

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 648 OF 2021

(Originating from the decision of the High Court of Tanzania (Land Division)

at Dar Dar es Salaam (her ladyship K. Mteule, J.) delivered on the 9th

August, 2021 in Land Appeal No. 11 of 2011)

BASHIRU SAID MTUMBA APPLICANT

VERSUS

ANOLD PETER KAVISHE 1ST RESPONDENT

ABDI OMARY..... 2ND RESPONDENT

RULING

A.Z. MGEYEKWA, J

This ruling is in respect of an application for extension of time for filing an appeal against the decision of this court in Land Appeal No.11 of 2021 before Hon. T.R. Mteule, J. delivered on 06th August, 2021. The Applicant is seeking for extension of time to apply for leave to appeal to the Court of Appeal of Tanzania in respect of the Judgment of this court in Land Appeal No. 11 of 2021. The application, preferred under the provisions of

Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E. 2019], Section 14 (1) Law of Limitation Act Cap.89 [R.E. 2019]. It is supported by the applicant's own affidavit in which grounds on which extension of time is sought are set out. The grounds advanced as the basis for this application are: one, failure to obtain the copies within time; and two, that the application is tainted with illegalities.

The respondents have stoutly opposed the application by filing a counter affidavit deposed by Anold Peter Kavishe, the 1st respondent. Refuting the applicant's contention that this application is meritorious as there is no any illegality in the judgment of this court. They urged the Court to dismiss the application.

Hearing of the application was on 14th December, 2021 whereas Mr. Francis Munuo, learned counsel represented the applicant, while the respondents were absent. By the court order and consent by the parties, the application was argued by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

In his submission, the applicant's Advocate urged this court to adopt the applicant's affidavit to form part of his submission. Mr. Munuo submitted that this court has discretionary power to extend time where such period to do so has expired and such power must be exercised

judiciously, To buttress his contention, he referred this court to the cases of **Kalunga and Company, Advocates v National Bank of Commerce Limited** [2006] TLR 295 and **Mumello v Bank of Tanzania** [2006] TLR 227. He went on defining what amounts to a good cause which has been laid down in numerous precedents such as **R v Governor of Winchester Prison Exp Roddie** [1991] 2 All ER 931, **Aidan Chale v Republic**, Criminal Appeal No. 130 of 2003, and **Tusekile Duncan v R**, Criminal Appeal No. 202 of 2009. Mr. Munuo further submitted that the applicant has delayed filing his application for leave. It was his submission that the time to file an application for leave is 30 days after the pronouncement of the decision. To support his submission, he referred this court to Rule 45 (a) of the Court of Appeal Rules of 2009.

The learned counsel for the applicant continued to submit that the delay to file the application for leave is not negligence or apathy on part of the applicant since he requested copies of the judgment and decree which was delivered on 6th August, 2021, and the same was furnished to him on 18th August, 2021. It was his view that the time started to run from the date when he obtained the said copies.

With respect to the ground of illegality, Mr. Munuo submitted that the impugned ruling carries several serious irregularities which warrant the

extension of time. He submitted that this court relied and enforced on sale agreement that had not been taxed for stamp duty. To support his position he referred this court to section 5 (1), 47 (1), and 5th item to the Schedule of the Stamp Duty Act, Cap.18 [2019] and the case of **Zacharia Bura v Theresia Mubiru** [1995] TLR 211. Mr. Munuo also raised a second point of illegality that this court rejected the ground of appropriateness of admissibility of sale agreement for not being raised in the trial court while the same is a point of law. To bolster his contention, he cited the case of **Jumanne Ahmed Chivinja & Another v R**, Criminal Appeal No. 371 of 2019.

On the third point of illegality, Mr. Munuo claimed that this court relied on contradictory testimonies of Defence witness DW2, TW1, and TW2 on the sale agreement. Fortifying his submission he cited **Goodluck Kyando v R** [2006] TLR 363 and **Kavula William and Another v R**, Criminal Appeal No. 119 of 2020 CAT at Kigoma (unreported).

On the strength of the above submission, Mr. Munuo beckoned upon this court to exercise its discretion to grant an extension of time with costs.

In his rebuttal submission, Mr. Yudathade, learned counsel for the 1st respondent took a swipe at the applicant's submission. He was brief and straight to the point. Mr. Yudathade had the view that no sufficient reasons had been adduced to justify the delay and that the application has no chances of success. He prayed that the same be dismissed with costs. Mr. Yudathade submitted that the applicant did not account for each day of delay. Supporting his position he cited the cases of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported).

