

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.153 OF 2022**

(Originating from Land Appeal No.62 of 2020 from the District Land and Housing Tribunal for Kibaha and Land Case No.1 of 2020 from the Ward Tribunal for Ubena Zomozi)

MOSHI SAIDI LUBALATI APPLICANT

VERSUS

HAMISI R.H MBALA RESPONDENT

RULING

Date of last Order: 03.05.2022

Date of Ruling: 07.06.2022

A.Z.MGEYEKWA, J

This ruling is in respect of an application for an extension of time to lodge an appeal out of time against the decision of the District Land and Housing Tribunal in Land Appeal No. 62 of 2020. The application, preferred under the

provisions of section 38 (1) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deponed by Moshi Saidi Lubalati, the applicant. The respondent has stoutly opposed the application by filing a counter-affidavit deponed by Hamisi R. H Mbala, the respondent.

When the matter was called for hearing on 19th May, 2022, the applicant enlisted the legal service of Ms. Zaina Mshana, learned counsel, and the respondent appeared in person. The respondent prayed to argue by way of written submission. By the court order, the applicant filed his submission in chief on 24th May, 2022. The respondent was required to file a reply before or on 31st May, 2022. A rejoinder was filed on 3rd June, 2022.

In his submission, Ms. Mshana submitted that the reason for the delay to lodge the petition of appeal before this court since the applicant was ill. She referred this court to the applicant's affidavit and stated that immediately after the judgment which was delivered on 2nd December, 2021 the applicant suffered from a serious sickness then on 28th December, 2021, she was taken to the hospital at ICS Health Centre. Ms. Mshana went on to submit that the applicant's health was getting worse and on 12th January, 2022 she was

admitted and hospitalized and was discharged on 17th January, 2022 but still her health was not good. She added that in April, 2022 she was feeling well then she seek for legal advice and found herself out of time.

The learned counsel for the applicant continued to submit that on 6th April, 2022 the applicant decided to lodge the instant application before this court seeking an extension to lodge an appeal against the decision of the District Land and Housing Tribunal. Ms. Mshana cited section 38 of the Land Disputes Courts Act Cap. 216 that this court has discretionary power to grant the application for an extension of time to file an appeal out of time. The applicant invokes this Court's jurisprudence in the case of **Magreth Makuba v Nisile Ernest**, Misc. Land Application No. 101 of 2018.

The learned counsel for the applicant went on to submit that the applicant delayed to lodge the present application due to serious sickness and the applicant has annexed the medical report. Supporting her submission she referred this court to paragraph 5 of the applicant's affidavit and cited the case of **Alasai Josiah (suing by his Attorney Oscar Sawuka) v Lotus Valley Ltd**, Civil Application No. 498 of 2019, CAT at Dar es Salaam.

Ms. Zena also raised a ground of illegality. She submitted that there is an issue of illegality and irregularity of the impugned decision of the trial tribunal. She stated that the records reveal that the respondent at the trial tribunal instituted a dispute in his own capacity instead of instituting the case under a representative capacity since he claimed to be an administrator of the estate of the late Ramadhani Hassan Mbala who claimed to be the owner of the suit land. He added that even the applicant sued in her own capacity while on record she claimed that the suit property belongs to his late one Saidi Lubalati Kizigo. Supporting her submission, she cited the cases of **Purukelia Aloyce v Modest Alphonse & Josephat John**, Land Appeal No. 52 of 2016, and **Abel Kajoki & 2 Others v Innocent Saus**, Land Appeal No. 27 of 2016.

Ms. Mshana also raised another illegality of pecuniary jurisdiction. She faulted the tribunal for failure to inquire the monetary value of the subject matter of the dispute. She added that was a mandatory requirement as a result the proceedings and judgment are a nullity. Fortifying his submission he cited the case of **Ndekeja Kashinje v Mboje Masunga**, Land Appeal No. 11 of 2018 HC at Tabora (unreported).

It was her final submission that illegality being a point at issue constitutes a sufficient cause for this court to extend time. To buttress her submission she cited the case of **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185.

In conclusion, Ms. Mshana urged this court to grant the applicant's application for an extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal.

In reply the respondent was brief. He contended that the applicant is trying to deceive this court by forged sick sheet in order to delay justice. He argued that the applicant had enough time to lodge an appeal but she was not intending to file an appeal until when she was served with execution's documents then she decided to lodge an appeal. He added that the applicant is trying to deprive the heirs to enjoy their rights. The respondent valiantly argued that the applicant was not sick since attended other social activities and farming activities. He insisted that the applicant has forged the sick sheet. He submitted that the appellate tribunal decided the case based on the strong evidence on record. In conclusion, he urged this court not to grant the applicant's application

In his rejoinder, Ms. Mshana reiterated his submission in chief. Stressing that the applicant was ill thus she was not able to proceed with the procedure of filing an appeal. She went on to state that the respondent has stated that the existence of legal rights is an indispensable prerequisite for initiating and proceedings in a court of law. Ending, she urged this court to grant the 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 as was 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 and 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, 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 the grounds of sickness and illegality. In paragraph 9 of the applicant's affidavit and the same is cemented by his counsel they alleged that the decision of the District Land and Housing Tribunal is tainted with illegality and irregularities. They raised the issue of *locus standi* and pecuniary jurisdiction. On his side, the learned counsel for

the respondent opposed the application, and his submission was based solely on the ground of sickness.

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].*

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 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* and jurisdiction. In my view, the raised illegality bears sufficient importance, and the points of

illegality meet the requisite threshold for consideration as the basis for enlargement of time and that 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 within thirty days from today.

Order accordingly.

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




A.Z.MGEYEKWA

JUDGE

07.06.2022

Ruling delivered on 7th June, 2022 in the presence of the respondent.




A.Z.MGEYEKWA

JUDGE

07.06.2022