

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO. 731 OF 2022**

(Originating from the District Land and Housing Tribunal for Ilala at Ilala in  
Land Application No.86 of 2017)

**SERENA TEMBA ..... APPLICANT**

**VERSUS**

**MOSES DAVID CASTICO ..... RESPONDENT**

**RULING**

*Date of last Order: 17.01.2023*

*Date of Ruling 24.01.2023*

**A.Z.MGEYEKWA, J**

I am called upon in this matter to decide whether this court should exercise its discretion under section 14 (1) and (2) and section 19 (1), (3) and (4) of the Law of Limitation Act, Cap.89 and section 38 (1) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] and section 95 of the Civil Procedure Code Cap. 89 [R.E 2019] extend the time for the applicant to

lodge an appeal against the decision of the District Land and Housing Tribunal for Ilala at Ilala dated 25<sup>th</sup> August, 2020. The application is supported by an affidavit and supplementary affidavit deponed by Serena Temba, the applicant. The respondent resisted the application and demonstrated their resistance by filing a counter affidavit. The counter affidavit was deponed by Moses David Castico, the respondent.

When the matter was called for hearing on 20<sup>th</sup> December, 2022, Mr. Ramadhani Maleta, counsel appeared for the applicant while the respondent enjoyed the legal service of Mr. Jerome John and Mr. Hassan, learned counsel. Pursuant to the Court order both learned counsels complied with the Court to argue the application by way of written submission whereas, the applicant's counsel filed his submission in chief on 27<sup>th</sup> December, 2022 and the respondent filed his reply on 5<sup>th</sup> January, 2023, and the rejoinder was lodged in Court on 11<sup>th</sup> January, 2023.

In his submission, the applicant's counsel started to correct the date of the Judgment and Decree to read 7<sup>th</sup> September, 2021. Mr. Maleta urged this Court to adopt the applicant's affidavit and form part of his submission. The learned counsel for the appellant contended that the assessors opined in favour of the applicant who proved to be the first purchaser of the disputed land which he bought in 2013 as per the sale agreement

(ExhD1). The counsel for the applicant submitted that the applicant is a layperson whose counsel was not in court on the day when the Judgment was delivered, hence the applicant did not understand the decision of the trial Chairman who differed with the opinion of the two assessors when the Chairman ruled that the sale agreement was invalid for lack of stamp duty hence the trial tribunal declared the respondent a lawful owner of the suit land.

The learned counsel for the applicant submitted that the applicant knew that the Judgment was in his favour, thus immediately on 7<sup>th</sup> September, 2021 a letter addressed to the tribunal requesting copies of the Judgment and Decree. Mr. Maleta contended that it took almost a year to be supplied with the said copies. To support his submission he referred this Court to an electronic receipt dated November, 2022. He added that the application for execution which was already filed by the respondent at the tribunal.

The learned counsel for the applicant continued to argue that the applicant filed an application for an extension of time to file an appeal out of time before this Court based on the ground that there was a delay in supplying the certified copies of the Judgment and Decree of the tribunal. He went on to submit that there is illegality in the Judgment of the trial tribunal

related to stamp duty which led to the rejection of the sale agreement which resulted to a total denial of justice on the part of the applicant. To fortify his written submission he cited the cases of **Amour Habib Salim v Hessein Bafagi**, Civil Application No. 52 of 2009 (unreported), **Paul Juma v Diesel & Auto Electric Service Ltd & Others**, Civil Application No. 54 of 2007 (unreported), **Nizam Din Chur v Devonshire Stores Ltd** [1958] 1 EA and **Sunderji Nanji Ltd v Mohamedali Kassam Bhaloo** [1958] 1 EA 762.

The learned counsel for the applicant continued to submit that the trial tribunal did not halt the issue of admissibility of the sale agreement of the applicant to give her an opportunity to pay the stamp duty before admitting the same as an exhibit. It was his submission that according to the law the tribunal was supposed to refuse or admit an unstamped sale agreement when it was tendered as an exhibit during the trial or the trial tribunal to halt the proceedings to allow the applicant to pay stamp duty and later admit the same as an exhibit. The learned counsel for the applicant went on to submit that the trial tribunal, unfortunately, admitted the sale agreement and reject the same on his judgment for being invalid.

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

Objecting to the application, in his written submission, Mr. Jerome Njiwa, counsel for the respondent contended that the Judgment of the trial tribunal was delivered on 25<sup>th</sup> August, 2020 and not on 25<sup>th</sup> August, 2021 as stated by the applicant's counsel. The counsel urged this Court to find that the application at hand is incompetent because there is no any Judgment delivered on 25<sup>th</sup> August, 2021.

Mr. Jerome went on to submit that after a critical scrutiny of the applicant's affidavit especially paragraphs 7, 8, 9, and 10 reveals that the applicant is alleging to have failed to appeal on time because one; she believed and understood to have won the case and two she could not appeal on time because the trial tribunal delayed to supply the certified copies of Judgment and Decree on time. He added that they have strongly countered in paragraphs 7, 8, 9, 10, 11, and 12 of the counter affidavit. Mr. Jerome went on to submit that those grounds are nothing but mere afterthoughts. He added that in case this Court will believe the applicant then the Court will open a Pandora box which will endanger our jurisprudence, every litigant who will delay appealing within time will allege that she/he believed that she/he won the case.

