

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 693 OF 2021

(Arising from Misc. Land Application No. 148 of 2020 in the District Land and Housing Tribunal for Kibaha, originated from Talawanda Ward Tribunal in Application No. 5 of 2020)

MICHAEL ATANAS MALILA APPLICANT

VERSUS

SELEMANI KULULO RESPONDENT

RULING

Date of last Order: 13.04.2022

Date of Ruling 13.04.2022

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]. The applicant urged this court to extend the time to file an appeal out of time against the decision of the District Land

and Housing Tribunal for Kibaha in Appeal No.148 of 2020, originating from the Tawalanda Ward Tribunal in Application No. 5 of 2020.

The application is supported by an affidavit deposed by Michael Atanas Malula, the applicant. The respondent resisted the application and has demonstrated his resistance by filing a counter-affidavit deposed by Selemani Kululo, the respondent.

When the matter was called for hearing on 9th April, 2022, the applicant enlisted the legal service of Ms. Rachel Kabogo, learned counsel holding brief for Mr. Omega Emmanuel, the applicant's Advocate while the respondent enjoyed the legal service of Yusuph Mathias, learned counsel holding brief for Mr. Kiondo, learned counsel for the respondent. The Court acceded to the parties' proposal to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

Submitting in support of the application, Mr. Omega urged this court to adopt the applicant's affidavit and form part of his submission. He submitted that the failure to file an appeal within time was not negligently done by the applicant but it was due to the delay in receiving a certified

copy of the judgment. He added that the applicant received the copies on 8th November, 2021 which was already out of time. He went on to submit that on 8th November, 2021 the applicant started to look for an Advocate who will advise on the matter, and on 29th November, 2021 he met Mr. Omega Juael, learned counsel who facilitated the filing of this application. He insisted that the delay in obtaining certified copies is one of the sufficient reasons for granting an extension of time to file an appeal out of time. Supporting his submission, he cited the case of **Moses Mchunguzi v Tanzania Cigarette Co. Ltd** and reference No.3 of 2018 (unreported) the court held that:-

" ..the court has therefore developed some factors which can be considered to constitute good cause. Some of these include promptness of taking action, the length of delay, illegality, and delay in being supplied with the necessary documents..."

Regarding the ground of illegality. The learned counsel for the applicant submitted that the impugned decision is tainted with illegality. He stated that the District Land and Housing Tribunal stated that the applicant has no *locus standi* and ended up ordering retrial denovo without considering the evidence on record. The learned counsel for the

applicant submitted that the applicant has an interest in the suit land as he cultivated the said land for 23 years from 1996 to 2019. He claimed that the Chairman gave an order which is contrary to section 31 (1) of the Law of Limitation Act, Cap.89 [R.E 2002], therefore, in his view the judgment and proceedings were nullity. To buttress his contention he cited the case of **Josia Basisi and 138 others v Attorney General and Others**, Misc. Civil Appeal [1998] TLR 331.

The learned counsel for the applicant did not end there, he submitted that the ground of illegality is sufficient reason for an extension of time. Fortifying his submission he referred this court to the cases of **VIP Engineering and Marketing Limited v Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2006 (unreported), and **TANESCO v Mfungo Leonard Majura & 15 Others**, Civil Application No.94 of 2016 (unreported).

In conclusion, the learned counsel for the applicant urged this court to grant the applicant's application to file an appeal out of time.

Objecting to the application, in his written submission, Mr. Kiondo, learned counsel urged this court to adopt the respondent's counter-affidavit and form part of his submission. The respondent's Advocate

valiantly contended that the applicant has failed to account for each day of delay for the court to grant his prayers thus the application is devoid of merit. He went on to submit that the applicant's ground for the delay is based on the delay to obtain copies of the tribunal decision, looking for legal assistance and he raised the ground of illegality. Stressing, Mr. Kiondo contended that there is no good cause or sufficient reason advanced by the applicant since the requirement to attach copies of judgment and decree does not apply in cases originating from the Ward Tribunal. To buttress his submission he referred this court to section 38 (1), (2) and (3) of the Land Disputes Courts Act, Cap. 216 and cited the case of **Mohamed Yahaya Ramia v Richard Joseph Rusisye**, Land Appeal No. 127 of 2015 (unreported).

