

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.116 OF 2022**

(Arising from in the District Land and Housing for Kinondoni at
Mwananyamala in Application No. 26 of 2018)

MOHAMED SELEMANI SUKA APPLICANT

VERSUS

ZAHARA SELEMANI SUKA 1ST RESPONDENT

ZUBEDA SELAMANI SUKA2ND RESPONDENT

KINONDONI MUNICIPAL COUNCIL 3RD RESPONDENT

RULING

Date of last Order 16.06.2022

Date of Ruling: 20.06.2022

A.Z.MGEYEKWA, J

This ruling is in respect of an application for an extension of time to lodge a revision out of time against the decision of the District Land and Housing Tribunal in Application No. 26 of 2018. The application, preferred under the provisions of section 14 of the Law of Limitation Act, Cap. 89 [R.E 2019] and

section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deponed by Geoffrey Luyanji, the applicant's Advocate. The applicant has set out the grounds on which an extension of time is sought. The 1st and 2nd respondents have stoutly opposed the application by filing a joint counter-affidavit deponed by Zahara Selemani, and Zubeda Selemani, the respondents.

When the matter was called for hearing on 2nd June, 2022 when the matter came for hearing, the applicant enlisted the legal service of Mr. Geoffrey Luyanji, learned counsel and the 2nd respondent appeared in person. By the court order, the application was scheduled to be disposed of by the way of written submission whereby the applicant filed his submission in chief on 6th June, 2022. The respondent was required to file a reply before or on 13th June, 2022. The applicant waived his right to file a rejoinder. The 3rd respondent appeared in court on 16th May, 2022, he was aware about the matter but opted not to file a counter affidavit.

In his submission, in support of the application. Mr. Munuo submitted that the applicant has filed the instant application for extension of time under the section 14 of the Law of Limitation Act, Cap. 89 [R.E 2019] and section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. Mr. Munuo

submitted that it is trite law that for extension of time to be granted the court is endowed with unfettered discretion but the same must be exercised judiciously and the party must exhibit good cause for the delay. The applicant's Advocate invokes the Court's jurisprudence in the case of **Kalunga and Company, Advocates v national Bank of Commence Ltd** [2006] TLR 235.

He went on to submit defining what amounts to good cause, the law has not been able to give invariable definition to guide the exercise of unfettered discretion. He added that however, the courts have laid numerous precedents giving proper explanation by circumstances. To fortify his submission he cited the case of **R v Governor of Winchester Prison Exp. Roddie** [1991]2 All ER 931 cited with approval in the cases of **Aidan Chale v Republic**, Criminal Appeal No. 130 of 2003, CAT at Mbeya, **Osward Masatu Mwizarubi v Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010. **Tanzania Revenue Authority v Yusuph Juma Yusuph**, Civil Application No. 02 of 2014, CAT at Zanzibar (all unreported) and **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010, wherein factors to be considered in determining the existence

of good cause for a court to grant of an application for extension of time were laid down by the Court of Appeal of Tanzania as follows:-

"(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.

(d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."

Submitting on the ground of illegality, Mr. Munuo stated that it is settled law where such matter is raised as a reason for an extension of time such amounts a good cause even if the period of delay is not accounted for. He added that the question of illegality must be apparent on the face of the records such as a question of jurisdiction and not that would be discovered by a long-drawn argument or process. The applicant's counsel invokes this Court's jurisprudence in the case of **The Principal Secretary Ministry of Defence and national Security v Devram Valambhia** [1992] TLR 182 and **VIP Engineering and Marketing Ltd and 3 Others v Citibank Tanzania Ltd** Consolidated Civil Reference 6, 7 and 8 of 2006 Court of

Appeal of Tanzania. Supporting his submission he referred this court to paragraphs 9 (a) and (b) of the applicant's affidavit. He added that the illegality and irregularity are manifested on the face of the record that the court erred in law for striking out the application for non-joinder of necessary party. To buttress his position he cited the case of **Mohamed Masoud Abdallah and 42 Others v Tanzania Road Haulage** [1980] Consolidated Appeal No. 150 and 158 of 2009 CAT at Dar es Salaam (unreported).

In conclusion, Mr. Munuo urged this court to grant the applicant's application for an extension of time to allow this court through revisional proceedings to determine the said illegality and irregularity.

