

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 420 OF 2021

(Arising from Misc. Land Case Application No. 329 of 2019 in the High Court at Land
Division)

JUDITH YOAS & 15 OTHERS **APPLICANTS**

VERSUS

KIBAHA HOUSING COOPERATIVE

SOCIETY LIMITED **RESPONDENT**

RULING

Date of Last Order: 22/02/2022 &

Date of Ruling: 25/02/2022

A. MSAFIRI, J

This is an application for extension of time to file review of the decision of this Court dated 10th July 2020 by Hon. Maige J (as he then was). The application has been made under Section 14 (1) of the Law of Limitation Act Cap. 89 R.E 2002 and Section 95 of the Civil Procedure Code Cap. 33 R.E 2002. The Application is supported by the affidavit of Advocate Desidery Ndibalema for the applicants while the respondent filed a counter affidavit of Jimmy Mrosso, advocate for the respondent.

By the leave of the Court, the Application was argued by way of written submissions. In his submission, advocate Ndibalema stated that, this Application is prompted by the reason that it was discovered later that one Ambonisye Mwakang'ata is neither an Officer of the respondent nor among the members of the respondent society but he has been swearing the affidavits in the Application as the Principle Officer of the respondent.

Alle

He submitted further that, the applicants has discovered that the deponent of the said affidavit had no capacity to swear the affidavit as he is not a member of the respondent and was never authorized by the respondent to swear an affidavit. He said that the facts regarding the position of the deponent were not in the knowledge of the applicant but the same were revealed later after the Ruling of this Court granting the respondent leave to appeal to the Court of Appeal, and the time to file an application for review had already expired.

Mr Ndibalema argued that it is vital that this application be granted as the ruling granting the leave to appeal to the court of appeal was fraudulently procured which led the Court to deliver the ruling with irregularities. He pointed that, due to irregularities in the said impugned ruling, this application should be granted. He has cited several cases among them is the case of **Transport Equipment Ltd vs. D.P Valambhia (1993) TLR 91.**

On reply, advocate Titus Aron for the respondent stated that, the said Ambonisye Nsajigwa Mwakangáta is a member of the respondent society (KIHOCOSO) since 2013. That, he applied for membership and was approved on 29/07/2012 and he was elected as the secretary of the society on 09/03/2013. Mr. Aron argued that, the applicant has failed to show good cause for extension of time to be granted. The applicant did not show good cause but cooked allegations which cannot be termed as good cause for extension of time. He has also cited several cases among them is **Omary Shaban S. Nyambu vs. Dodoma Municipal Council & Others, Criminal Application No. 1.25 of 2020 (2021) TZCA 423.**

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In rejoinder, counsel for the applicants mostly reiterated their submissions in chief and their prayers in chamber summons.

It is settled law that the application for extension of time is discretionary power of the court and it further requires the applicant to adduce sufficient reasons/good cause to convince the Court. There are number of decisions to support the said stand, to mention but few is the case of **Benedict Mumello vs Bank of Tanzania, Civil Appeal No 12 of 2012**, the Court of Appeal said as hereunder:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

It is now trite law that among of the reasons to grant application for extension of time apart from accounting every day of delay is on the ground of illegality. On the cases that stressed that position is the case of **Grand Regency Hotel Limited vs. Pazi Ally & 5 others, Civil Application No. 100/01 of 2017** where it cited the case of **VIP Engineering & Markerting Limited and 2 others vs. Citi Bank Tanzania Limited** where the Court stated that:

"It is therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 regard less of whether or not a reasonable explanation has been given by the Applicant under the rule to account for the delay".

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Also, in the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram P. Valambhia [1992] T.L.R 387** where the Court of Appeal 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 right"*
[Emphasis is mine].

However, there is a case upon which the Court of Appeal has drawn a line upon which the point of illegality can be raised and be termed as a good and sufficient cause for extension of time. That is the case of **Ngao Losero vs. Julius Mwarabu Civil Application No. 10 of 2015 Court of Appeal of Tanzania**, where the Court of Appeal had the view that illegality is only accepted when it is apparent on the face of impugned decision. In the above case the Court of Appeal quoted with approval its decision in the case of **Lyamuya Construction Company Ltd vs. Board of Trustees of Young Christian Women's Association of Tanzania**, Civil Application No. 2 of 2010 where it made the following observations;

"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 extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient

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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 supplied).

In the current application, the illegality raised is on the allegations that the person who swore the affidavit on Misc. Land Application No. 329 of 2019 which was the Application for Leave was unauthorized one. The respondent has denied the allegations also claiming that the person was a member of the society and was appointed by the society to swear an affidavit on her behalf in the impugned Misc. Land Application No. 329 of 2019. In my opinion these issues invites a long drawn arguments between the two parties, the applicants saying that Ambonisye Nsajigwa was not authorized while the respondent saying that he was authorized and even producing documentary evidence to prove their claims.

I am of the opinion that in such circumstances, the irregularity of the impugned decision is not apparent on face of record and is not even a point of law but rather facts which had to be argued by parties so as to be ascertained. Furthermore, the applicants in their affidavit have stated that, the facts regarding the position of Ambonisye Nsajigwa was not in the knowledge of the applicants but were revealed later after the impugned ruling was delivered, hence the delay to file application for review on time. However, they have failed to express the time of their discovery so the Court could assess the time for the delay.

Having said so, I must conclude that the applicants have not demonstrated any good cause that would entitle them extension of time.

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In the result, this application fails and is, accordingly dismissed for want of sufficient causes, with costs.

It is so ordered.

Dated at Dar es Salaam this 25th Day of February 2022.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal dotted line.

A.MSAFIRI

JUDGE