

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

MISC. LAND CASE APPLICATION NO. 691 OF 2023

SIMON NYATO.....APPLICANT

VERSUS

**EDSON JUSTUS RWELAMIRA (As Legal Personal Representative of the Estate
of JUSTUS JOSEPH RWELAMILA.....1ST RESPONDENT**

JORUM JUSTUS RWELAMILA.....2ND RESPONDENT

R U L I N G

Date of Last Order: 14.11.2023

Date of Ruling: 30.11.2023

T. N. MWENEGOHA, J.

The applicant is seeking for an order of extension of time so that he can lodge an appeal, against the decision of the District Land and Housing Tribunal for Kinondoni, vide Land Application No. 106 of 2016, decided by Hon. Mlyambina, J. This Application was brought under **Section 41(2) of the Land Disputes Courts Act, Cap 216 R. E. 2019** and was accompanied by the affidavit of Mr. Simon Nyato, the applicant himself. The Application was heard by way of written submissions and exparte against the respondents.

Advocate Gabriel Aloyce Munishi appeared for the applicant and in his written submissions in support of the Application, insisted that there are issues of law that need to be determined by this Court against the impugned decision of Hon. Mlyambina, J. These include the violation of the applicant's

right to be heard. The applicant's counsel maintained that, when the Land Application No. 106 of 2014 was heard without the applicant being given the summons to appear in Court. That is to say, the said case proceeded *ex parte* against the applicant. That, violation of the applicant's right to be heard, constitutes an illegality, capable of extending the time for the applicant to file an appeal against the said decision in this Court. The applicant's counsel cited a number of cases to support his arguments, including the case of **Ex. MT 668007 Sgt George Kwisema versus the Republic, Criminal Appeal No. 127 of 2020**, quoting the case of **Mbeya-Rukwa Auto parts & Transport Ltd versus Jestina George Mwakyoma, (2003) TLR 25**.

I have considered the submissions of the counsel for the applicant. I have also made a perusal of the affidavit in support of the Application, and now I will proceed to determine whether the applicant has adduced sufficient reasons for his Application to be allowed or not.

In the case of **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD, Court of Appeal of Tanzania, Civil Application No. 13 of 2010 (Mwanza Registry, (unreported))**, it was observed that, there are no rules in defining what constitutes a good cause for allowing an Application for extension of time, rather, Courts will look on the circumstances of each case.

In the present case, the reason for seeking the enlargement of time by the applicant, as advanced by the applicant's counsel is that, the existence of illegalities in proceeding with the Land Application No. 106 of 2014. That, the applicant's right to be heard was violated.

I agree that existence of illegalities in the impugned decision constitutes a sufficient cause, capable of enlarging the time in favour of the applicant.

However, in the present case, the applicant seems to be seeking an extension of the time for him to challenge the impugned decision of Hon. Mlyambina, J. given in Land Application 106 of 2014. The said case was heard and decided ex parte against him. Therefore, there is no way, the applicant can appeal against the impugned Judgment of Hon. Mlyambina, J. the then learned Chairman of the Kinondoni District Land and Housing Tribunal. Therefore, even if this Application is allowed in favour of the applicant, he still cannot take the intended action, as that is not a proper remedy. This decision will be useless in his intended course. The applicant should follow proper remedy available to him.

For that reason, I find this Application to be devoid of merits and the same is dismissed. No order as to costs.

Ordered according.




T. N. MWENEGOHA

JUDGE

30/11/2023