

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

MISCELLANEOUS LAND APPLICATION NO. 534 OF 2022

(Arising from Land Appeal No.51 of 2018)

MATHEW MLAY-----1ST PLAINTIFF

VERSUS

RASHID MAJID KASENGA-----1ST DEFENDANT

RULING

20th January 2023

7th February 2023

L.HEMED, J.

This is an application for extension of time. Mathew Mlay (the Applicant) is seeking for extension of time within which to apply for leave to appeal to the Court of Appeal against the decision of this Court, Hon. Maige,J.(as he then was), delivered on 28th August 2019 in Land Appeal No.51 of 2018. The matter at hand commenced from the ward tribunal for Makuburi ward *vide* SHAURI LA MADAI YA MPAKA NA 77/2009 where the respondent herein Rashid Majid Kasenga, who was the complainant thereat, won the case.

After the said decision of the trial ward tribunal, the Applicant herein filed in the District Land and Housing Tribunal for Kinondoni (DLHT) Misc.

Application No.119 of 2012 seeking for directives of DLHT on how to execute the decision of the Ward Tribunal for Makuburi and the same was granted.

The Applicant could not rest as he later on lodged in the same DLHT another Application which was registered as Misc. Land Application No.546 of 2017. In this second application, the Applicant sought for extension of time within which to appeal against the decision of Makuburi Ward in SHAURI LA MADAI YA MPAKA NA 77 OF 2009 of which directives as to how to execute was already given by the DLHT. The said application was unsuccessful on the ground that the Applicant never acted diligently and the days of delay were not accounted for. The DLHT also found itself to be *functus officio* as it had already given directives on the execution of the impugned decision of the trial ward tribunal.

Dissatisfied by the decision refusing extension of time, he appealed to this Court *vide* Land Appeal No.51 of 2018. Having deliberated over the appeal, this Court, Hon. Maige, J as he then was, in his Judgment delivered on 28th August 2019, found the appeal devoid of merits. He confirmed the decision of the DLHT and proceeded to dismiss the appeal on the ground

that the length of the delay and the degree of negligence outweighed the issue of illegality involved in the intended appeal such that allowing an extension of time would occasion injustices on the part of the innocent party.

The applicant, through Misc. Land Application No.573 of 2019 lodged in this Court, unsuccessfully applied for certification on point of law involved in the decision of this Court in Land Appeal No.51 of 2018. Aggrieved by the decision of this Court refusing certification on point of law, he knocked the gates of the Court of Appeal of Tanzania *vide* Civil Application No. 354/17 of 2020 seeking for revision. The CAT found that the application for a certificate on point of law was misconceived so as the application for revision. The CAT ended up striking out the application before it with costs on 26th August 2022, hence the present application.

As previously stated, the matter at hand is an application for extension of time for the applicant to apply for leave to appeal to the Court of Appeal. Principally, the applicant is duty bound to demonstrate good and sufficient cause for the delay. In **Tanga Cement Company Limited v. Jumanne D. Massanga and Another**, Civil Application No.6 of 2001 the

Court of Appeal of Tanzania had this to say regarding what constitutes a good and sufficient cause, where it stated thus:

"What amounts to sufficient cause has not been defined. From decided cases, a number of factors have to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay, lack of diligence on the part of the applicant."

The question before us is whether the applicant has shown good and sufficient cause for the delay. In the matter before us, the applicant relied on two grounds, technical delay and illegalities on the face of record, in trying to convince this Court to grant the application.

It was submitted by the counsel for the applicant that immediately after the delivery of the judgment in Land Appeal No.51 of 2018 on 28th August 201, the applicant timely filed an application for certification of point of law *vide* Misc. Application No.573 of 2019. The application was decided on 29th June 2020 followed by revision Application through Civil

Application No.354/17 of 2020 in the Court of Appeal which was concluded after two years, on 31st August 2022 directing that the Applicant needed only a leave to appeal.

It was asserted by the applicants that the time lapsed from 28th August 2019 when the Judgment in Land Appeal No.51 of 2019 was delivered to 7th September 2022 when the present application was filed, is a total of three years, which is a technical delay. He cited the case of **Emmanuel Rurihafi and Another v. James Mrema**, Civil Appeal No. 314 of 2019 (CAT) to support his argument on technical delay. Guided by the decision of Court of Appeal in **Constantine Victor John vs Muhimbili National Hospital**, Civil Appeal No.214/18 of 2020, I do hold that the time spent by the applicant prosecuting application of certificate on points of law and the application for revision in the Court of Appeal of Tanzania is a technical delay and thus excusable.

