

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

MISC. LAND APPLICATION NO. 103 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Kinondoni in Land Application No.342 of 2017 dated 21st November, 2022)

AULAND EQUIPMENT (T) LTD APPLICANT

VERSUS

ELIZABETH KOKUGONZA KYAKULA RESPONDENT

RULING

Date of last Order: 17.02.2023

Date of Ruling 23.02.2023

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 41 (2) of the Land Disputes Courts Act, Cap.216 [R.E 2019] to extend the time within the applicant to lodge an appeal against the decision of the District Land and Housing Tribunal for Kinondoni (DLHT) dated 21st September 2022. The application is supported by an affidavit and supplementary affidavit deponed by Thomas Brush, learned counsel for the

applicant. The application has encountered formidable opposition from the respondent and he demonstrated his resistance by filing a counter-affidavit deposed by Elizabeth Kokugonza Kyakula, the respondent.

When the matter was called for hearing on 4th April 2023 the appellant enjoyed the legal service of Mr. Thomas Brush, learned counsel, and the respondent enjoyed the legal service of Mr. Jamardin Ngolo, learned counsel.

In support of his submission, Mr. Brush reiterated 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. Mr. Brush submitted that the matter before you is an application for an extension of time to file an appeal out of time against the decision of DLHT for Kinondoni in Application No. 342 of 2017.

The learned counsel for the applicant submitted that the applicant did not receive the copies of the impugned Judgment and Decree within time. To buttress his submission he referred this Court to paragraphs 9, 10, 11, and 12 of the applicant's affidavit. Mr. Brush added that the prescribed time to file an appeal is 45 days, unfortunately, the Judgment and Decree of DHLT were supplied to the applicant on 21st November 2022 while the Judgment was delivered on 21st September 2022. He submitted that effort whereas the

applicant lodged a Misc. Land Application No. 762 of 2022. The learned counsel for the appellant continued to argue that the period of 8 days was spent in preparing the instant application and the period before filing the instant application in between 22nd to 29th November 2022. He added that the period from 22nd November 2022 to 29th November 2022 was spent in the process of preparation of the application.

The learned counsel for the applicant submitted that the Misc. Land Application No. 762 of 2022 was struck out on 23rd February 2023 for containing a defective affidavit. Hence the applicant refiled the instant application after a lapse of 8 days when the application was struck out. The learned counsel for the applicant went on to submit that the period after 23rd February 2023 was spent on the preparation of the instant application and they were waiting to collect a typed ruling which was supplied to the applicant on 2nd March 2023.

Regarding the ground of illegality, Mr. Brush stated that the intended appeal contains arguable issues. To fortify his submission, he referred this Court to paragraph 13 of the applicant's affidavit. Mr. Brush stated that in paragraph 13 (a) of the affidavit, they are claiming that the DLHT had no jurisdiction to determine the matter because the claim was purely monetary and not a land matter. He went on to state that in paragraph 13 (c) of the affidavit, the involvement of assessors in hearing the case was not observed and the

assessors' opinions were not considered. To buttress his submission Mr. Brush cited the case of **Tanzania Revenue Authority v Yusufu Juma Yusufu**, Civil Application No. 2 of 2014, the Court of Appeal while considering the issue of extending time in a situation where a party was not supplied with copies to enable him to appeal. He added that failure to get the copies on time is a good cause for the extension of time. In support of the ground of illegality, Mr. Brush seek refuges in the case of **Murtaza Mohamed Raza Virani v Mehboob Hassanali Versi**, Civil Application No. 168 of 2014, whereas the Court of Appeal revisited the case of **VIP Engineering and Marketing Ltd.**

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

Mr. Ngoli, the learned counsel for the respondent vehemently resisted the application. He began by disputing the length of the delay. The learned counsel urged this court to adopt the counter affidavit and form part of his submission. The learned counsel for the respondent urged this Court to adopt his counter affidavit to form part of his submission. Mr. Ngolo forcefully argued that on the first limb, the applicant failed to account for days of delay. He contended that the impugned decision was delivered on 21st September 2022 and Mr. Brush represented the applicant at the DLHT, and they alleged

that they wrote a letter dated 18th October 2022 to be supplied with copies of the impugned decision but from September to October it is a lapse of 25 days and applicant did not intend to file an appeal.

