

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 109 OF 2022

*(Originating from the Judgment of the District Land and Housing Tribunal for
Kinondoni in Land Appeal No.50 of 2019)*

ANCHIRA HILDA KARWANI APPLICANT

VERSUS

KIZITO GALINOMA RESPONDENT

RULING

Date of last Order 09.06.2022

Date of Ruling 13.06.2022

A.Z.MGEYEKWA, J

This Court is called upon to grant extension of time to file an appeal before this court against the decision of the District Land Housing Tribunal in Land Appeal No.50 of 2019. 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 Ashery Fred Utamwa, the applicant's Advocate. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the

application by filing a counter-affidavit deponed by Stanslaus Ishengoma, the learned counsel for the respondent.

When the matter was called for hearing on 4th November, 2021 when the matter came for hearing, the applicant enlisted the legal service of Mr. Philemon Mujumba, learned counsel. The respondent was summoned to appear in court by way of publication in Kiswahili tabloid – Mwananchi Newspaper dated 20th May, 2022. I am alive to the fact that the respondent was notified through the said publication to appear in court on 2nd June, 2022 for hearing. Having regard to the entire circumstances of this case, I am of the considered view that the respondent was duly being served but he opted not to show appearance, therefore, I proceed to determine the application *ex parte* against the respondent.

In support of the application, Mr. Mujumba submitted that the applicant has stated in the affidavit, particularly in paragraphs 3, 4, and 5 that the delay was caused by the tribunal. He added that there was a typographical error made in the Judgment and Decree of the District Land and Housing Tribunal for Mwananyamala and thus the applicant found himself out of time to lodge an appeal before this court. The learned counsel for the applicant went on to

submit that the delay was not caused by the applicant thus he urged this court to grant the applicant's application.

Mr. Mujumba continued to submit that the District Land and Housing Tribunal failed to analyse and address properly the grounds raised in the appeal filed before it. He added that as a result, the District Land and Housing Tribunal reached an erroneous decision. It was his view that had the District Land and Housing Tribunal scrutinized the evidence on record then it would have realized that the trial tribunal made serious illegality by entertaining the testimony of the respondent's son namely Geoffrey Kizito Gallinoma who appeared and tendered evidence on behalf of the respondent without obtaining a power of attorney or a letter of the administration making him a legal representative of Kizito Galinoma. To buttress his submission he referred this court to paragraphs 6 and 7 of the applicant's affidavit and page 4 paragraph 2 of the trial tribunal judgment.

Mr. Mujumba did not end there, he submitted that the raised illegality goes to the root of the subject matter. In his view, the same touches on the jurisdiction of the trial tribunal. To fortify his submission he cited the case of **Tanzania China Friendship Textile Co. Ltd v Our Lady of the Usambara Sisters**, Civil Appeal No. 84 of 2002. (2006) TLR 70. He went on to submit

that illegality amounts to sufficient cause for an extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the days of the delay. The applicant's Advocate invokes this Court's jurisprudence in the cases of **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 389 CAT and **VIP Engineering and Marketing Limited & 2 Others v Citibank Tanzania Limited**, CAT-Consolidated References Nos 6, 7 and 6 of 2006.

In conclusion, Mr. Mujumba urged this court to grant the applicant's application for an extension of time based on the ground of illegality.

Having carefully considered the submissions made by the learned counsel for the applicant and examined the applicant's 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.

In his submission, the applicant's Advocate relied solely on the ground of illegality. The applicant's counsel alleges at the decision of the trial tribunal is tainted with illegality. I am in accord with Mr. Mujumba that 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].*

Equally, in 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 the trial tribunal in excess of its hearing of the case whereas it is alleged that the respondent's son had no *locus standi* to represent the respondent in the said case. I have revisited the applicant's affidavit in particular paragraph 6, the applicant has raised a ground of illegality that the Ward Tribunal did not consider the party who never appeared to testify in court but his son purported to represent his father without obtaining a power of attorney. I am

also guided by the authority of the case of **Arunaben Chaggan Mistry v Naushad & others**, Civil Application No. 6 of 2006 CAT at Arusha point of law that is of sufficient importance and apparent on the face of the record, such as the question of jurisdiction. I am satisfied that in the matter at hand, the applicant has raised a ground of illegality which is a point of law and of sufficient importance then I consider that the applicant has raised a good cause for an extension of time.

In sum, based on the foregoing analysis proceed to grant the applicant's application to lodge an Appeal before this court within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 13th June, 2022.




A.Z. MGEYEKWA
JUDGE
13.06.2022

Ruling delivered on 13th June, 2022 in the presence of Mr. Mujumba, learned counsel for the applicant in the absence of the respondent.




A.Z. MGEYEKWA
JUDGE
13.06.2022