

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO. 122 OF 2022  
*(Originating from Land Appeal No. 108 of 2011)***

**IBRAHIM SHIJA KITULA ..... APPLICANT**

**VERSUS**

**ZABLON SHEM .....1<sup>ST</sup> RESPONDENT**

**PHILIPO CHARLES .....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 10.05.2022*

*Date of Ruling: 10.05.2022*

**A.Z.MGEYEKWA, J**

This ruling is in respect of an application for an extension of time to lodge an application for review in respect to Land Appeal No. 108 of 2011. The application, preferred under the provisions of section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019]. The affidavit is supported by an affidavit

deponed by Ibrahim Shija Kitula, the applicant. The applicant has set out the grounds on which an extension of time is sought.

When the matter was called for hearing on 11<sup>th</sup> May, 2022, the applicant enlisted the legal service of Mr. Masinde Chisamo, learned counsel. The respondents were summoned to appear in court by way of publication in Kiswahili tabloid – Mwananchi Newspaper dated 20<sup>th</sup> April, 2022. I am alive to the fact that the respondents were notified through the said publication to appear on 11<sup>th</sup> May, 2022 when this application was fixed for hearing. Having regard to the entire circumstances of this case, I am of the considered view that the respondents were duly being served, therefore, I proceed to determine the application *ex parte* against the respondents.

Submitting in support of the application, Mr. Masinde referred to the averments made in the supporting affidavit. He stated that the applicant has raised a ground of illegality. He submitted that the District land and Housing Tribunal in Land Application No. 419 of 2006 delivered its decision in favour of the applicant, thereafter, the applicant filed an application for execution at the District Land and Housing Tribunal. He submitted that unfortunately, the tribunal did not direct itself to the prayers of the applicant, it proceeded to declare the 1<sup>st</sup> respondent the lawful owner. Mr. Masinde went on to submit

that thereafter, the applicant decided to file an appeal at the High Court but her appeal was dismissed and the applicant was directed to lodge their case at the tribunal with competent jurisdiction.

The learned counsel for the applicant went on to submit that for that reason the applicant decided to lodge an application for review in regard to Land Appeal No. 108 of 2011 out of time. The learned counsel did not end there, he complained that there are errors and irregularities in Land Appeal No. 108 of 2011 which they want to bring to the attention of this court.

In conclusion, the learned counsel for the applicant urged this court to grant the applicant's application.

Having carefully considered the oral submissions made by the learned counsel for the applicant and the affidavit, the issue for determination is ***whether the applicant's counsel has adduced sufficient reasons to warrant this court to grant the applicant's application.***

The position of the law is settled and clear that an application for 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 observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, 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 stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga & another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter-affidavit, Mr. Masinde has shown the path navigated by the applicant and the backing he has encountered in trying to convince this court that there is a matter of law which calls for a review. The applicant's Advocate has raised one main limb for his delay; illegality. The illegality is alleged to reside in the powers exercised by this court in excess of its appeal against the decision of the District Land and Housing tribunal. The applicant's counsel is claiming that this court misdirected itself in dismissing the appeal on the ground that the matter was supposed to be lodged at the tribunal with competent jurisdiction.

Reading paragraph 13, the applicant has raised an issue of illegality that this court in determining Land Appeal No. 108 of 2019 this court left the co-existence of two decisions, one granted the right of ownership to the applicant, and another decision granted the same right to the 1<sup>st</sup> respondent.

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].*

Applying the above authorities, it is clear that the ground of illegality that has been cited by the applicant is a point of law. In my view, the raised

illegality bears sufficient importance and the same has met the requisite threshold for consideration as the basis for enlargement of time and that 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 application for review before this court within thirty days from today.

Order accordingly.

Dated at Dar es Salaam ~~this date~~ 10<sup>th</sup> May, 2022.

  
A.Z. MGEYEKWA  
JUDGE  
10.05.2022  


Ruling delivered on 10<sup>th</sup> May, 2022 in the presence of Mr. Masinde Chisamo, learned counsel for the applicant.

  
A.Z. MGEYEKWA  
JUDGE  
10.05.2022  