Mr. Ngolo argued that the applicant's reasons that his application was struck out is baseless because the applicant knows how to file an application of this nature before this Court. He valiantly argued that the applicant's prayer is intending to delay the respondent's right and enjoy his award. In support of his submission, Mr. Ngolo stated that the legal requirement in accounting for each day of delay is well stated in various decisions of the High Court and Court of Appeal of Tanzania such as **Philemon Simwandete Mbwanga v The Permanent Secretary, Ministry of Defence and Attorney General**, Civil Application No. 168/01 of 2018, the Court of Appeal of Tanzania cited with approval the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007. He insisted that the applicant has failed to account for each day of delay because he had time to make follow-ups but he did not do so and he was negligent because he did not prefer to file an appeal.

On the second ground of illegality; Mr. Ngolo refused that the DLHT decision is tainted with illegality. He stated that the ground of jurisdiction as stated in paragraph 13 (a) of his affidavit is baseless because the said issue was raised at the DLHT and the tribunal overruled it since the matter involved a leased house. Regarding the ground of assessors, he stated that the

assessors were involved and they gave their opinion and Hon. Mbilinyi considered their opinion and stated her reasons.

It was his view that the applicant has failed to show good cause to warrant this Court to extend time. He insisted that it is clear that the applicant requested for copies for a purpose of advising his client to take proper measures, but he did not mention the proper measures to be taken. Supporting his argument he cited the case of **Jackson Asteria v Faustine Mwemezi**, Civil Appeal No. 11 of 2021,

In conclusion, the applicant beckoned upon this Court to find that the applicant is playing delaying tactics, hence he urged this court to dismiss the application with costs.

In his rejoinder, Mr. Brush reiterated his submission in chief. He insisted that the applicant has accounted for the days of delay. He argued that there is no any guide on how to write a letter requesting for copies. He stressed that the applicant has demonstrated that there are arguable grounds for adjudication, and at this juncture, the parties are not supposed to argue on the grounds of appeal. Ending, Mr. Brush urged this Court to grant the application with costs.

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 applicant's Advocate has raised two main limbs for the applicant's delay, accounting for each day of delay, and illegality. I have opted to address the second limb, illegality. The applicant's counsel for the applicant alleges that the decision of this court is tainted with illegality. 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, the Court of Appeal of Tanzania at 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].*

Therefore, I fully subscribe to the submission of the learned counsel for the applicant that the ground of illegality is a sufficient cause for an extension of time in order to rectify the raised anomaly. See also the case

of **Badru Issa Badru v Omary Kilendu** (supra) 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."

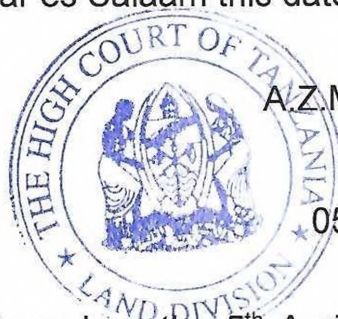
The illegality is alleged to reside in the powers exercised by the DLHT in excess of its hearing the Application of this court while it had no jurisdiction to entertain the dispute. In his submission, the learned counsel for the applicant elaborated that this court had no jurisdiction to entertain the dispute for the reasons that the subject matter was concerning a contract. He argued that the matter at DLHT was not a land matter instead it was a civil matter. Thus he was certain that the DLHT had no jurisdiction to entertain the Application. The Court of Appeal of Tanzania 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. Stated that where illegality exists and is pleaded as a ground, the same as well constitute a good cause for an extension of time.

I am also guided by the authority of the case of **Arunaben Chaggan Mistry v Naushad & others**, Civil Application No. 6 of 2006 CAT at Arusha (unreported), the Court emphasized the ground of illegality must be such a point of law that is sufficient importance and apparent on the face of the record, such as the question of jurisdiction.

For the aforesaid reasons, 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 a file an appeal within thirty days from today. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 5th April 2023.

 **A.Z.MGEYEKWA**
JUDGE
05.04.2023

Ruling delivered on the 5th April 2023 in the presence of Mr.Jamardin Ngolo, counsel for respondent.

 **A.Z.MGEYEKWA**
JUDGE
05.04.2023