

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

MISC LAND APPLICATION NO. 430 OF 2023
(Arising from Land Case No. 292 of 2015 Land Division)

SAFI MSAFIRI MTUMBI @ MAMA SIMBA.....APPLICANT

VERSUS

EVANS FRANK.....1ST RESPONDENT

HAMIS KASSIMU RAMADHANI.....2ND RESPONDENT

RAMADHANI KASSIMU YUSUFU.....3RD RESPONDENT

RULING

09 to 11th October, 2023

The Applicant named above is seeking for extension of time to file a notice of appeal against the decision of this Court dated 31/05/2019 in Land Case No. 292/2015.

The ground for extension is based on illegality on the impugned judgment; One, the cause of action pleaded in the pleadings was breach of tenancy agreement while the judgment was based on a different cause of action namely trespass to land; Two, the Court did not involve assessors, hence did not have their opinion when composing a judgment. In the counter affidavit, the deponent opposed the application on assertion that paragraph eight of

the plaint in Land Case No. 292/2015 provide clearly for trespass as cause of action against the Applicant. He avered that trespass was proved and the Applicant was found to have caused loss to the First Respondent's goods stored in a place rented to him.

Mr. Samson Edward Mbamba Senior learned Counsel for Applicant submitted that the cause of action as per plaint was a breach of tenancy agreement, argued this Court appreciated that the Applicant was not a party to the tenancy agreement. He submitted that the Court went on to determine a quite different cause of action of trespass a tortious action, made reference on exhibit P2 and P3, that it involved loss of damaged cosmetics due to trespass by the Applicant and not breach of tenancy agreement. He submitted that a holding that the Applicant was not a party to the tenancy agreement, had broken into the store rented by the First Respondent from the Second and Third Respondents, was not a holding for a breach of contract but for a tort of trespass.

In reply, Mr. Augustino Mariano Mwinyigu learned Counsel for Respondent submitted that trespass is an act that is associated to land as well and not tort alone. He submitted that the Court was justifiable to award the damages against the trespasser alone due to her actions against the same cause of

action. He submitted that the ground raised by the Applicant might be discovered by long drawn argument or process against the decision of the Justice of Appeal (sic, Judge of the High Court). He cited the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women Association of Tanzania**, Civil Application No. 2/2010, C.A.T.

On rejoinder, the learned Counsel for Applicant submitted that while the suit filed was on breach of tenancy agreement, but the trial Judge decided a suit on trespass to land against a person who was not a party to the tenancy agreement and awarded damages. According to them it is a point of illegality, irregularity and impropriety to be determined by the Court of Appeal, if extension of time to file a notice of appeal is granted.

It is common ground that where illegally is well pleaded, grounded and established to be such a novel point of law or it raises an issue of sufficient important which warrant intervention by the superior court, extension of time may be granted without regard to the rule of accounting delay on each delayment. In **Mariam Nyangasa vs. Shaban Ally Sembe**, Civil Application No. 139/12 of 2017 CAT cited by the learned Counsel for Applicant, at page 6, the apex Court established.

"In Edward Nyelusye, for instance this Court held that where a point of law at issue is the question of illegality, time will always be extended and leave to appeal to the Court of Appeal must be granted even where there is an inordinate delay'

However for the rule to be apply, the alleged illegality must be manifest on the face of record as opposed to the one discovered through a very long drawn argument or by connecting some dots here and there. That was the import in the celebrated **Lyamuya Construction** (supra), that,

"The Court there emphasized that such a point of law must be that of sufficient importance and, I would add that it must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process"

Herein the point which the learned Counsel for Applicant was trying to bring up, looks more or equal to a normal grounds of appeal, if at all the error is there.

The application for extension is dismissed. However I make no order for costs.



E.B. LUVANDA
JUDGE
11/10/2023

Ruling delivered through video conferencing, neither Ms. Aziza Msangi Learned Counsel for Applicant nor Mr. Augustino Mariano Mwanyigu learned Counsel for Respondent attended.



E.B. LUVANDA
JUDGE
11/10/2023