

**THE UNITED REPUBLIC OF TANZANIA**  
**(JUDICIARY)**  
**IN THE HIGH COURT OF TANZANIA**  
**(IRINGA DISTRICT REGISTRY)**  
**AT IRINGA**

**MISC. LAND APPLICATION NO. 07 OF 2020**

(Originating from Land Appeal No. 14 of 2017, Originating Land Application No. 17 of 2009 of the Njombe District Land and Housing Tribunal)

**RUKIA ABDUL UPETE -----APPLICANT**

**VERSUS**

**IRENE RUKIA KWEKA** (The Administrator of the Estate of the Late **JUMA SIMBALIMOTO MHELELA**) -----**1<sup>ST</sup> RESPONDENT**

**ASHA MHELELA** -----**2<sup>ND</sup> RESPONDENT**

**Date of Last Order: 05/08/2022**

**Date of Ruling: 16/08/2022**

**RULING**

**MATOGOLO, J.**

Rukia Abdul Upete, the applicant in this application is moving this court for the following orders:-

1. That, the appellant be granted leave to file notice of appeal to appeal to the Court of Appeal of Tanzania outside prescribed time.

2. That, the applicant be granted leave to file and serve letter applying for copies of judgment, proceedings and decree on appeal out of time.
3. That, the applicant be granted leave to file application for leave to appeal to the Court of Appeal of Tanzania out of time.
4. That, costs of the application be provided for.

The application is by chamber summons made under section 11(1) of the Appellate Jurisdiction Act, Cap 141 RE 2019, Section 47(2) of the Land Disputes Courts Act, Cap. 216 RE 2019 and Section 14(1) of the Law of Limitation Act, Cap. 89 RE 2019.

The application is supported by an affidavit of Rukia Abdul Upete. The same was argued by written submissions.

The applicant was represented by Mr. Frank Ngafumika of Zinger Attorneys, the 1<sup>st</sup> respondent Irene Rukia Kweka (the administrator of Estates of the Late Juma Simbalimoto Mhelela) was represented by Mr. E.E Wamunza learned advocate. The second respondent did not enter appearance.

In his written submission in support of the application Mr. Ngafumika adopted the applicant's affidavit in which the reasons for delay were disclosed in paragraphs 2, 3, 4, 5 and 6. These include the fact that she was responsible for nursing her sick father one Abdul Upete. On the date of judgment of this court and even afterwards she was nursing her sick father. She attached the hospital charts and report from medical attendants.

She stated that after her father has shown stability she consulted a lawyer and was advised that time for taking steps has expired such that

nothing could be done without leave first being sought and granted for taking such steps out of prescribed time. Another ground is that there are various points of law which call for determination by the Court of Appeal.

That on 13<sup>th</sup> March, 2020, the applicant filed this application, when the same was fixed for mention he prayed to amend the same.

Mr. Ngafumika said the point of Law for determination by the Court of Appeal are:-

- i. Whether the mention of defendants in section 20 of the Law of Limitation Act include the plaintiff,
- ii. Whether the issue of time is the question of technicalities which cannot defeat overriding objective principle.
- iii. Whether it was proper for the High Court to condemn only the applicant who was the buyer to pay damages to 1<sup>st</sup> respondent without any liability.

He said this point of illegality itself is sufficient ground for extension of time. He said there is a long chain of authorities setting the principles and factors to be considered for the grant of such applications. He cited the case of ***James Ifada vs. Hamisi Alawi***, Civil Application No. 482/14 of 2019, Court of Appeal of Tanzania (Unreported) in which it was held that:-

*"I am satisfied that the alleged illegalities in the decision sought to be challenged amount to good cause hence warrant of extension of time".*

He also referred the of ***Enock Katibwa vs Ayoub Ramadhani and 2 Others***, Civil Application No. 491/17 of 2018, Court of Appeal of Tanzania (unreported) in which it was held that:-

*"Apart from accounting for delay, there are exceptional circumstances particularly when illegality is raised as a ground in an application for extension where time can be extended regardless the extent and reason for delay".*

Mr. Ngafumika learned counsel concluded by praying to this court to grant the application basing on the circumstances of this case.

In reply, Mr. Wamunza, the learned counsel for the 1<sup>st</sup> respondent submitted that the Tanzania Court of Appeal Rules 2009, GN. No. 368, under Rule 83(1) provides that any person who desires to appeal to the Court shall lodge a written notice in duplicate with the Registrar of the High Court. Rule 83(2) requires every notice to be lodged within 30 days of the date of the decision against which it is desired to appeal.