In respond, the 1st and 2nd respondents were brief and focused. They contended that the applicant's application and affidavit and his submission in chief differ and are contrary to the submission filed in court. They argued that the learned counsel for the applicant who was not a party to the case has stated lies and hearsay evidence since he was not the counsel for the applicant at the tribunal. Therefore, it was their view that Mr. Geoffrey Luyanji did not know exactly what transpired or happened at the tribunal. He went on to submit that the counsel for the applicant did not disclose the source of information of what he deposed in his affidavit. They went on to argue that

there is no any affidavit sworn by Mohamed Selemani Suka, the applicant or David Andindile Advocate who represented the applicant at the tribunal until the matter was struck out. They insisted that the application is totally misleading and lacks merits in substance and form.

They went on to submit that it is cardinal principal that the applicant has to account for days for delay and state reasons as to what and why he was prevented to appeal within time. They argued that the applicant was negligent and failed to convince this court why he did not lodge an appeal on time. Stressing they argued that there is no valid explanation for the delay to appeal in time but negligent by the applicant. Fortifying their argumentation they cited the case of **Salum Mohamed Salum (Administrator of the estate of the late Mohamed Salum) v Saiwaad Abdallah @ Saiwaad**, Misc. Land Application No. 131 of 2019.

The 1st and 2nd respondents went on to submit that the applicant or deponent have failed to disclose when they obtained the copy or order or decision of the tribunal and there is no any proof if they requested for copies of the tribunal. They strongly argued that the application is an afterthought which is not acceptable in law. They added that the applicant has not adduced sufficient grounds for delay to appeal in time and has totally failed

to prove his delay in order to convince this court to exercise its discretionary power. They went on to submit that cited authorities in regard to non-joinder is in favour of the respondents not the applicant since joinder of parties is inevitable, they added that there is no way the applicant can avoid to join Kinondoni Municipal Council, the Attorney General (AG) and Solicitor General. They submitted that the tribunal decision was sound and reasoned.

On the strength of the above submission, they urged this court to dismiss the application for lack of merit.

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 counsel 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 solely on the ground of illegality. He did not account for the days of delay.

The requirement of accounting for every day of delay has been emphasized by the Court of Appeal in numerous decisions; examples are such as the recent case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) delivered in May, 2019 and the case of **Karibu Textile Millss v**

Commissioner General (TRA), Civil Application No. 192/20 of 2016, **Tanzania Coffee Board v Rombo Millers Ltd**, AR CAT Civil Application No 13 of 2015 (unreported) the Court reiterated its decision in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported) which had held that:-

"Dismissal of an application is the consequence befalling an applicant seeking extension of time who fails to account for every day of delay."

After taking into consideration what has been stated in the affidavit filed by the applicant's counsel, I would like to make an observation that the applicant's counsel in his affidavit stated that the impugned ruling was delivered on 3rd November, 2021. However the said ruling is dated 3rd September, 2021 and it was certified on 18th November, 2021 thus application was lodged before this court on 17th March, 2022. The 45 days lapsed and the applicant did not account the days of delay at all. Therefore, I am in accord with the 1st and 2nd respondents that the applicant has failed to account for the days of delay.

The applicant's counsel alleges that the decision of the tribunal is tainted with illegality and irregularities. On his side, the 1st and 2nd respondents forcefully opposed the application. 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].

Therefore, I fully subscribe to the submission of the learned counsel for the applicant that the ground of illegality is a sufficient cause for an extension

of time in order to rectify the raised anomaly. See also 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."

In his submission, the learned counsel for the applicant elaborated that there is a serious issue of illegality and irregularities in the said ruling of the tribunal. The 1st and 2nd respondent opposed this ground and said that the tribunal's decision was sound and correct. It is true that Mr. Geoffrey was not a party to the case at the tribunal but he had gone through the ruling and noted the alleged legal defects. In my considered view the issue of necessary party is a legal ground which qualifies as a ground of illegality. As mentioned earlier, it is clear that where illegality exists and is pleaded as a ground, the same as well constitutes a good cause for an extension of time.

I am also guided the authority of the case of **Arunaben Chaggan Mistry v Naushad & others**, Civil Application No. 6 of 2006 CAT at Arusha (unreported), the Court emphasized the ground of illegality must be such a

point of law that is of sufficient importance and apparent on the face of the record, such as the question of jurisdiction.

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 a revision application before this court within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 20th June, 2022.




A.Z.MGEYEKWA
JUDGE
20.06.2022

Ruling delivered on 20th June, 2022 in the presence of Mr. Omega, Advocate holding brief of Mr. Geoffrey Lunganji, counsel; for the applicant and the 2nd respondent.




A.Z.MGEYEKWA
JUDGE
20.06.2022