

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 294 OF 2022

(Arising from Application No. 04 of 2017 in the District Land and Housing Tribunal for Mkuranga dated April 13, 2022 by Hon. R. Mwakibuja, CP)

JUMA KISOKOLA APPLICANT

VERSUS

CHARLES LUGOLOLA RESPONDENT

RULING

Date of last Order: 20.07.2022

Date of Ruling: 20.07.2022

A.Z.MGEYEKWA

The applicant has lodged the instant application against the decision of the District Land and Housing Tribunal for Mkuranga concerning Land Application No. 4 of 2017 which was delivered on 13th April, 2022 in favor of the respondent.

Aggrieved with that decision, the applicant has knocked on the door of this court seeking an extension of time to file an appeal out of time. The application is brought under section 14 of the Law of Limitations Act Cap 89 [R.E. 2019].

When the matter was called for hearing on 20th July, 2022, the applicant was represented by Omega learned Advocate, whereas the respondent was represented by Mr. Emmanuel Hyera, learned Advocate.

Mr. Omega prayed to adopt the applicant's affidavit deponed by Juma Kisokola to form part of his submission, he submitted that the applicant is seeking an extension of time and his submission is based on two grounds; account days of delay and illegality. The learned counsel submitted that the applicant fell sick from 27th April, 2022 to 29th May, 2022 when he recovered and appeared before this court on 30th May, 2022, where he was informed that cases are supposed to be filed online. Whereas on 1st June, 2022, the Appeal was filed online, and on 2nd June, 2022 the appeal was rejected for being out of time.

Regarding the issue of illegality, the learned counsel submitted that the decision of the District Land and Housing Tribunal is tainted with illegality. He claimed that the tribunal reached its decision in favor of the respondent without considering the evidence of the Village Council.

In conclusion, he beckoned upon this court to allow the applicant's application.

In reply, Mr. Emmanuel, contended that Land Application No.4 of 2017 came to an end seven years ago, and the application. He raised a point of law that the applicant's application is brought under section 14 of the Law of Limitation Act, Cap. 89. In his view the application is brought under the wrong law. He further argued that the delay of three days was not accounted for. He added that the applicant has not supported his submission which any documentary evidence.

Regarding the ground of illegality, the learned counsel for the respondent's counsel submitted that the alleged issue of illegality is not on the face of the record, it goes to the merit of the appeal. To fortify his argumentation, he cited the case of **Iron & Steel Ltd vs Martin Kimalinja & 107 other**, Civil Application No. 292/18 of 2020. The learned counsel for the respondent stressed that the ground of illegality cannot move this court to grant the applicant's application for an extension of time to file an appeal.

In his rejoinder, Mr. Omega reiterated his submission in chief that it was a simple delay and the same was not caused by the applicant's negligence. He submitted that the application is properly filed before this

court and the citation of section 14 of the Law of Limitation Act is proper. He urged this court to grant the applicant's application.

Having heard the learned counsels' submissions in support and against the application and upon thorough perusal of the record of application, I wanted to satisfy myself on the propriety or otherwise of the application before this court. Both counsels have submitted on the issue of provision of the law which is cited by the applicant in his chamber summons to move this court to grant his application for extension of time.

I have found it is important to address the point of law raised by the learned counsel for the respondent since this court has a duty to take judicial notice of matters relevant to the case even when the matter is not raised in the memorandum of appeal. The Court of Appeal of Tanzania in the case of **Adelina Koku Anifa & another v Byarugaba Alex**, Civil Appeal No. 46 of 2019 (unreported) that:-

"...the court cannot justifiably close its eyes on such glaring illegality because it is his duty to ensure proper application of the laws by the subordinate courts and/or tribunals."

The facts of the instant application correspond very well with the authority above and in case the point of law could not have been raised by the learned counsel for the respondent then this court could have raised or the same could have been raised in a later stage.

I have gone through the submissions of both learned counsel and I have noted that the application was brought under section 14 of the Law of Limitation Act Cap 89 [R.E. 2019]. Without wasting the time of this court, it is vivid that the applicant has not moved this court properly to determine his application. I fully subscribe to the learned counsel for the respondent that section 14 of the Law of Limitation Act Cap 89 [R.E. 2019] is not a proper provision and law to move this court to grant the applicant's application. Hence the application is incompetent before this court. The proper and specific provision to move this court to determine the application of extension of time is section 41(2) of the Land Disputes Court Act Cap 216 [R.E. 2019] which provides that:-

"2. An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order: Provided that, the High Court may, for a good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days."

In the upshot, I proceed to strike out the instant application with leave to refile subject to the law of limitation.

Order accordingly.

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




A.Z.MGEYEKWA

JUDGE

20.07.2022

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



A.Z.MGEYEKWA

JUDGE

20.07.2022

