

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

MISC. LAND APPLICATION NO. 513 OF 2021

*(Originating from the decision of the District Land and Housing Tribunal in
Land Application No. 50 of 2008 delivered on 16th March, 2010)*

ZUBERI SELUHOMBO KANDAMSILE APPLICANT

VERSUS

MICHAEL AUGUSTINO RESPONDENT

RULING

Date of last Order 06.04.2022

Date of Ruling 08.04.2022

A.Z.MGEYEKWA, J

This application was lodged before this court on 23RD September, 2021 the applicant is praying for an extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal for Kibaha at Kibaha delivered on 16th March, 2010 certified on 6th August, 2010.

When the matter was called for mention on 6th April, 2022 the applicant appeared in person, unrepresented. There is no dispute that the respondent, by way of publication in Kiswahili tabloid – Mwananchi

Newspaper dated 7th December, 2021 was summoned to appear in court. I am alive to the fact that the respondent was notified through the said publication to appear on 3rd January, 2022 when this application was fixed for mention. Having regard to the entire circumstances of this case, I am of the considered view that the respondent was duly being served, therefore, I proceed to determine the application *ex parte* against the respondent.

The applicant being an old man had not much to submit, he urged this court to adopt his affidavit and grant the application.

The applicant's affidavit was sworn by Zuberi Seluhombo Kandamsile, the applicant. In his affidavit, he stated that the decision of the District Land and Housing Tribunal for Kibaha with respect to Application No. 50 of 2008 was delivered in favour of the respondent. He stated that the said judgment was certified on 6th August, 2010. He stated that failure to lodge an appeal within time was due to his sickness and he blamed the District Land and Housing for failure to supply him with a certified copy of the judgment on time.

The applicant went on to state that the impugned judgment of the District Land and Housing Tribunal is tainted with irregularities and

procedure impropriety with respect to the evidence in proving the ownership of the suit premises.

For the interest of justice, he urged this court to grant his application for an extension of time.

Having carefully considered the applicant's 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 was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

I have keenly followed the applicant's affidavit, I have shown the path navigated by the applicant who is trying to reverse the decision of this the District Land and Housing Tribunal for Kibaha. In the affidavit, the applicant relied solely on the ground of illegality. I am saying so because he has not accounted for the days of delay.

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 at 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].*

Therefore, I fully subscribe to the submission of the learned counsel for the applicant that the ground of illegality is a sufficient cause for an extension of time in order to rectify the raised anomaly. See also the case of **Badru Issa Badru v Omary Kilendu** (supra) the Court of Appeal of Tanzania held that:-

*"I am of the considered view that even though there is a considerable delay in the application, pertinent issues have been raised. First, ... **there is an allegation of illegality, irregularities, and impropriety** ... which cannot be brushed aside." [Emphasis added].*

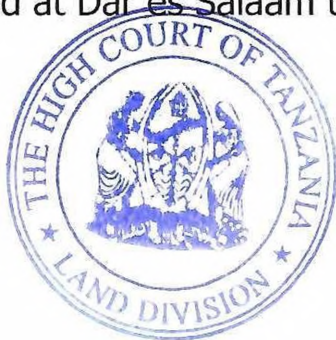
The illegality is alleged to reside in the powers exercised by the District Land and Housing Tribunal in excess of its hearing of the application. The applicant is complaining that the District Land and Housing Tribunal decision is tainted with irregularities and procedure impropriety. In the case of **Praygod Mbagu v The Government of Kenya, Criminal Investigation Department and The Hon. Attorney General of Tanzania**, Civil Reference No. 04 of 2019, it was held that where illegality exists and is pleaded as a ground, the same as well constitute a good cause for an extension of time.

In my view, the raised illegality bears sufficient importance, it meets the requisite threshold for consideration as the basis for enlargement of time, and this alone is weighty enough to constitute sufficient cause for an 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 an appeal within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 8th April, 2022.




A.Z.MGEYEKWA
JUDGE
08.04.2022

Ruling delivered on 8th April, 2022 in the presence of the applicant.




A.Z.MGEYEKWA
JUDGE
08.04.2022