

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO.827OF 2022

**(Arising from Application No. 41 of 2006 and Misc. Application No. 300 of
2018)**

ATTORNEY GENERAL APPLICANT

VERSUS

**MWAJUMA NGOMA (As administratrix of the
of the late HARUBU NGOMA,**

JUMA NGOMA, MWALIMU ALLY NGOMA &

MASUDI NGOMA 1ST RESPONDENT

THE DISTRICT EXECUTIVE DIRECTOR

BAGAMOYO DISTRICT COUNCIL 2ND RESPONDENT

RULING

Date of last Order: 13.03.2023

Date of Ruling: 15.03.2023

A.Z.MGEYEKWA, J

The applicants' Application is brought under section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019], Section 95 of the Civil Procedure Code, Cap. 33 [R.E 2019], sections 45 of the Land Disputes Courts Act, Cap.216

[R.E 2019], sections 79 and 95 of the Civil Procedure Code Cap.33 [R.E 2019], and section 17 (1) (a) of the Office of Attorney General (Discharge of Duties Act, Cap. 268 [R.E 2019]. The Application is premised on the grounds appearing on the Chamber Summons together with the supporting affidavit of Mr. Boaz Albany Msoffe, State Attorney sworn on 2nd September, 2022.

The Application is contested. The 1st respondent filed a counter affidavit of Mwajuma Ngoma, the 1st respondent sworn on 20th February, 2023 in which she averred that the applicant's application for extension of time is unfounded. She alleged that the applicant is praying delaying tactics. The 2nd respondent did not object the application.

When the matter was called for hearing on 13th March, 2023, the applicant was represented by Mr. Boaz Msoffe the 1st respondent was represented by Mr. Isihaka Yusufu assisted by Mr. Mikidadi Hassan, learned counsels and the 2nd respondent enlisted the legal service of Mr. Hemedi Malolo and Ms. Jacqueline Kavishe, learned counsels.

The learned counsel for the applicant started to kick the ball rolling. Reiterating what was deposed in the supporting affidavit, the learned counsel urged this court to adopt the applicant's application and form part of his submission. He states that this is an application by the Attorney General

seeking an extension of time to file an Application for Revision against the District Land and Housing Tribunal for Kibaha in Application No. 41 of 2006. He went on to state that matter was between the Mwajuma Ngoma was v the District Executive Director of Bagamoyo. He stated that the Attorney General was not a party to the case, therefore they have filed the instant application for extension of time to join the case. Mr. Boaz asserted that the Tribunal order affected the Attorney General and the Government at large. He contended that the impugned Judgment and Decree is tainted with illegalities which attracts the attention of this Court. To buttress his submission he referred this Court to paragraph 20 of the applicant's affidavit. He contended that the trial Tribunal issued orders on prayers that were not pleaded, the issue of the lawful owner was not prayed but the trial Tribunal declared the applicant is the lawful owner of the suit land. To fortify his submission he cited the case of **Malicherdies John Mwenda v Gizele Mbaga (Administratrix of the Estate of JOHN JAPHET MBAGA - deceased) & 2 others**, Civil Appeal No. 57 of 2018.

The learned State Attorney continued to submit that the trial tribunal determined issue which were not framed. He valiantly argued that the trial Tribunal *suo motu* framed an issue that was not framed nor agreed upon by the parties. To bolster his submission he referred this Court to pages 4, 14,

and 17 of the impugned judgment. He added that the issue of compensation was not agreed by the parties. But the tribunal determined it as if it was raised and agreed upon. Mr. Boaz went on to submit that the trial tribunal went into an error to state that there was no evidence of compensation while on page 5 of the trial tribunal proceedings in the examination of chief, the respondent testified to the effect that he was compensated 30 plots and Tshs. 13,000,000/=, but the tribunal concluded that he was not paid.

Mr. Boaz continued to argue that the trial tribunal issued an execution order against the improper party. In his view a District Executive Director is a mere employee of the District Council hence he is not qualified to be sued as per Local Government (District Authorities) Act, Cap. 287 [R.E 2010]. He insisted that a mere employee cannot be held responsible for the act his employer. In his view, the proper party was District Council. To buttress his contentions he cited the case of **Haruna Ramadhani v District Executive Director**, Civil Case No. 9 of 2015.