The learned counsel for the respondent continued to argue that there is no any proof that the applicant and his counsel made any further efforts

to make follow-ups to obtain the certified copies after the letter dated 7<sup>th</sup> September, 2020. It was his view that it was the applicant's and counsel's sheer negligence and such negligence cannot be condoned by this Court. He went on to submit that the applicant has failed to account for each day of delay from the date of judgment 25<sup>th</sup> August, 2020 to 29<sup>th</sup> November, 2022 when the applicant filed the present application, a period of more than two years. Mr. Jerome continued to submit that the need to account for each day of delay in application for extension of time has been emphasized in numerous decisions of the High Court and Court of Appeal of Tanzania, in **Jubilee Insurance Co. Ltd v Mohamed Sameer Khan**, Civil Application No. 439 /1 of 2020 (unreported). He stressed that the ground that the applicant delayed filing an appeal because the trial tribunal delayed furnishing her with certified copies of the Judgment and Decree should not be considered at all.

Regarding the ground of illegality, the counsel for the respondent argued that the same is raised from the bar hence the same should not be considered as all. Mr. Jerome went on to submit that at any rate the alleged illegality is not an illegality that can warrant the extension of time to appeal out of time as per the requirement of the law. The learned counsel for the respondent contended that the applicant is blaming the

trial tribunal Chairman for admitting the applicant's sale agreement as exhibit D1 but disregarded and invalidated the same in the course of composing the Judgment on the ground that the same was not stamped as per the mandatory requirement of the law. It was his submission that the trial Chairman was correct in disregarding the sale agreement after refreshing his mind though it was wrongly admitted. To support his submission, he cited section 47 (1) of the Stamp Duty Act, Cap. 189 [R.E 2019].

The learned counsel for the respondent continued to submit that the applicant's counsel represented the applicant at the tribunal and forgot that he is the same person who tendered the said sale agreement knowing that it was not stamped and never applied for an order to pay stamp duty he stressed that the alleged illegality is not a vital point of law sufficient for extension of time. To fortify his submission. He cited the case of **Transport Equipment v D.P Valambia** [1993] TLR 91.

On the strength of the above submission, the respondent's counsel beckoned upon this court to dismiss the applicant's application.

In his brief rejoinder, Mr. Maleta agreed that the impugned Judgment was delivered on 25<sup>th</sup> August, 2020. He submitted that their major ground for extension of time is based on illegality. He stressed that the Chairman

failed to properly interpret and apply the provisions of the Stamp Duty Act and such illegality needs to be corrected by the High Court. He reiterated his submission in chief regarding the point of illegality.

Having heard the contending submissions of the parties, it now behooves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge an appeal. The central issues for consideration and determination are whether or not the applicant has shown good cause to justify his application in terms of section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019] under which this application is brought.

To begin with, I wish to restate that it is a trite law that if a delay is involved then the applicant is required to show good cause which includes the reasons for the delay, and to account for each day of delay. This requirement got a broadened scope in the epic decision of the Court of Appeal Tanzania in **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019. Also the same was held by the Court of Appeal in the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) that:-



*“Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay.”*

In the record, the applicant on paragraphs 6, 8, 9 and 10 stated that the impugned Judgment was delivered on 25<sup>th</sup> August, 2021 while the records show clear that the impugned Judgment was delivered on 25<sup>th</sup> August, 2020 and certified on 22<sup>nd</sup> September, 2021. The same means from 22<sup>nd</sup> September, 2021, the copies were ready for collection. However, the applicant filed the instant application on 29<sup>th</sup> November, 2022 without accounting for the delay of one year.

Having said so, I have no other option than to fully subscribe to the respondent's counsel submission that the applicant has failed to account for each day of delay, therefore, the applicant's grounds for delay cannot hold water.

Regarding the issue of illegality, the position in our jurisprudence is settled on the matter. It is to the effect that, in determining whether the application has met the required conditions for its grant, a conclusion is drawn from the affidavit that supports the application. The rationale for this is not hard to find. It stems from the fact that an affidavit is a piece of evidence, unlike submissions which are generally meant to reflect the general features of

a party's case and are elaborations or explanations on evidence already tendered. This was observed by the Court of Appeal of Tanzania in the case of **The Registered Trustees of Archdiocese of Dar es Salaam v Chairman Bunju Village Government and Others**, Civil Application No. 147 of 2006 (unreported).

Reading the applicant's affidavit, the applicant on paragraph 6 5<sup>th</sup> line the applicant stated that I quote; "*...my sale agreement was invalid as it was not stamped with stamp duty.*" Reading the trial tribunal Judgment specifically on page 13, 4<sup>th</sup> line the Chairman stated that the 2<sup>nd</sup> respondent's sale agreement which was admitted as exhibit D1 lacks stamp duty. It is my considered opinion that the applicant in her affidavit pleaded a point of illegality.

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), 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 authorities, it is clear that the ground of illegality that has been cited by the applicant touches on point of law. In my considered view, this point of illegality meets the requisite threshold for consideration as the basis for the enlargement of time and this alone is weighty enough to constitute sufficient cause for an extension of time.

In sum, based on the foregoing analysis, I am satisfied that the above ground of illegality is evident and that the present application has merit.

Therefore, I proceed to grant the application and the applicant is required to lodge an appeal within 30 days from today.

Order accordingly.

Dated at Dar es Salaam this date 24<sup>th</sup> January, 2023.



Ruling delivered on 24<sup>th</sup> January, 2023 in the presence of Mr. Ramadhani Maleta, counsel for the applicant and the respondent.

