

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 40 OF 2023

*(Arising from the decision of Kibaha Land and Housing Tribunal in Misc.
Land Application No. 156 of 2022 by Hon. S.L. Mbuga)*

THE REGISTRUSTEES KANISA

LA PENTEKOSTE TANZANIA.....APPLICANT

VERSUS

RAHMAT ALLY FUNGAMEZA as personal legal representative
of **ALI HASSAN FUNGAMEZA**, deceased.....**1ST RESPONDENT**

FATUMA RASHIDI RUPINDA as personal legal representative of **RASHIDI
DELEMANI RUPINDA**, deceased.....**2ND RESPONDENT**

TATU SAID MIKUYA as personal representative
of **SAIDI MAULIDI MIKUYA**, deceased.....**3RD RESPONDENT**

TANZANIA INVESTMENT BANK LTD.....4TH RESPONDENT

RULING

Date of last Order: 02.03.2023

Date of Ruling: 02.03.2023

A.Z.MGEYEKWA, J

The applicant filed this application on 12 February, 2016 seeking for extension of time to lodge an appeal out of time against the decision of the

District Land Housing Tribunal for Kibaha in Misc. Land Application No. 156 of 2022. The Application is made under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The Application is premised on the grounds appearing on the Chamber Summons together with the supporting affidavit Rev. Philemon Tibanenason, the applicant sworn on 7th January, 2023, in which he buttresses the grounds in support of the application.

The Application is contested. The 1st, 2nd, and 3rd respondents filed a joint counter affidavit. Mr. Dennis Michael Msafiri opposed the application for extension of time on the ground that the applicant has not laid a basis for grant of the extension of time. Apart from the 1st, 2nd and 3rd respondents, the 4th respondent's counsel did not oppose the application for extension of time.

In his submission, in support of the application, Ms. Josephine urged this court to fully adopt the affidavit to form the party of his submission. She submitted that the applicant is requesting this Court to consider his grounds for extension of time stated in the applicant's affidavit. She stated it is the discretionary power of this Court to grant or not grant the application but the applicant is required to adduce good reasons and to account for the days of delay. To buttress her contention she cited the cases of **Yusufu Same &**

Another v Hadija Yusuf, Civil Appeal No. 1 of 2002, and **Nyamboga Magembe v Jeremiah Nzenga**, Misc. Land Application No. 91 of 2018.

Ms. Josephine went on to state that, on 6th December, 2022 the applicant filed an Application for Revision No. 49 of 2022 before this Court. The same was struck out on 17th January, 2023 for being incompetent. She went on to submit that 17th January, 2023 was the last date for the applicant to file an appeal and they filed the instant application on 20th January, 2023. Ms. Elizabeth argued that the applicant delayed filing the said appeal because she had to engage an Advocate and managed to file the instant application on 27th January, 2023 a lapse of 10 days. It was her view that the reasons stated are justifiable for allowing the applicant to file an appeal out of time. To fortify her submission she cited the case of **Fortunatus Msha v William Shija and Another** [1997] TLR 154.

Regarding the ground of illegality, Ms. Josephine contended that the impugned Ruling is tainted with illegalities. She referred this court to paragraph 23 of the applicant's affidavit. In support of her submission, she cited the case of **Principal Secretary National Defence v Valambia** (1991) TLR. Ending, the counsel for the applicant urged this Court to extend time for the applicant to file an appeal out of time.

In conclusion, Ms. Josephine beckoned upon this Court to grant the applicant's application.

In response thereto, the learned counsel for the 1st to 3rd respondents' confutation was strenuous. Mr. Dennis, adopted his counter affidavit to form part of his submission. He contended that the statutory period for an aggrieved person to file an appeal is 45 days. To bolster his submission he referred this Court to section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. Mr. Dennis submitted that the impugned decision was delivered on 1st December, 2022 and the 45 days ended on 15th January, 2023. He went on to state that from January forward the applicant has not accounted for each days of delay. Mr. Dennis argued that the affidavit was prepared on 20th January, 2023, and the applicant used 3 days to prepare the said documents, thereafter, the counsel's explanations are not clear as to why he filed the instant application on 27th January, 2023.

In his view, the applicant has failed to account for the delay of 7 days. He argued that the applicant has attached 'Annexure KP11' saying that there was a problem in filing the same but the problem occurred before filing the application. He lamented that the applicant took oath on 20th January, 2023 but did not mention the issue of network problems.

On the ground of illegality, the learned counsel for the 1st to 3rd respondents submitted that Court in number of cases stated that illegality must be of sufficient importance matter. To fortify his submission, Mr. Dennis referred this Court to the case of **Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 page 5 the Court of Appeal of Tanzania cited with approval the case of **Valambhia** and stated that the alleged illegality must be of sufficient importance. Mr. Dennis was certain that the applicant has failed to establish any illegality.

