

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO.831 OF 2023

(Originating from Ruling and Drawn Orders of the District Land and Housing Tribunal for Ilala in Application No. 301 of 2019 by Hon. Kirumbi, Chairperson)

GEORGE ALLY KITEMBE APPLICANT

VERSUS

AZARA LIMITED RESPONDENT

RULING

Date of last Order: 01.03.2023

Date of Ruling: 01.03.2023

A.Z.MGEYEKWA, J

This ruling is in respect of an application for an extension of time to lodge an appeal out of time against the decision of the District Land Housing Tribunal for Ilala in Application No. 310 of 2019. The Application is made under section 41 (2) of the Land Disputes Courts Act, cap. 216 [R.E 2019]. The Application is premised on the grounds appearing on the Chamber Summons together with the supporting affidavit of Mr. George Ally Kitembe, the applicant sworn on 21st December, 2022.

The Application is contested. The respondent filed the counter affidavit of Karim Kanji, Principal Officer of the respondent's Company sworn on 23rd February, 2023.

In his submission, in support of the application, Mr. Sosthenes Mbedule, counsel for the applicant urged this court to fully adopt the affidavit to form the party of his submission. He submitted that the applicant is requesting this Court to consider his grounds for extension of time stated under paragraph 7 of the applicant's affidavit. He submitted that the applicant is an old man aged 80 years and he was facing economic hardship, hence, he was unable to engage a counsel within a short period to assist him to file an appeal within time.

Regarding the ground of illegality, Mr. Sosthenes contended that the impugned Ruling arising from the Application of the District Land and Housing Tribunal (DLHT) is tainted with illegality. He argued that the applicant was not heard on merit as the respondent's counsel raised a preliminary objection in respect of the jurisdiction of the Tribunal and the DLHT sustained the respondent's objection and dismissed the Application. He went on to argue that it was not proper for the DLHT to dismiss the Application because it was not determined on merit. In his view, the proper

remedy was to strike out the Application. He went on to submit that a dismissal order is issued after hearing parties on merit while striking out is issued before hearing the matter on merit. He added that the applicant was supposed to be given an opportunity to be heard by a competent Court vested with jurisdiction to determine the matter. He stated that illegality has been defined as being one of the grounds for extension of time and in such circumstances where there is an illegality then the same is good ground. To support his submission he referred this Court to the cases of **Yahaya Khamis v Hamis Haji Idd & 2 others**, Civil Appeal No. 225 of 2018 at page 7 CAT, **Convergence Wireless Networks (Mauritius) Ltd WIA Group Ltd**, Civil Application No. 263 B of 2005 and **Omary Shabani Nyambu v Dodoma Sewerage Authority**, Civil Application No. 146 of 2016.

In conclusion, Mr. Sosthenes urged this Court to grant the applicant's application based on the fact that the substantive claims rights of the parties were not determined.

In response thereto, the learned counsel for the respondent's confutation was strenuous. Mr. Kissenge, adopted his counter affidavit to form part of his submission. The learned counsel for the respondent contended that the applicant has stated reasons for leave of appeal instead of stating grounds for extension of times. Mr. Kissenge spiritedly contended that the applicant

took two years to file the instant application, and yet he has not stated a good reason for his delay. To fortify his submission, Mr. Kissenge referred this Court to section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019]. He stressed that a delay of two years is an inordinate delay. He added that the applicant could have applied to the Minister for Legal Affairs for an extension of time. To support his submission, he referred this Court to section 44 (1) of the Law of Limitation Act, Cap.89 [R.E 2019].

Regarding the issue of illegality, the counsel for the respondent admitted that the DLHT dismissed the application, but in his view, he stated that the tribunal's decision was not based on a legal issue. He distinguished the cited cases from the case at hand that in the matter at hand the impugned decision was not a legal decision and still the applicant had plenty of time to raise his concern but he did not do so. He added that the DLHT Application was founded on a sale agreement, therefore, in his view, the DLHT was right to say that it had no jurisdiction.

On the strength of the above submission, the learned counsel for the respondent stressed that no sufficient cause has been advanced and hence the applicant's Application for extension of time is without merit and the same be dismissed.

In his rejoinder, Mr. Sosthenes reiterated his submission in chief. Ending, the learned counsel for the applicant urged this court to grant the applicant's application.

Having gone through the submissions from both parties it would appear to me to determine *whether the applicant has established sufficient reason for this court to enlarge time.*

It is trite law that in an application for an extension of time the applicant is required to account for each day of delay. I wish to refer to and rely on the precedent set out in the case of **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. In the case of **Bushfire Hassan v Latina Lucia Masanya**, Civil Application NO.3 of 2007 (unreported) the Court of Appeal of Tanzania when addressing the issue of delay held that: -

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken ..."

This stance was followed in many decisions among them being the case of **Mustafa Mohamed Raze v Mehboob Hassanali Versi**, Civil Application No. 168 of 2014 (unreported).

Encapsulated in the applicant submission and per the applicants' affidavit, it is clear that the decision was delivered on 23rd June, 2020 and the applicant lodged this application for an extension of time on 21st December, 2022 a lapse of 2 ½ years. Reading paragraphs 7 (a) of the applicant's affidavit shows that the applicant's among his main reason for his delay is economic hardship. The applicant has not explained how economic hardship rendered him to delay filing his appeal on time. Mr. Sosthenese tried to inform the Court that the applicant is an old man and he fall sick but there is no cogent document to prove that the applicant was faced with economic hardship or he fall sick. As far as the length of the delay is concerned the applicant's application cannot stand because he did not account for each day of delay at all.

Regarding the ground of illegality. It has been held many times without a 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, 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 **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** (supra) the Court of Appeal of Tanzania on 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 is established, to take appropriate measures to put the matter and the record straight.**" [Emphasis added].*

I fully subscribe to the submission of the applicant that the ground of illegality is a sufficient cause for an extension of time to rectify the raised anomaly. The illegality is alleged to reside in the powers exercised by the DLHT in excess of its hearing a preliminary objection concerning Application No. 301 of 2019 and the objection was related to the jurisdiction that the tribunal noted that it had no pecuniary jurisdiction to entertain the dispute, as a result, the Chairman dismissed the Application.

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 Valambhia'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 jurisdiction. 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, I am satisfied that the above grounds of illegality are evident and that the present application has merit. Therefore, I proceed to grant the applicant's application to lodge an appeal within forty-five days from today.

Order accordingly.

Dated at Dar es Salaam this date 1st March, 2023.



A.Z.MGEYEKWA

JUDGE

01.03.2023

Ruling delivered on 1st March, 2023 in the presence of Mr. Sosthenes Mbedule, counsel for the applicant, and Mr. Shuma Kissenge, counsel for the respondent.



A.Z.MGEYEKWA

JUDGE

01.03.2023