

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

MISC. LAND APPLICATION NO. 28439 OF 2023

*(Arising from Application No.235 of 2021 originating from the decision of the District
Land and Housing Tribunal for Kigamboni at Kigamboni)*

LEILA ABDALLAH RAJABUAPPLICANT

VERSUS

SHABANI KASSIM KAYANA.....RESPONDENT

RULING

28th February & 25th April 2024

L. HEMED, J.

At the District Land and Housing Tribunal for Kigamboni, the Applicant herein, **LEILA ABDALLAH RAJABU** instituted a suit, Land Application No. 235/2021 against the Respondent herein **SHABANI KASSIM KIYANA** claiming ownership of the suit landed property located at Mkwajuni, Vijibweni ward in Kigamboni Municipality– Dar es Salaam measuring 20 meters X 15 meters. The Applicant claimed to have purchased it from one Mohamed Abdallah on 11th February 2023 for Tshs 3,800,000/=.

The matter was heard *exparte* following the none-appearance of the Respondent herein on the hearing date. After scrutiny of the matter before

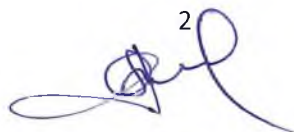


it, the trial Tribunal in its Judgment delivered on 26th September 2023 found that the suit landed property belong to both the Applicant and the Respondent, jointly as husband and wife.

The Applicant applied for a copy of Judgment to the trial Tribunal and the same was supplied to her on 26th October 2023. It appears that the Applicant was aggrieved by the decision of the trial Tribunal however, she could not appeal in time until on 27th December 2023 when she filed this application seeking for the following orders: -

- "i. That this honourable court be pleased to grant an extension of time to the Applicant to appeal to the High Court of Tanzania against the judgement in Application No. 235 of 2021 of the District Land and Housing Tribunal for September 2023.*
- ii. Costs of this Application to be borne by the Respondent.*
- iii. Any other relief this honourable court may be deemed to grant."*

The Application has been supported by the Affidavit deposed by one **Leila Abdallah Rajabu**. The Respondent through the counter affidavit of one **Shabani Kassim Kayana** has challenged the application.

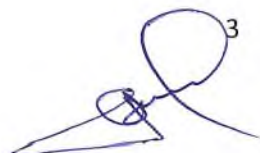
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Parties argued the application by way of written submissions which were promptly filed. In arguing it, **Mr. Partrick Malewo**, learned advocate, acted for the Applicant while the Respondent enjoyed the legal service of **Mr. Ali Jamal**, advocate.

It should be noted that, the instantaneous application has been made under section 14(1) of the Law of Limitation Act,[Cap.89 R.E 2019] which provides thus:-

"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application ... an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."
(Emphasis added)

From the above provision, the court is given discretion powers to extend the period of limitation upon sufficient cause being demonstrated by the Applicant. The Law of Limitation Act (supra) does not define anywhere the words sufficient or good cause. The words have been defined by court in various cases as to what constitutes a good, reasonable or sufficient cause. For instance, in **Osward Masatu Mwizarubi v.**



Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010, the Court of Appeal of Tanzania observed that:-

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" is relative **one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion.**"(Emphasis added)*

The question is whether in the instant matter, the Applicant has provided sufficient or good cause to warrant the court to grant the prayer to file an Appeal out of time. I have gone through the rival affidavits and submissions filed by the parties and found that the Applicant has placed reliance on two grounds, namely:-

- i. Delay in obtaining the copy of the Judgment; and
- ii. Illegality of the impugned judgment.

In her Affidavit to support the Application, the Applicant has asserted that there was a delay by thirty (30) days, wasted in obtaining the impugned judgement delivered on the 26th September 2023 and supplied to her on 26th October 2023. In her view, the 30 days, should be



excluded automatically in the computation of the days of the delay. She glued her averment by the case of **Grace C, Rumbambey v. CMC Automobiles Limited**, Civil Appeal No.316 of 2020, that the period used in obtaining copies of the proceedings, judgement and decree is automatically excluded.

Furthermore, the Counsel for the Applicant argued that there were illegalities and irregularities in the judgement of the trial tribunal. In his opinion, the Chairman assumed powers of a matrimonial court by declaring the disputed property a matrimonial one. Another illegality pointed out by the counsel for the Applicant is that the Respondent never entered appearance during the whole course of proceedings in the Tribunal. Therefore, she prayed this court to grant the application for extension of time.

