

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.314 OF 2022**

(Originating from Application No.441 of 2016 from the District Land and
Housing Tribunal for Kinondoni at Mwananyamala)

JENNY JOSEPH MWENURA APPLICANT

VERSUS

KRISTABELA MAKWINYA RESPONDENT

RULING

Date of last Order: 20.07.2022

Date of Ruling: 20.07.2022

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 for Kinondoni at Mwananyamala in Application No. 441 of 2016. The application, preferred under the provisions of section 41 (1) and (2) of the

Land Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deponed by Jenny Joseph Mwenura, the applicant. The respondent has stoutly opposed the application by filing a counter-affidavit deponed by Kristabela Makwinya, the respondent.

When the matter was called for hearing on 20th July, 2022, the applicant enlisted the legal service of Ms. Dorine Kamugila and Ms. Habibu Kassim, learned counsels, and the respondent enjoyed the legal service of Mr. Karilo Mulembe Karilo, learned counsel.

In his submission, Ms. Dorin urged for this Court to adopt the applicant's affidavit to form part of their submission. She stated that on paragraph 4 of the affidavit, they stated that the applicant is a student, studying at Lutheran Institution Kiomboi. Ms. Dorin submitted that at the time when the Judgment was delivered she was at school. To buttress her submission she attached her school identity to prove that she is at school. The learned counsel for the applicant insisted that the applicant was out of communication as they were not allowed to use phones at school.

Ms. Dorin also raised a ground of illegality. She stressed that the impugned decision is tainted with illegalities. She argued that the tribunal proceeded to determine a contractual case while it has no jurisdiction to determine the contractual issue. She insisted that the matter before District Land and Housing Tribunal was not a land matter. To fortify her submission, Ms. Dorin cited the case of **Metro Petroleum Tanzania Ltd and 3 others vs. United Bank of Tanzania**, Civil Appeal No. 47 of 2019, and stated that a ground of illegality is a sufficient ground for extension of time. She stressed that the ground of illegality alone sufficed for the Court to grant the application extension of time.

On the strength of the above submission, the learned counsel for the applicant beckoned upon this Thus, we pray for this Court to allow the application.

In reply, Mr. Karilo submitted in length. He strongly objected the application. Mr. Karilo contended that it is the discretion of the Court whether or not to grant an extension of time. He added that the court will grant an extension of time only when the applicant has shown sufficient reasons. The learned counsel for the respondent argued that the applicant's counsel in her

submission has failed to give sufficient reason and account for the days of delay. Supporting his submission, he cited the cases of **Ratman v Cumara Samy** (1965) 1WLR 10 of Malaysia, **Registered Trustees v Chairman Bunju Village Government and Others**, Civil Appeal No. 147 of 2000, **Regional Manager Kager v Ruaha Company Ltd**, Civil Application No. 96 of 2009 and **Kalunga & Company Advocates v National Bank of Commerce** (2006) TLR page 235. He insisted that there are no good reasons to move this Court to exercise its power.

Mr. Karilo complained that the applicant delayed to appeal and she remained silent until when the respondent lodged an application for execution No. 314 of 2022 on 9th June, 2022. He lamented that the applicant's application is to prejudice the application for execution at the District Land and Housing Tribunal.

The learned counsel referred this court to paragraph 4 of the affidavit and contended that the applicant claimed that she is a student, however, she contradicted herself since she attached an ID bearing a different college name and the said ID expired in 2021, thus, in his view at the time she lodge this application she was not a student. Fortifying her submission, he cited

the case of **Director of Public Prosecution v Masunga Muhamali & Masunga Maduhu**, Criminal Application No. 2 of 2022. Counting the days of delay, the learned counsel contended that the applicant delayed for 67 days thus she had to account for all days of delay.

Mr. Karilo did not end there, he argued that the applicant's claims that she was not present when the Judgment was delivered does not amount sufficient reason. Fortifying his position, he cited the cases of **Arbogast C. Warioba v National Insurance Corporation (T) Ltd & another**, Civil Application No. 24 of 2011 and **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 CAT. Mr. Karilo contended that the issue of illegality was not on the face of the record and the same is not stated in the affidavit and the counsel for the applicant in her oral submission did not elaborate on the point of illegality.

On the strength of the above submission, Mr. Karilo stressed that there is no any serious issue to be brought to the attention of this Court. Thus, he urged this Court to dismiss the application with costs for lack of merit.

In his rejoinder, Ms. Dorin reiterated her submission in chief. Stressing that the applicant's ground of illegality is a sufficient ground for extension of

time. In case of a point of illegality. She referred this court to the famous case of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported).

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, 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 ground of delay and illegality. I have perused the applicant's affidavit and as rightly stated by Mr. Karilo the applicant has failed to account for each day of delay as the supporting documents show that the applicant accomplished her study in 2021 while the decision of the District Land and Housing Tribunal was delivered on 24th February, 2022.

Regarding the ground of illegality, the applicant has established the ground of illegality in paragraph 6 of the applicant's affidavit the applicant stated that the applicant feels aggrieved with the judgment and decree of the District Land and Housing Tribunal because it contains a ground of illegality. The learned counsel for the applicant in her submission stated that the impugned decision of the tribunal is tainted with illegality. She argued that

the tribunal proceeded to determine a contractual case while it had no jurisdiction to determine it. She stressed that the matter before the tribunal was not a land matter. On his side, the learned counsel for the respondent opposed the application, and in his submission he claimed that the ground of illegality is not vivid in the tribunal's decision.

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** (supra). 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 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.**" [Emphasis added].*

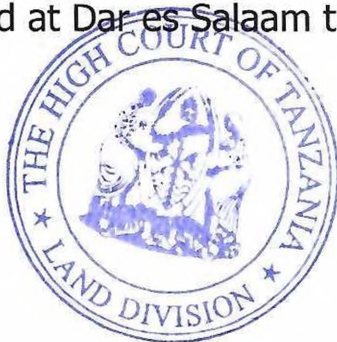
Applying the above authorities, it is clear that the ground of illegality that has been cited by the applicant touches on jurisdiction. In my view, the raised illegality bears sufficient importance and meets the requisite threshold

for consideration as the basis for enlargement of time, and this alone is 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 forty- five days from today.

Order accordingly.

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




A.Z.MGEYEKWA
JUDGE
20.07.2022

Ruling delivered on 20th July, 2022 via video conferencing whereas both learned counsels were remotely present.




A.Z.MGEYEKWA
JUDGE
20.07.2022