Regarding the point of illegality, the learned counsel for the 2nd respondent contended that the alleged impugn decision is not tainted with illegality instead this court determined the matter on merit and decided on all issues.

From the parties' phenomenal submissions, the pertinent issue to be resolved is whether this application is meritorious. It is settled law that an application for extension of time is grantable where the applicant presents a credible case to warrant the grant of such extension. This means that a party asking for the extension of time has a duty to justify the reason for the extension. The law also requires the applicant to act equitably. This

requirement got a broadened scope in the epic decision of the Court of Appeal in **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania, CAT** in Civil Application No. 2 of 2010 (unreported) and **Khadija Rehire Saidi & Five Others v Mohamed Abdallah Said**, Civil Application No. 39 of 2014 at Dar Es Salaam (unreported) whereas the key conditions for the grant of an application for extension of time were laid down. In the case of **Khadija Rehire Saidi (supra)** the **Court of Appeal of Tanzania** held that: -

"The determination of what constitutes a good cause (reasonable or sufficient cause) involves an application of judicial discretion, but there are certain established principles which would guide the courts in reaching a decision in each case. These considerations include but are not limited to:

- i. The length of delay*
- ii. The reason for the delay*
- iii. The degree of prejudice to the respondent if the application is granted, and*
- iv. Whether it raises any point of public importance or illegality in the decision, that is to say, if there is an arguable case."*

As courts emphasize the need to assign sufficient cause, it is been underscored, as well, that in determining what constitutes sufficient cause regard has to be had to all circumstances of a particular case. See the cases of **Dephane Parry v. Murray Alexander Carson (1963) EA 546;** and **Regional Manager, Tanroads Kagera v Ruaha Concrete Company Limited**, CAT-Civil Application No. 95 of 2007 (unreported). Gathering from the submissions, the applicant's Advocate has raised two main limbs for his delay, technical delay, and illegality. I have opted to address the second limb. The applicant alleges that the decision of this court is tainted with illegality. The illegality is alleged to reside in the powers exercised by this court whereas the applicant claims that the sale agreement had not been taxed for a stamp, appropriateness of admissibility of the sale agreement and that this court in its decision relied on contradictory testimonies.

It is trite law that where illegality exists and is pleaded as a ground, the same may constitute the basis for extension of time. This principle was first propounded in **The Principal Secretary, Ministry of Defence and National Service v Devram 7 L Valambhia** [1992] TLR 185. This position has been re-stated in a plethora of subsequent decisions including **Paulo Juma v Diesel & Autoelectric Services Ltd & 2 Others**, CAT - Civil Application No. 54 of 2007; **VIP Engineering and Marketing Limited & 2 Others v Citibank**

Tanzania Limited, CAT-Consolidated References Nos 6, 7 and 6 of 2006; and **Patrobert D. Ishengoma v Kahama Mining Corporation {Barrick Tanzania Bulyanhulu) & 2 Others**, CAT-Civil Application No. 19 of 2016 (all-unreported). For illegality to constitute a ground, it must carry some sufficient importance. This was stated in the case of **Lyamuya Construction** (supra), in which the Court of Appeal of Tanzania accentuated the following reasoning:-

"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 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 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."

As stated earlier on, the illegality cited by the applicant touches on the appropriateness of admissibility of the sale agreement and contradictory testimonies of defence witnesses, and the same is reflected in the applicant's affidavit specifically in paragraphs 12 and 13. In my view, the applicant has

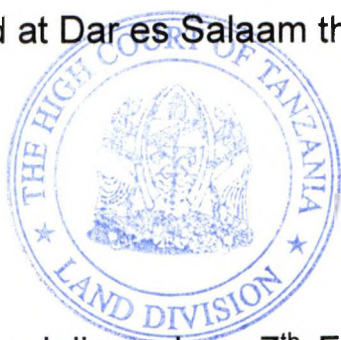
convinced this court that the ground of illegality is one of the sufficient reasons for this court to grant an extension of time to the applicant.

I have noted that Mr. Yudathade, the learned counsel for the respondent's submission also based on the duty of accounting for each day of delay. I do agree but where illegality sets in as a ground, the length of time of inaction becomes of no significance.

In the upshot of all this, I grant the application and direct that the applicant has 30 days from the date of this Ruling within which to institute his appeal. Costs to be in the cause.

Order accordingly.

Dated at Dar es Salaam this date 7th February, 2022.




A.Z.MGEYEKWA

JUDGE

07.02.2022

Ruling delivered on 7th February 2022 in the presence of Mr. Francis Munuo, learned counsel in the absence of the respondent.




A.Z.MGEYEKWA

JUDGE

07.02.2022