The learned counsel submitted that the notice of appeal in this case was supposed to has been filed by 17<sup>th</sup> August, 2019. However, the same was filed 13<sup>th</sup> March, 2020, a delay of 6 months and 15 days.

He argued that it is a cardinal principle of Law that in all applications for extension of time, the courts would by and large extend time where sufficient reasons is shown. He questioned whether such reason has been shown.

The applicant gave two grounds for the delay.

- i. She was nursing her sick father; and
- ii. There are conspicuous points of law.

He argued that in this application there is no sufficient explanation have been given why it took the applicant so long to instruct a lawyer to lodge the application.

Proceedings from Taxation Cause No. 4 of 2019 was instituted by the respondent after the High Court judgment, portray that the applicant appeared in person on the 25<sup>th</sup> February, 2019, 20<sup>th</sup> January, 2020, 10<sup>th</sup> February, 2020 and 25<sup>th</sup> February, 2020.

He said the issue of the applicant taking care of her sick father , was not substantiated as required by law, more over since she was not sick herself she would have instructed her lawyer even by phone to lodge the notice of appeal.

He submitted further that behavior of filing application for extension of time after six (6) months and 15 days later demonstrate sloppiness in the prosecution of the intended appeal. To bolster his argument he cited the case of **VODACOM FOUNDATION Vs. COMMISSIONER GENERAL (TRA)**, Civil Appeal No. 107/20 of 2017.

As to the 2<sup>nd</sup> ground for extension of time mentioned under paragraph 6 of the affidavit, the learned counsel for the respondent submitted that the same do not show any crucial issue of law which is intended to be placed before the Court of Appeal. As such the intended grounds of Appeal cannot move this court to grant the application for leave without clearly indicating the real issues of law or of general

importance emanating from the judgment of the High Court, which the applicant intends to put before the Court of Appeal for consideration.

He contended that it is not enough for the applicant to simply allege that, the High Court was wrong and therefore the applicant deserve a hearing of the intended appeal. He said matters of law and fact must be clearly shown to enable the court to consider them judicially based on the relevant material placed before it. He said the 2<sup>nd</sup> ground for extension of time must also fail. The 1<sup>st</sup> respondent therefore prayed for the application for leave to be dismissed with costs.

Having carefully read the written submissions by the parties, the issue for determination here is whether the applicant has advanced sufficient reasons for the delay.

The reasons advanced by the applicant for her delay are mainly two; that is **one**, she was nursing her sick father and **two**; she was prosecuting this application but later she prayed to amend the same hence this application. She also alleged in her affidavit and in the written submission that there is illegality of the decision sought to be challenged.

Extension of time can only be granted upon good or sufficient reason for the delay. There is a long chain of authorities to this position of the law such as the case of ***Michael Lessan Kweka vs. John Eliafye [1997] TLR152.***

But it is a settled principle of Law that an application for extension of time is within the discretion of the court to grant or refuse it.

The only reasons advanced by the applicant for her delay to lodge notice of appeal to appeal to the Court of Appeal, leave to file and serve

letter applying for copies of judgment, decree and proceedings out of time and leave to file an application for leave to appeal to the Court of Appeal is that, she was attending her sick father. But she has also alleged illegality of the decision sought to be challenged.

This application was filed after a delay of six months and 15 days. There is no doubt that, this is a prolonged delay. The applicant is bound to account for each day of delay. This has been the position of the law and courts in several decisions have insisted on this.

In the case of ***Vodacom Foundation Vs. Commissioner General (TRA)***, Civil Appeal No. 107/20 of 2017, Court Of Appeal it was 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. Those who came to the court of Law, must not show unnecessary delay in doing so, they must show the due diligence".*

See also the case ***Bushiri Hassan Vs. Latifa Lukio Mashayo***. Civil Application No. 03 of 2007, Court of Appeal of Tanzania (unreported).