Concerning the ground of illegality, the learned counsel for the respondent contended that alleging illegality on the decision of the Ward Tribunal is misconceived and misleading and thus a gross misdirection. He claimed that the allegation against the Ward Tribunal had no merit. He defended the decision of the appellate tribunal as sound and reasoned. He insisted that the dismissal of the appeal had been on the purest point of law not on the matter of technicalities. He added that there are no

chances of success on the intended appeal and thus the instant application is frivolous, vexatious and an abuse of the court process as there is no sufficient reason or good cause for delay by the applicant to file an appeal timely and no illegality in the decision in dismissing the appeal.

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

In his short rejoinder, the applicant's Advocate reiterated his submission in chief and added that the copies of judgment and decree were necessary documents to enable the applicant to prepare the grounds for appeal. He distinguished the cited case of **Mohamed Yayaha Ramia** (supra) that the cited case of **Moses Mchunguzi** (supra) is a recent case in regard to sufficient reasons for extension of time to file an appeal.

Regarding the issue of illegality, he insisted that the failure of the appellate tribunal to consider the law of limitation and evidence on record concerning *locus standi* was fatal. He insisted that the appellant occupied the suit land since 1996 and developed it for 23 years but the trial tribunal declared the appellant to have no *locus standi* for the reason that the land

in dispute was sold to Mzee Alois in 1952 while that was not the testimony of the appellant.

on the strength of the above submission, the applicant's Advocate prayed for this court to grant the applicant's application.

Having heard the contending submissions of the parties, it now behooves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge an appeal. The central issues for consideration and determination are *whether or not the applicant has shown good cause to justify his application in terms of section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019] under which this application is brought.*

To begin with, I wish to restate that it is settled law that an application for an extension of time is grantable where the applicant presents a credible case to warrant a grant of such extension. This means that a party asking for an extension of time has a duty to justify the reason for the extension. The law also requires the applicant to act equitably as it was held in the case **Nicholas Kiptoo Arap Korir Sa/at v IEBC & 7 Others**, Supreme Court of Kenya. Application 16 of 2014.

Gathering from the submissions, the applicant's quest for an extension of time is premised on two grounds. One, account for the days of delay; two, irregularities in the judgment sought to be impugned. The respondent's Advocate contended that no sufficient cause has been adduced, and the fact that the applicant has generally narrated what transpired without stating the cause of his delay. I have opted to begin addressing the ground of illegality.

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 is 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 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 locus standi*, whether the applicant had *locus standi* at the trial tribunal or not. Reading the applicant's affidavit in particular paragraph 8, the applicant is complaining that there is a serious illegality and irregularity in the impugned decision which attracts the attention of this court. The learned counsel for the applicant in his written submission stated that the tribunal declared that the applicant has no *locus in standi* while the applicant cultivated the suit land for 23 years from 1996 to 2019. The respondent on his side opposed the application, Mr. Kiondo contended that the decision of the District Land and Housing Tribunal is well-founded in both law and fact, thus, there is no any illegality involved in the decision of the said Tribunal.

In my view, the raised illegality of *locus standi* is on point of law, therefore, the same meets the requisite threshold for consideration as the basis for enlargement of time, and this alone, 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 before this court within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 13th April, 2022.



A.Z.MGEYEKWA

JUDGE

13.04.2022

Ruling delivered on the 13th April, 2022 via audio teleconference whereas Mr. Francis Johnson, learned counsel for the applicant was remotely present and the respondent was present in person.



A.Z.MGEYEKWA

JUDGE

13.04.2022