However, the applicant has confessed that there was a delay of seven 7 days from the date of ruling of the Court of Appeal to the date of filing the present application. According to the applicants, the 7 days are excusable. I am of the firm view that the number of days is immaterial in

determining whether to grant application for extension of time. What matters is whether the days have been accounted for even if it is a single day. In **Bushiri Hassan vs Latifa Mashayo**, Civil Application No.03 of 2007, the Court had this to say:

" Delay even of a single day has to be accounted for, otherwise, there would be no point having rules prescribing periods within which certain steps have to be taken."

I have gone through the affidavit deponed to support the application, I could not find an account given for the delay in the said seven days.

As to the ground of illegality, the applicants have asserted that there is illegality tainted on the decision of this Court in Land Appeal No.51 of 2018. The said illegalities have been listed in paragraph 12 of the Affidavit supporting the Application. They are reproduced hereunder verbatim:-

"a) The Ward Tribunal had no jurisdiction to entertain Application No.77 of 2009 which was based on a surveyed land and registered under the Land Registration Act, Cap 334 RE 2019.

The powers to deal with the registered land are under the Registrar of Titles who was never a party to the proceedings.

(b) The District Land and Housing Tribunal for Kinondoni and the High Court (Land Division) erred to hold that the illegality concerning lack of jurisdiction was not sufficient reason to allow an extension of time to file an appeal due to length delay. The delay was a technical one which should have been excluded.

(c) The District Land and Housing Tribunal for Kinondoni erred to hold that it was functus officio after finding that there was an illegality concerning jurisdiction of the Ward Tribunal. "

I am aware that the law as of now, illegality is sufficient cause to warrant extension of time as was stated in **Principal Secretary, Ministry of Defence National Service V. Devram Valambhia**, [1992] TLR 185. However, such illegality has to be on the face of record. To satisfy myself whether the alleged illegality is on the face of record, I had to go through

the decision of this Court in Land Appeal No.51 of 2018 (Hon. Maige, J.as he then was). Having gone through the said decision, I realized that the purported grounds of illegalities listed herein above, were the grounds of the Applicant herein he used to challenge the decision of the District Land and Housing Tribunal refusing extension of time.

In this application and the then appeal, the alleged illegality is/was jurisdiction. The applicant contends that the trial tribunal did not have jurisdiction to deal with dispute pertaining to surveyed and registered land. In the said impugned judgment of this Court, Hon. Maige, J.(as he then was) dealt with it extensively. He found that the dispute at the trial tribunal was essentially boundary dispute as the applicant and respondent herein were neighbours. The applicant was blamed of constructing a wall fence on the boundary. The trial Tribunal having examined evidence from both parties and having visited the *locus in quo*, found that the applicant herein had indeed constructed his wall on the boundary.

The applicant, instead of appealing to the DLHT against the decision, he preferred an application to the DLHT for directives as to how the execution of the decision of the trial tribunal would have been carried out.

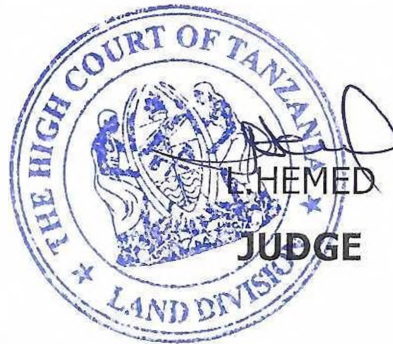
My brother Hon. Maige,J.(as he then was) was of the view that, the preference of the said application showed that the applicant was not aggrieved by the decision. Having granted the application and given directives on how to execute the decision of the trial tribunal, the DLHT implicitly upheld the decision of the trial tribunal. It was also found that since the first decision confirmed the decision of the trial tribunal, the applicant could not be heard more than four years from the decision of the trial tribunal under the umbrella of illegality.

From my observation, the question of jurisdiction of the trial tribunal in dealing with registered land was the ground of illegalities for extension of time before the DLHT and was one of the grounds of appeal in Land Appeal No.51 of 2018 before this Court. I have noted that this Court in the impugned judgment has dealt with the issue of jurisdiction of the trial tribunal substantially. I am at one with the respondents that illegalities in the judgment should be apparent on the face of records. After passing through the judgment of this Court in Land Appeal No.51 of 2018, I could not find any illegalities contended by the applicants. The alleged illegalities were grounds of appeal before this Court. It can not be a ground for extension of time.

In the final analysis, I find this application devoid of merits and consequently, I dismiss it with costs.

It is so ordered.

DATED at **DAR ES SALAM** this 7th February 2023



COURT: Ruling is delivered in the presence of Mr. Norbet Tarimo for the applicants this 7th February 2023. Right of appeal explained.