The learned State Attorney continued that the illegalities vitiated the proceedings and the tribunal was wrong to issue those orders against the District Council. Fortifying his submission he cited the case of **M/S**

Mkurungenzi Nowu Eng v Godfrey M. Mpezya, Civil Appeal No. 188 of 2018.

Mr. Boaz further submitted that the applicant promptly lodged the instant application. In his view, there was no exorbitant delay because from 16th May, 2022 when the applicant became aware he meet with the 2nd respondent up to 15th July, 2022 and filed the instant application on 3rd August, 2022. He stressed that there was no any negligence on the part of the applicant. Supporting his submission he cited the case of **Principal Secretary Ministry of Defence and National Service v Devram Valamphia** (1992) TLR 185. He urged this Court to find that raised illegalities are sufficient ground for an extension of time.

On the strength of the above submission, the learned State Attorney beckoned upon this Court to allow the application with no order as to costs. Mr. Isihaka, the learned counsel for the 1st respondent vehemently resisted the application. Mr. Isihaka urged this court to adopt the counter affidavit and form part of his submission. He began by disputing the length of the delay. he submitted that it is trite law that a party applying for an extension of time must account for each day of delay even a single day must be accounted for. He spiritedly contended that in the present matter, there is a delay of 16 years since the first Application No. 41 of 2006 was filed before this Court.

He lamented that the applicant was required to adduce good cause for his delay. To support his submission he cited the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), the Court listed four factors in considering an application for extension of time; length of delay, reasons for the delay, if the respondent is prejudice and chances of success. He contended that in the present case, the applicant delayed for 16 years to file the said appeal, in view of that he contended that this application is an afterthought against the rule that litigation must come to an end.

He valiantly argued that if this court will allow the application the 1st respondent will be prejudiced since she was declared a lawful owner of the suit plot. He forcefully argued that neither the 2nd respondent appealed against the decision nor applied for revision for a period of 16 years. He insisted that the 1st respondent will suffer irreparable loss compared to the applicant.

Regarding the ground of illegality, we submit that it is trite law a claim of illegality goes beyond a mere complaint that a certain decision is tainted with illegality. He stated that the illegality must be on the face of the record and not one discovered by a long drawing process. He repeatedly submitted that

extension of time involves discretionary powers of the Court and the term justice means that no extension of time should not prejudice the respondent. To support his submission he referred to the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women Christians Association of Tanzania**, Civil Appeal No. 2 of 2010 (unreported). The learned counsel for the 1st respondent disputed all points of law raised by the learned State Attorney.

On the strength of the above submission, Mr. Isihaka urged this court to find that this application is unmerited and the same be dismissed.

In his rejoinder, Mr. Boaz reiterated his submission in chief.

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. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it 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 and the respondent's counter affidavit, Mr. Boaz has shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decision of the District Land and Housing Tribunal. 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 the District Land and Housing Tribunal is tainted with illegality.

The illegality is alleged to reside in the powers exercised by the District Land and Housing Tribunal. Reading paragraph 20 (i) the applicant's counsel alleges that the District Land and Housing Tribunal granted prayers which were not pleaded. In my considered opinion I find this point is on the face of the record. I am saying so because reading the prayers made by the 1st respondent comparing the same with the prayers granted by the Tribunal, it is clear that the prayer of ownership was not pleaded.

On his side, the learned counsel for the respondent opposed the application, on paragraph 17 of the counter affidavit, the learned counsel for the 1st respondent in his submission argued that the alleged illegality is not apparent on the face of the record.

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 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). 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 a point of law must be 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 my view, the first illegality bears sufficient importance, and its discovery does not require any long-drawn argument or process. Therefore, this illegality meets the requisite threshold for consideration as the basis for the enlargement of time, and that this alone, weighty enough to constitute sufficient cause for 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 application for revision within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this ~~date~~ 15th March, 2023.



Ruling delivered on 15th March, 2023 whereas Mr. Francis Wisdom, learned State Attorney for applicant and Mr. Isihaka Yusuf, learned counsel for the respondent were remotely present.

