

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 244 OF 2022**

*(Arising from the decision of Kinondoni District Land and Housing Tribunal in Land Application No. 279 of 2018 made on 2<sup>nd</sup> March, 2022)*

**BETWEEN**

**NATHANIEL MUSHI ..... APPLICANT**

**VERSUS**

**EMILIANA MSIGWA ..... RESPONDENT**

**RULING**

*Date of last Order: 27/6/2022*

*Date of Judgment: 11/08/2022*

**A. MSAFIRI, J.**

The applicant Nathaniel Mushi has filed this application seeking for the following orders: -

1. That, this Honourable Court be pleased to grant extension of time for Applicant to file an appeal out of time against the decision of District Land and Housing Tribunal for Kinondoni in Land Application No. 279 of 2018 made on 2<sup>nd</sup> March, 2022.
2. Any other order (s) and relief (s) the Tribunal may make. *Alls.*

The application was made under section 41 (2) of the Land Disputes Courts Act No. 2 of 2002 as amended by the Written Laws (Misc. Amendment Act No. 2 of 2016). I feel I should comment on the citation of the enabling provision. I believe that the proper citation is the Land Disputes Act, Cap 216 R. E 2019. The Application was supported by an affidavit of the applicant himself. The application was contested by the respondent, who filed a counter affidavit sworn by his advocate, Richard Peter Mbuli.

The hearing was conducted by way of written submission whereby the applicant's submissions in chief and rejoinder were drawn and filed by the applicant in person, while the reply by the respondent was drawn and filed by Mr. Richard Mbuli, advocate of the respondent.

In his submission in chief, the applicant stated that, after the decision of the trial Tribunal which was in favour of the respondent, he was assisted by Legal and Human Rights Centre (LHRC) to write a letter requesting for certified copy of judgment and the letter was delivered to the said trial Tribunal. That, after making several follow up, the judgment and decree was availed to him on 3<sup>rd</sup> May 2022 but there is no evidence of receipt of payment for copies of judgment because he was under legal assistance.

The applicant stated further that by the time the judgment and decree was availed to the applicant, 62 days has already passed so he could not lodge the intended appeal as he was out of time. He averred that the delay in lodging the intended appeal was caused by the Tribunal Secretary. He

*Atte.*

submitted that, it is trite law that delay to be supplied with copies of the documents necessary for intended appeal is a sufficient ground.

The applicant stated that the second ground is ignorance of legal procedure. That the applicant being a lay person, he delivered a requesting letter for copies of judgment and decree without making a photocopy. That the ignorance of procedure amount to sufficient reason to grant applicant time to move the Court.

He said that the third reason for granting of extension of time is his promptness in filing present application. That, after being supplied with the copy of judgment and decree on 3/5/2022, the applicant filed the current application on 13/5/2022.

He said that, the fourth reason is based on illegality. That the allegation of illegality is a good cause for extension of time as observed in the case of **Principal Secretary Ministry of Defence and National Service vs. Devram Valambhia** (1992) TLR 185. He said that there is conspicuous illegality in the trial Tribunal decision which shows that the Tribunal record were tainted with illegalities as deposed in paragraph 9 of the applicant's affidavit. He prayed for the application to be granted.

In reply, the respondent prayed to adopt the contents of counter affidavit filed in Court. He stated that, if it was true that the applicant filed the requesting letter, then he could have remembered the date or month of filing such a letter or could have obtained an affidavit from the Tribunal Clerk who

*Atts.*

told him that the letter was misplaced. He contended that, the applicant's allegation that he is a layperson is a lie because, he has stated that he was under the aid of LHRC. The respondent added further that, the ignorance of procedure is of no excuse because the applicant has to prove his claims as per section 110 (1) of the law of Evidence Act, Cap. 6 R.E 2019.

On the issue of illegality and irregularity, the respondent argued that it is trite law that such irregularity must be apparent on face of record. He concluded that the applicant has failed to advance a good cause for delay but it is clear that the delay was contributed by negligence on part of the applicant. He prayed for the application to be dismissed with costs.

On rejoinder, the applicant reiterated his submission in chief. He added that he was a lay person and that is why he was assisted by LHRC. That being a lay person, he is not expected to remember date or month of filing a letter requesting for judgment or know that he was required to obtain affidavit from the clerk. He said further that, all irregularities which have been raised are rightly on the face of record. He reiterated his prayers.

Having gone through the submissions from both parties of this application, the sole issue which calls for the Court's determination is whether the application has merit.

