

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO.649 OF 2021  
(Arising from Land Revision No.02 of 2020)**

**PHILEMON LUGAMGIRA ..... APPLICANT**

**VERSUS**

**APLOLINARY MWANANZIGE ..... 1<sup>ST</sup> RESPONDENT**

**MAGRETH NAMBULI LUGANGIRA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 21.04.2022*

*Date of Ruling: 25.04.2022*

**A.Z.MGEYEKWA, J**

This ruling is in respect of an application for an extension of time to file an appeal out of time against the decision of this court in respect to Land Revision No. 02 of 2020. The application, preferred under the provisions of section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019]]. The affidavit is supported by an affidavit deponed by Philemon Lugangira, the

applicant's Advocate. The applicant has set out the grounds on which an extension of time is sought. The respondents have stoutly opposed the application by filing a counter-affidavit. The first respondent's counter-affidavit is deponed by Apolinary Mwananzige, the 1<sup>st</sup> respondent, and the second respondent's counter-affidavit is deponed by Magreth Nambuli Lugangira, the 2<sup>nd</sup> respondent.

When the matter was called for hearing on 13<sup>th</sup> April, 2022 when the matter came for hearing, the applicant enlisted the legal service of Ms. Semeni John, learned counsel and the respondent appeared in person, unrepresented. By the court order, the application was scheduled to be disposed of by the way of written submission whereby the applicant filed his submission in chief on 16<sup>th</sup> November, 2021. The respondent was required to file a reply before or on 29<sup>th</sup> December, 2021. A rejoinder was filed on 4<sup>th</sup> January, 2022. The 2<sup>nd</sup> respondent conceded to the application therefore the 1<sup>st</sup> respondent was required to lodge

In support of the application, Mr. Mafie begun by tracing the genesis of the matter which I am not going to reproduce in this application. He submitted that the applicant was required to file an appeal within thirty days from the date of the judgment. He added that the applicant after receiving leave to

appeal the applicant immediately requested for a copy of the ruling and he received it on 11<sup>th</sup> November, 2021, and started the process to hire an Advocate, he found himself out of time hence he lodged the instant application for extension of time.

The learned counsel for the applicant went on to submit that the applicant is a layman thus, he was not aware of the procedure and rules of the court. He added that the court considers departing from the general rule and consider other factors in granting an extension of time. He added that where there is a point of law that requires to be determined by the higher court such as jurisdiction then the same is a fit ground for extension of time. To fortify his submission he cited the cases of **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, CAT-Civil Application No. 6 of 2016 (unreported), **Eqbal Ebrahim v Alexander K. Wahyungi**, Civil Application No. 235/17 of 2020, **VIP Engineering and Marketing Limited and three others v Citibank Tanzania Ltd**, consolidated, Civil References No. 6, 7 and 8 of 2006 (unreported) and **MMI Steal Industry Ltd v Mohamed Said Katoto**, Civil Appeal No. 392/01 of 2017. Stressing on the point of law, he submitted that the illegality in question needs the consideration and determination of the Court of Appeal.

In conclusion, Mr. Mafie urged this court to grant the applicant's application for an extension of time to allow the applicant to file an appeal to the Court of Appeal of Tanzania.

The learned counsel for the respondent was very brief. He argued that the applicant has advanced two points of law to be determined by the Court of Appeal of Tanzania; whether the High Court acted within its jurisdiction in dismissing the application for revision based on the ruling of the Ward Tribunal proceedings instead of the District land and Housing Tribunal, whether the High Court had jurisdiction to entertain and dismiss the revision. It was his view that this court had jurisdiction considering the fact that the applicant is the one who lodged the application for revision in respect to Land Case No. 114 of 2019 of the District Land and Housing Tribunal for Temeke. He distinguished the cited cases by the applicant's Advocate from the matter at hand.

On the strength of the above submission, the learned counsel for the 1<sup>st</sup> respondent beckoned upon this court to dismiss the applicant's application for an extension of time with costs.

In his rejoinder, Mr. Mafie reiterated his submission in chief. Stressing that this court had to deal with the decision of the District land and Housing

Tribunal since the appellate tribunal was required to revise the trial tribunal decision. Insisting that, this court acted beyond its jurisdiction by entertaining the decision of the trial tribunal. The learned counsel for the applicant urged this court to allow the applicant's application.

Having carefully considered the submissions made by the learned counsels in their oral submission and examined the affidavit and counter-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. This stance has been taken by the Court of Appeal of Tanzania in a number of its decision. See the case of **Mbogo & Another v Shah** [1968] EALR 93.

Moreover, 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 position

has been amplified in a multitude of the Court of Appeal decisions. In the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). The Court of Appeal of Tanzania, **FINCA (T) Ltd & Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported) and **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) The Court of Appeal of Tanzania held that:-

*“Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay.”*

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the 1<sup>st</sup> respondent's counter-affidavit, I have shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decision of this court. In his submission, the applicant's Advocate relied on accounting days of delay and mostly he relied on the ground of illegality as a good reason for extension of time to file an appeal out of time.

The applicant's Advocate in his written submission stated that the applicant being a layman was not aware of the procedure and rules of the court, as a good cause on which I right away reject the explanation of ignorance of the legal procedure given by Mr. Mafie. As it has been held times out of number, ignorance of the law has never featured as a good cause for an extension of time. See the case of **Ngao Godwin Losero** (supra) the Court of Appeal cited with approval the case of **Bariki Israel v The Republic** Criminal Application No.4 of 2011 [18<sup>th</sup> October, 2016 TANZLII]. This ground is seriously wanting in merits.

Regarding the ground of illegality, the applicant's counsel alleges that the decision of this court is tainted with illegality since this court has no jurisdiction to dismiss the application for revision based on the ruling of the Ward Tribunal while it was required to revise the District Land and Housing Tribunal proceedings. On his side, the learned counsel for the 1<sup>st</sup> respondent opposed the application. Mr. Martin valiantly argued that this court had jurisdiction to revise the application for revision.

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."*

The illegality is alleged to reside in the powers exercised by this court in excess of its hearing the application of this court while it had no jurisdiction to entertain the dispute. In his submission, the learned counsel for the applicant elaborated that this court revised the proceedings of the trial tribunal while in the application for revision, the court was moved to examine the irregularities of the proceedings of the District Land and Housing Tribunal. In the case of **Arunaben Chaggan Mistry (supra) and Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003, the Court of Appeal of Tanzania emphasized that the ground of illegality must be such a point of law that is of sufficient importance and apparent on the face of the record, such as the question of jurisdiction.

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 twenty-one days from today.

Order accordingly.

Dated at Dar es Salaam this date 25<sup>th</sup> April, 2022.



  
A.Z.MGEYEKWA

**JUDGE**

25.04.2022

Ruling delivered on 25<sup>th</sup> April, 2022 in the presence of the applicant and the 1<sup>st</sup> respondent.



  
A.Z.MGEYEKWA

**JUDGE**

29.03.2022