In conclusion, the counsel for the 1st to 3rd respondents urged this Court to dismiss the Application with costs.

In her reply, Ms. Tausi had nothing to say rather she concede to the application.

In his rejoinder, Mr. Josephine reiterated her submission in chief. She insisted that the delay was 10 days from the date when the impugned decision was delivered. Stressing on the point of illegality, she submitted that in Application No. 156 of 2022 the illegality is where the parties were called to show cause regarding the execution without determining the preliminary

objection. Ending, the learned counsel for the applicant urged this court to grant the applicant's application and each party to bear his/ her own costs.

Having gone through the submissions from both parties it would appear to me to determine *whether the applicant has established sufficient reason for this court to enlarge time.*

Starting with the ground of illegality, I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit with relevant authorities. The position of the law is settled and clear that a point of law must be that of sufficient importance and must also be apparent on the face of the record. In the cases of **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, CAT-Civil Application No. 6 of 2016 (unreported) and **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported), 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 a 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, in the instant application, in the applicant's affidavit particularly paragraph 23, the applicant who deponed the affidavit alleges that the District Land and Housing Tribunal's decision was tainted with illegalities. The applicant has raised six points of illegalities and in her submission, Ms. Josephine simply stated that the applicant has raised points of illegality and ground of illegality is a good ground for an extension of time. In her rejoinder, Ms. Josephine tried to convince this Court that the impugned decision is tainted by illegalities; the respondent raised an objection at the tribunal, astonishing the Chairman determined the application for execution without determining first the preliminary objection. On his side, the learned counsel for the 1st, 2nd, and 3rd respondents opposed the application, Mr. Denis insisted that the alleged illegalities are not sufficient important. I am in accord with Mr. Denis that, the alleged points of law are not of sufficient importance and not apparent on the face of the record.

Applying the above authorities, it is clear that the ground of illegality cited by the applicant does not meet the requisite threshold for consideration as the basis for the enlargement of time. Therefore this ground is rejected.

I have gone through the applicant's application and I join hands with Mr. Dennis, the applicant has failed to apply the above analyses, thus, it is clear that the ground of illegality cannot hold water.

Concerning the ground of technical delay, as amply submitted by Ms. Josephine that the applicant's delay falls under technical delay. Since the learned counsels for the applicant and Mr. Denis are in unison with respect to the technical delay, I find it proper to determine the issue whether the delay in the instant application qualifies as a technical delay.

Reading paragraphs 2 and 22 of the applicant's affidavit shows that the applicant's one of the main reasons for his delay is a technical delay. Encapsulated in the applicant's counsel submission and per the applicant's affidavit, it is clear that the impugned decision was delivered on 1st December, 2022 and the applicant lodged an application for revision before this Court which was struck out on 17th January, 2022, the applicant found that he was already out of time to file an appeal before this Court. The records show that on 20th January, 2023 they filed the instant application,

and the same was registered on 27th January, 2023. Technical delay is explicable and excusable in the cases of **Bank of Tanzania Ltd v Enock Mwakyusa** Civil Application No. 520/18 of 2017 (unreported), **Zahara Kitindi & Another v Juma Swalehe & 9 others**, Civil Application No. 4/05 of 2017 and the landmark case of **Fortunatus Masha v William Shija & Another** (supra) in which the Court of Appeal of Tanzania held that:-

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which only involved **technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted**. In the present application, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances, an extension of time ought to be granted." [Emphasis added].*

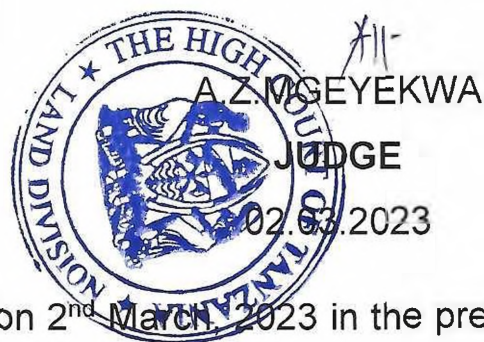
Applying the above position of the law, it is crystal clear that the applicant's delay was a technical delay contrary to the observation of Mr. Denis. I have gone through the applicant's affidavit and found that the applicant has demonstrated his technical delay as explained above.

Having unflinchingly reviewed the depositions in the affidavit and the submissions made by the applicant's learned counsel and the 3rd respondent

learned counsel, I am convinced that this case fits in the mould of cases for which extension of time on the ground of actual delay may be granted. Therefore, I proceed to grant the applicant's application to lodge an appeal before this Court within 21 days from today. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 2nd March, 2023.



Ruling delivered on 2nd March, 2023 in the presence of Mr. Ms. Josephine, counsel for the applicant. Mr. Dennis Msafiri, counsel for the 1st to 3rd respondents and Ms. Tausi Sudi, counsel for the 4th respondent.