For application of extension of time like the present one, the applicant must show good cause before the Court can exercise its powers for extension of time. (See the cases **of Abdallah Salanga & 63 others vs. Tanzania** *Alls*

**Harbours Authority**, Civil Reference No. 8 of 2003 and **Sebastian Ndaula vs. Grace Rwamafa**, Civil Application No. 4 of 2014 (both unreported).

I have also gone through the affidavit in support of the application. The first reason for the delay which is advanced by the applicant is that, he was delayed in getting copies of impugned judgment and decree for appeal purposes. That, the judgment was delivered on 02/3/2022, and he applied to be supplied with certified copies of the necessary documents, and made several follow ups, but the copies were availed to him on 03/5/2022.

It is not clear when did the applicant requested for the necessary documents as the said requesting letter was not attached to the affidavit. On explanation, the applicant said the requesting letter was misplaced by the Tribunal. The applicant did not advance any proof on the misplaced letter, such as the letter from the said Tribunal which has misplaced the requesting letter.

In his written submission in chief, the applicant stated that, being a layperson, he was ignorant of the legal procedure, and he delivered a requesting letter to the Tribunal without making a photocopy. He cited a case of **Martha Daniel vs. Peter Thomas Nko** (1992) TLR 359.

In this, it is my view that the applicant cannot plead ignorance of procedure as he has admitted that he was assisted with legal aid by LHRC. He has admitted that, even the letter requesting for copies of judgment and decree was drafted by the said LHRC. Since he was under legal aid, the applicant cannot plead ignorance of procedure as he had legal professions to assist

*Atts.*

him. I find the case of **Martha Daniel vs. Peter Thomas Nko (supra)** cited by the applicant to be distinguishable from the circumstances in this case. In the cited case, the appellant had filed her appeal within the time but she filed the appeal in the wrong Court. The Court ruled that since she was a lay person, she be allowed to file an appeal out of time in an appropriate Court. In the current application, the dispute which is source of this application was filed properly by the respondent before the trial Tribunal, where the same was decided in the respondent's favour. The applicant has delayed to file an appeal within the time hence the current application.

I hereby disregard the claim of ignorance of procedure by the applicant. I also find that the reason that the requesting letter was misplaced by the Tribunal have not been proved by the applicant so the Court has failed to determine on when did the applicant requested for copies of judgment and decree for the purpose of computing the time.

The applicant also has stated in his affidavit that the copies of judgment and decree was availed to him on 03/5/2022 but after he has gone through the same, he found that it was certified on 11/4/2022. Again, this Court has no way of knowing which date exactly did the applicant was availed with the said copies so the Court had to rely on the date on which the said copies were certified i.e. on 11/4/2022. Even if the applicant could have been availed with the said copies on 03/5/2022 as he claimed, then this application was filed 16 days later and the days were not accounted for. It is settled law that in an application for extension of time, the applicant is supposed to account for each day of delay. *Alle.*

Another reason which has been advanced by the applicant is illegalities in the proceedings and the decision of the trial Tribunal. These illegalities are stated in paragraph 9 of the affidavit.

It is trite law that, when a point of illegality is raised, it suffices as a good cause for the Court to exercise the discretion for extension of time. However, for this principle to apply, such point of law must be of sufficient importance and must also be apparent on the face of record, not one that would be discovered by a long drawn arguments or process (See the cases of the **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambia** (1992) TLR 182, **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported) and **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Arusha (Unreported).

The illegalities advanced by the applicant are;

- a) That, the trial Tribunal gave reliefs while such reliefs were never asked for by the appellant and or the Respondent,*
- b) That, the trial Chairman invited and considered opinion of assessors who attended part of the proceedings,*
- c) That the trial Chairman erred in holding that has (sic) considered opinion of two assessors while there was opinion of single assessor,*
- d) That, the opinion was not read in presence of assessor and recorded in the proceedings before scheduling the matter for judgment, Allg.*



- e) That, the Predecessor Chairperson did not record the reasons and manner of taking over the suit hence vitiated the proceedings.*
- f) That, the site visit made on 20/11/2021 was done in absence of assessors.*

In determining these alleged illegalities, my duty is not to indulge on their merits but only to consider whether they are points of sufficient importance and whether they are apparent on the face of record. Looking at the claimed illegalities, it is my view that items 9 (a), (b), (c), (e), and (f), are points of sufficient importance and are apparent on face of record.

For the reason of illegalities and irregularities, I hereby grant this application. The applicant is granted 14 days from the date of this ruling to lodge his appeal. No order as to costs.

It is so ordered.



**A. MSAFIRI**

**JUDGE**

**11/8/2022**