In response to the submission in chief, the advocate of the Respondent, contended that the records indicate that the decision was delivered on 26th September 2023 in the presence of the Applicant and it was ready for collection on the same day. He insisted that the Applicant had enough time to prepare and lodge her Appeal within time and she did not do so. According to the learned advocate the applicant has failed to



account for each day of the delay from 25th November 2023 to 27th December 2023.

Additionally, the learned counsel for the Respondent disputed the assertion that the judgement of the Trial Tribunal contains illegalities and irregularities. He insisted that the illegalities stated by the applicant are not apparent on the face of the impugned judgment. The learned counsel ended up praying for the dismissal of the application.

Let me start with the 1st ground for extension of time relied by the Applicant. It was lamented that she delayed to appeal within time because the copy of impugned judgment was supplied to her late. According to the Applicant's affidavit, the Judgment was delivered on 26th September, 2023 and supplied to her on 26th October, 2023. The Applicant also averred in her affidavit that the time within which to file Appeal lapsed on 26th November 2023.

According to section 41(2) of the Land Disputes Courts Act, [Cap.216 R.E 2019] the time within which to appeal against the decision of the District Land and Housing Tribunal is forty five (45) days after the date of the decision. It provides thus:-

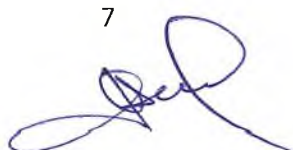


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*"An appeal under subsection (1) may be lodged within **forty five days** after the date of the decision or order." (Emphasis added).*

From the above provision, if the impugned Judgment was pronounced on 26th September, 2023 then, the 45 days for filing an Appeal lapsed on 10th November 2023. The copies of judgment and decree were supplied to the applicant on 26th October, 2023 but could she not manage to lodge the appeal by 10th October, 2023. The Applicant however, has not said anything as to what happened between 26th October, 2023 and 10th November, 2023 that prevented her from lodging the Appeal timely. It is now trite law that in application for extension of time the Applicant must account for each day of the delay. The requirement of accounting for the delay has been stated by the Court in various decision including the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 02 of 2010. In **Elius Mwakalinga v. Domina Kagaruki and 5 others**, Civil Application No.120/17 of 2018, the Court of Appeal of Tanzania, insisted on the necessity of accounting for each day of the delay, where it stated thus:-

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"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."

I have also noted that the instant application was filed on 27th December, 2023. This was done after 48 days from the deadline of filing the Appeal. The delay for 48 days after the lapse of the time within which the Appellant was to file her appeal, demonstrate how negligent and sloppy the Applicant was in taking action against the impugned decision of the trial Tribunal. In **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 166 of 2008, the Court stated that:-

"It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, act very expeditiously and that the application has been brought in good faith." (Emphasis added)

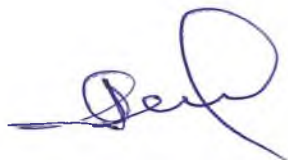
The record of the instant application shows that the Applicant did not act promptly since becoming aware that she was out of time. She



continued to sleep on her right to appeal for 48 days even after the lapse of the time to process the appeal.

With regard to the complaint that the decision intended to be challenged is tainted with illegalities, I would first state that illegality of the impugned decision constitutes good cause for extension of time. However, it is also settled that where illegality is raised as a ground for extension of time, the illegality must not only be apparent on the face of the decision intended to be challenged, but it should also be an illegality that would not be discovered by a **long-drawn argument process**. This position was stated by the Court of Appeal in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 02 of 2010 and **Tumsifu Kimaro(the Administrator of the Estate of the Late Eliamini Kimaro) v. Mohamed Mshindo**, Civil Application No. 28/17 of 2017. In **Lyamuya Construction Company Limited** (supra), the Court insisted thus:-

"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view, be said that in VAMBHIA'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 extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and, **I would add that it must be apparent on the face of the record... not one that would be discovered by long drawn argument or process.**"*

I have examined the impugned Judgment of the trial Tribunal and could not find the alleged illegalities to be apparent on the face of it. The illegalities stated by the applicant require long drawn arguments to discover them. In that regard, the point of illegalities cannot be a good cause to extend time to the Applicant to lodge an Appeal.

In the final analysis, I find no merits in the application. The same is dismissed with costs. Order accordingly.

DATED at DAR ES SALAAM this 25th April 2024



L. HEMED
L. HEMED

JUDGE