

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO.310 OF 2022

(Arising from the decision of the District Land and Housing Tribunal for
Mkuranga at Mkuranga in Land Application No. 46 of 2020)

FAUDHIA HAJI MAZIUNIAPPLICANT

VERSUS

OMARY MUSSA MKWARULO RESPONDENT

RULING

Date of last Order: 25.08.2022

Date of Ruling: 25.08.2022

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 this court in Land Application No. 46 of 2020. The application, preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The application is

supported by an affidavit deponed by Faudhia Haji Maziuni, the applicant. The applicant has set out the grounds on which an extension of time is sought.

When the matter was called for hearing on 25th August, 2022 the hearing was conducted through video conferencing whereas the applicants enlisted the legal service of Mr. Frank Chacha, learned counsel, and the respondent was duly been served to appear in court but he did not show appearance. Therefore, following the prayer by the applicant's Advocate to proceed *ex parte* succeeding the absence of the respondent, this court granted Mr. Frank prayers. The matter proceeded *ex parte* against the respondent.

In his submission, in support of the application, Mr. Frank urged this court to fully adopt the applicants' affidavit and form part of his submission. Mr. Frank submitted that the applicant in the affidavit has stated the ground for extension of time specifically in paragraphs 7, 8, 9, and 10. The counsel submitted that the applicant has raised grounds of technical delay and illegality. The learned counsel for the applicant stated that the impugned judgment was delivered on 27th October, 2021 in the absence of all parties, and on 4th November, the counsel lodged a letter requesting copies of the

impugned judgment and proceedings. Mr. Frank went on to submit that the applicant obtained the copies on 30th May, 2020, and found himself out of time hence he lodged the instant application on 9th June, 2022.

Regarding the ground of illegality, Mr. Frank submitted that the impugned judgment was tainted with illegality. He added that the Ward Tribunal quorum was not met and the Secretary was among the members of the tribunal contrary to the law. He added that the suit land was unregistered thus the Ward had no locus to determine it. Mr. Frank claimed that the applicant raised the said grounds at the District Land and Housing Tribunal but the Chairman did not determine them.

On the strength of the above submission, the learned counsel for the applicant beckoned upon this court to grant the applicant's application.

Having carefully considered the submission made by the learned counsel for the applicant and examined the 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 affidavit. The applicant's Advocate has raised two main limbs for his delay, technical delay, and illegality. I have opted to address the second limb. The applicant alleges that the decision of this court is tainted with illegality. The illegality is alleged to reside in the powers exercised by the Ward Tribunal in determining the matter, it is alleged that

the trial tribunal proceeded with hearing while the Coram was not met and the Secretary of the tribunal sat as a member of the tribunal contrary to the law.

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 on 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].

Applying the above authority in the matter at hand, it is clear that the illegality raised by the applicant in paragraph 12 of his affidavit and his advocate submission is sufficient cause for an extension of time to enable the upper court to rectify the raised anomaly. Therefore the said illegality cannot be brushed aside. See the case of **Badru Issa Badru v Omary Kilendu**, Civil Application No. 97/17 of 2020 (unreported), 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.**"* [Emphasis added].

The reasoning in the above excerpt followed in the footsteps of the decision in the case of **Praygod Mbagu v The Government of Kenya, Criminal Investigation Department and The Hon. Attorney General of Tanzania**, Civil Reference No. 04 of 2019.

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 before this court within forty-five days from today.

Order accordingly.

Dated at Dar es Salaam this date 25th August, 2022.




A.Z.MGEYEKWA
JUDGE
25.08.2022

Ruling delivered on 25th August, 2022 via audio teleconference whereby Mr. Frank Chacha, learned counsel for the applicant was remotely present.




A.Z.MGEYEKWA
JUDGE
25.08.2022