

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 507 OF 2023

*(Originated from Land Application No. 358/2019 at Kinondoni Land and Housing Tribunal before
Hon. S.H Wambili, Chairman)*

FATUMA ATHUMAN KIZENGA.....1ST APPLICANT

VERSUS

BAHATI SAID KOMBO.....1ST RESPONDENT

REDEMPTA FARAJI MASHELLE.....2ND RESPONDENT

DOLPHIN GENERAL

BUSINESS ENTERPRISES CO. LTD.....3RD RESPONDENT

NMB BANK PLC 4TH RESPONDENT

RULING

Date of Last order 14/12/2023

Date of the Ruling 22/02/2024

A. MSAFIRI, J.

The matter at hand has been brought under Section 41(2) of the Land Disputes Courts Act, R.E 2019. The applicant herein is seeking for the following orders: -

- 1. That this Honorable court be pleased to extend time for the applicant to file an appeal.*
- 2. That any other relief(s) this Honorable court may deem fit and just to grant.*
- 3. The cost of this Application.*



The applicant was represented by Augustine Rutakolezibwa, learned advocate and it was supported by an affidavit of the applicant. The 4th respondent enjoyed the service of Farid Qatare Farouk, learned advocate and filed a counter affidavit which was deposed by Froidius Mugisha Mutungi, also learned advocate of the 4th respondent. Meanwhile the ex-parte order was entered against the 1st, 2nd, and 3rd respondents as they neither appeared in court nor filed their counter affidavits or written submissions to contest the Application despite being duly served. Hearing of this Application was by way of written submissions.

In support of the application, Mr Rutakolezibwa started his submissions by praying to adopt the contents of the affidavit by the applicant. He pointed two grounds for the applicant's delay to file an appeal out of time. The first ground was that the delay was caused by applicant's former advocate one Eliya Mwingira. That the impugned judgment was delivered on 06th March, 2023 and the applicant instructed the said advocate to appeal against the said judgment of the trial Tribunal and to apply for the copies of judgment and decision. That in June, 2023 she tried to communicate with the said advocate but without any success and until 13th July, 2023 when she

Alls.

managed to obtain her case file from the said advocate and sought the legal assistance on how to appeal.

The counsel submitted further that, the second ground is illegality of the impugned judgment. That, in the applications for extension of time, illegality has been good cause for the court to exercise its discretion and grant extension of time. She pointed that however, the illegality has to be sufficient in content and apparent on the face of record.

He argued that the applicant was aggrieved by the judgment of the trial Tribunal because of irregularity apparent on the record as the trial Chairman ruled out that the 1st respondent that is Bahati Said Kombo is the same as the applicant Fatuma Kizenga.


The counsel said further that this mistake of irregularity has caused the applicant to suffer detriment as her residential house has been sold to the 2nd respondent and the intervention of this Honorable Court is sought so as to enable the applicant to appeal out of time against the decision which was based on irregularities. He prayed to the court to grant the sought extension of time.

To cement his point, he cited the case of **Stephen B.K. Mhauka vs The District Executive Director Morogoro District Council and Two** *Alls.*

Others, Civil Application No.68 Of 2019, Court Of Appeal Of Tanzania, At Dar Es Salaam. (TANZLII).

In response, Mr. Farid Qatare Farouk, learned advocate for the 4th respondent argued that first, there is no proof of any kind of instruction to the alleged advocate one Eliya Mwingira which the applicant claimed to have engaged. Second, there is no proof as to whether the said documents were requested if at all such request was ever made. Third, there is no proof as to when and how the same documents were obtained. Fourth, there is no good cause shown by the applicant so as to warrant the grant of the order sought, this is because the decision was given on 06th March, 2023 and she instructed her advocate to initiate the appeal procedure against the impugned decision but she is silent as to when exactly the instruction was issued.

Mr. Farouk stated further that the applicant kept quite without making any follow up to her advocate until June, 2023 when she started to make an inquiry to the advocate.

Furthermore, the counsel for 4th respondent argued that since the decision was given on 6th March 2023 and appeal documents were filed on 17th August 2023 this makes a number of more than 160 days. This means 

the applicant should account for each day of delay on those 160 days and the applicant has failed to do so. To cement his argument, he cited case of **Mzee Akida & Others Versus Low Seek Kon & Others, Civil Appeal No.481/17 of 2017, Court of Appeal at page 9**. He prayed for the dismissal of the Application with costs.

Having carefully considered the rival submissions by the parties along with content of their pleadings, the issue is whether the Application is tenable in such way that the applicant has managed to establish good cause for her prayers to be granted by the court.

The applicant in this case prays for the extension of time to file an appeal. The extension of time is purely the court discretion, however for the court to exercise its discretion for extension of time good cause must be shown. It follows therefore that the applicant is required to show good cause before the court can grant an extension of time. In the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 the Court of Appeal of Tanzania held that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that the extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause"

Aelle-

The applicant argued that the decision of the trial Tribunal in the Land Application No. 358 of 2019 was issued on 6th March 2023 and then she instructed her advocate Mr. Eliya Mwingira to appeal against the said decision and to apply for a copy of judgment and decree. That she was given a copy of judgment and decree on 13th July 2023 and then she find another Lawyer to assist her to go about the appeal.

The 4th respondent argued that there is no proof of such kind of instruction given to the said Advocate Mr. Eliya Mwingira, that there is no proof to whether the said documents were requested and when if at all such request was made, no proof as to when and how the same documents were obtained, and that there is no good cause by the Applicant to warrant the grant of order because decision was given on 6th March 2023.

The applicant said she instructed her advocate to appeal against impugned decision but she is silent as to when exactly the instruction was issued and she did not make any follow up to her advocate until June 2023 when she started to make an inquiry to the advocate.

Since the decision was given on 6th March 2023 and the appeal documents were filed on 17th August 2023 this makes a number of more

Alls.

than 160 unaccountable days. Even if she could have accounted the days by June 2023 as she claims, she did not account for the days from June 2023 to 17th August 2023 when this application was purportedly filed.

The applicant has an obligation to account for each day of delay as it was laid down in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo** Civil Appeal No. 3 of 2007(unreported) where the court had this to say:

*"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 has to be taken."*

From this ground I find that the applicant have failed to establish the good cause for delay as she failed to account for the days of delay.

On the second ground of illegality, which has been pleaded under paragraph 6 of the Applicant's affidavit, the applicant has stated that there is irregularity which is apparent on the face of the impugned judgment being challenged. In his submissions, the counsel for the 4th respondent did not respond on the applicant's claim of irregularity although in the counter affidavit it was vehemently denied without any further explanation.

Following that, it if my finding that the reason of illegality alone is sufficient to grant the Application. The situation was expounded in the case *Atto.*

of **The Principal Secretary, Ministry of Defence and National Service**
vs Divran P. Valambhia [1992] T.L.R 387 where the Court of Appeal 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 be established, to take appropriate measures to put the matter and the record right"* [Emphasis is mine].

It is therefore my observation that the applicant successfully manage to establish that there is illegality on the face of record of the challenged decision which should be ascertained by the Court.

I hereby grant the Application for the reason of illegality. The applicant to file the intended appeal within 21 days from the date of this Ruling. Costs to be in the cause.

It is so ordered



A. MSAFIRI
JUDGE
22/02/2024