

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 161 OF 2023**

(Originating from the Judgment and Decree of the High Court of Tanzania at Dar es Salaam in Land Appeal No. 25 of 2022 delivered on 4<sup>th</sup> October 2022 by Hon. Kadilu, J)

**AMOS RUBEN ..... APPLICANT**

**VERSUS**

**STEVEN AMANDUS NGONYANI ..... RESPONDENT**

**RULING**

*Date of Order: 24.04.2023*

*Date of the Ruling: 27.04.2023*

**A.Z. MGEYEKWA, J**

In this application, the Court is called upon to grant leave that will enable the applicant to file a Notice of Appeal to the Court of Appeal of Tanzania against the decision of this Court in Land Appeal No. 25 of 2022. The application is

brought under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 [R.E.2019] and section 14 (1) and (2) of the Law of Limitation Act, Cap.89 [R.E 2019]. The application is supported by an affidavit deposed by Amos Ruben, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter-affidavit deposed by Steven Amandus Ngonyani, the respondent.

When the matter was called for hearing 24<sup>th</sup> April 2023, the applicant was represented by Mr. Joseph Mabunda, while the respondent enjoyed the legal service of Mr. Mashaka Ngole assisted by Mr. Assenga and Ms. Ritha, learned counsels.

In his submission, Mr. Joseph was brief. He submitted that the applicant is seeking this court to extend to time to file an appeal out of time. He stated that the ground of extension of time is based on the illegality of the decision of this Court delivered in October 2022. The learned counsel for the applicant contended that the applicant was not aware of the existence of the Land Appeal No. 25 of 2022, he was informed on 23<sup>rd</sup> September 2023. He went on to argue that there was no proper service which was issued to the applicant hence he prays to file an appeal out of time. Mr. Joseph was certain

that the raised illegality is on the face of the record. To buttress his submission he referred this Court to a copy of the summons (annexure as TR2). He insisted that the applicant was not given an opportunity to be heard.

In conclusion, he urged this Court to use its discretionary power and grant the applicant's application.

In his reply, Mr. Mshana, counsel for the respondent from the outset submitted that the application is a demerit, and the same ought to be dismissed with costs. He urged this Court to adopt the respondent's counter-affidavit dated 11<sup>th</sup> April 2023 and form part of their submission. Mr. Amiri started by saying that the cited section 14 of the Law of Limitation Act, Cap. 89 is superfluous because the same does not apply and does not add any value to the instant application.

Mr. Mshana contended that the applicant's delay is approximately 171 days, and he has not accounted for the days of delay, therefore, this Court cannot exercise its discretionary power in granting an extension of time. He went on to argue that he has perused the applicant's affidavit, it contains no any iota of reasons as to why his appeal was lodged out of time. He stated that it is trite law that in the application for an extension of time, the applicant needs to explain the delay and account for each day of delay. He added that in the

matter at hand, the applicant has failed to account for even a single day of delay.

Regarding the ground of illegality, Mr. Mshana contended that it appears that the complaint is related to improper service. He valiantly contended that the applicant was present in Court and the matter was heard before Hon. Kadilu, J and the Court tried to convince him to conduct the hearing by way of written submission, but the applicant refused. He added that this Court extended an olive branch for him to find an advocate but he opted to do it by himself. To support his submission he referred this Court to paragraph 3 of the Counter Affidavit. He stressed that Irregularity must be explained, but in the application at hand, there is no any explanation. Ending, Mr. Mshana urged this Court to dismiss the application.

On his side, Mr Assenga, counsel for the respondent added that in the application for an extension of time, one has to account for each day of delay. support his submission he cited the In the case of **Ngao Godwin Ngesero v Julius Mwarabu**, Civil Appeal No. 10 of 2015 CAT at Arusha (unreported) whereby the Court of Appeal stated that the delay must not be inordinate, the applicant must show diligence not sloppiness in prosecuting his case in action which he intends to take. Mr. Assenga also cited the cases of **Maro**

**Wambura v Chacha Nyamahemba**, Misc. Land Application No.25 of 2021. He contended that the applicant was not serious in filing his appeal. To bolster his submission he cited the case of **Pelegia Buberwa b Godfrey Buberwa**, Misc. land Application No. 510 of 2022 Hon. Mhina, J adopted the holding of the Court of Appeal of Tanzania in **Sebastian Ndaula v Grace Lwamafa**, Civil Application No. 4 of 2014 (unreported), the Court of Appeal of Tanzania emphasized that in application for extension of time good cause must be shown. It was his view that in the instant application, the applicant has nowhere explained the good causes.

In conclusion, Mr. Assenga, the learned counsel for the respondent urged this court to dismiss the application with costs.

In his brief rejoinder, Mr. Joseph reiterated his submission in chief. He insisted that the applicant has raised reasonable cause for an extension of time. To support his submission he referred this Court to paragraph 5 that there was no proper service, and the applicant was not served with a copy of the petition of appeal. He insisted that illegality is sufficient cause for an extension of time as stated in the cited case of **Peragia Buberwa** (supra). Ending, he urged this Court to grant the applicant's application.

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 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.

I will determine the sole ground on illegality raised by the applicant in his affidavit, the issue of whether the issue of illegality was vividly shown in the applicant's affidavit. I have scrutinized the applicant's affidavit and noted that in paragraph 7 of his affidavit, the applicant simply stated that the irregularities and illegality done by this Court will cause him to suffer irreparably. Additionally, the learned counsel for the applicant did not mention any disturbing feature or point of law related to Land Appeal No. 25 of 2022 which merits the consideration of the matter at hand by this court.

It was his further submission that the illegality is featured in the summons (annexure TR2), Annexure TRA is a Notice issued by this Court to Amos Ruben informing him on the day of the hearing. I have scrutinized the said summons and could not find any illegality. Apart from the alleged summons, the record reveals that the applicant was afforded the right to be heard and

the record reveals clearly that the applicant was given an opportunity to reply and urged this Court to dismiss the appeal.

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) and **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, CAT-Civil Application No. 6 of 2016 (unreported). In **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 authority in the matter at hand, it is clear that the ground of illegality is not apparent on the face of the record, the same requires a long-drawn argument. Therefore, it is not a good ground for extension of time. That said, I find the application is a demerit, as the applicant has failed to show any disturbing feature in the proceedings and decision of this Court which is worth to be considered by this court. I am in accord with the submission made by the learned counsels for the respondent that the applicant has failed to move this court to grant his application.

Having failed to surmount that hurdle, the Court cannot exercise its discretion by granting the applicant's application. Thus, this application is dismissed without cost.

Order accordingly.

Dated at Dar es Salaam this date 27<sup>th</sup> April 2023.



A.Z. MGEYEKWA

JUDGE

27.04.2023

Ruling delivered on 27<sup>th</sup> April 2023 in the presence of both parties.





  
A.Z.MGEYEKWA

**JUDGE**

27.04.2023