegality which can be used as a good or sufficient cause for granting extension of time to the applicants.

Basing on what I have stated hereinabove the court has found the applicants have not been able to satisfy the court there is a good or sufficient cause to move it to exercise its discretionary power to grant the applicants the order of extension of time they are seeking from this court.

In the end result the application is found is devoid of merit and is dismissed with costs.

Dated at Dar es Salaam this 3rd day of March, 2022.

**I. ARUFANI**

**JUDGE.**

**03/03/2022**

**Court:**

Ruling delivered today 3rd day of March, 2022 in the presence of Mr. Pasensa Dickson Kurubone, learned advocate for the applicants and also holding brief of Mr. Raphael David, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.

THE HIGH COURT OF TANZANIA
LAND DIVISION

**I. ARUFANI**

**JUDGE.**

**03/03/2022**