The judgment of this court was delivered on 18<sup>th</sup> July, 2019. According to Rule 83(1) of the Court of Appeal Rules of 2009 G.N No. 308 the applicant was supposed to file notice of appeal within 30 days from that date, that is by 17<sup>th</sup> August 2019. But she did not do so. She said she did not take necessary steps after the judgment because she is sole responsible for nursing her sick father. Although she attached to her affidavit hospital documents but those documents reveal that Abdul Upete

the appellant's father had been receiving treatment at Adrikalo Medical Polyclinic (ARC's), Doctor Plaza and Kinondoni Hospital. However, these documents establish sickness of the said Abdul Upete who received treatment at various hospitals and clinic. But according to those documents she mostly attended treatment at Njombe where probably is where she resides. But there is no any document attached to the applicant's affidavit showing her involvement in nursing the said patient throughout. In short there is no proof that; applicant has been attending her sick father for all that periods for six months and 15 days to be unable to process his appeal to the Court of Appeal. Even to file a notice of appeal. Surprising enough the applicant has been and is living at Njombe where her advocate Mr. Frank Ngafumika is also residing. Mr. Ngafumika has been representing her in this case from the beginning as even in Criminal Case No. 92 of 2009 in which the applicant was charged before the District Court of Njombe for selling a subject matter of this case, she was represented by the same advocate Mr. Ngafumika. Under such circumstances, I do not see the reason as to why she could not instruct him just to lodge notice of appeal as I am sure, and as she has stated in her affidavit she was informed of the decision of this court as averred in paragraph 1. As the learned advocate has been in conduct of the case from the beginning, the applicant could simply instruct him to lodge the said notice of appeal on time, as the two are living in the same town of Njombe, even by phone as Mr. Wamunza had submitted. But she did not do so.

In actual fact the applicant has failed to account for such prolonged delay. Normally, sufficient reason for extension of time must relate to the inability or failure by the applicant to take particularly step as it was



explained in the case of ***Mussa and Others Vs. Wanjiku and Another (1970) EA 481.***

The applicant also has alleged illegality on the decision which he said apart from accounting for the delay, there are exceptional circumstances such as illegality if raised in the application for extension of time amount to good cause and cited cases of ***James Ifada vs. Hamisi Alawi, and Enock Katibwa vs Ayoud Ramadhani and 2 Others,*** (supra).

It is true that illegality of the decision if proved amount to good cause for extension of time. However, not every illegality alleged amounts to good cause. It is that illegality which is apparent on the face of record but not that which is discovered after a long drawn argument or process as it was held in the case of ***Lyamuya Construction Company Limited Vs. Board of Trustees of Young Christian Women Association of Tanzania,*** Civil Application No. 02 of 2010, CAT (unreported). In ***Mega Bulders Limited vs. D.P.I Simba Limited,*** Civil Application No. 319/6 of 2020 CAT (unreported), at page 9 the Court held that:-

*"Much as it can be appreciated that illegality is one of the factors to be considered as good cause, the same is not automatic right for illegality to be considered as a good cause, for extension of time, it must be apparent on the face of record".*

But the court in the case of ***Reli Assets Holding Company Limited vs. Anselim William Mauki and Another,*** Misc. Land Case Application No. 11 of 2013 has given instructive position for relying on illegality as ground for extension of time. At page 10-11 had this to say:-

*"It is highly unfortunate that the counsel for the applicant has already declared the decision of the trial District Land and Housing Tribunal illegal without any mandate to do so. He is now attempting to convince this court to hold the same instead of giving reasons for the delay to file appeal within prescribed period. In actual fact the applicant is telling this court that one may be allowed to ride on his deep slumber in total disregard of the provisions of the Law of limitation Act because his intended appeal contains elements of illegality and thereafter when he decided to wake up, walk straight to the court and pleads illegality as a sufficient cause for the delay and hence extension of time. The court is required to look into whether the applicant has shown sufficient cause for the delay and not to predetermine the intended appeal".*

In another case of ***Tanzania Harbours Authority vs. Mohamed R. Mohamed (2003) TLR*** 76 at page 77 the Court of Appeal of Tanzania held that:-

- "(i) This court has said in number of decisions that time would be extended if there is an illegality to be rectified however, this court has not said that time must be extended in every situation.*
- (ii) In this case the defence has been grossly negligent and surely cannot be heard now to claim that there is a point of law at stake."*

This apply to the case at hand. After the decision of this court was rendered, the applicant did not trouble herself to take appropriate step by lodging notice of appeal. She just relaxed, then at the time of her choice, and after a prolonged delay of six months and 15 days she wake up, come to the court seeking extension of time. This surely cannot be torelated. The way issue of illegality is now perceived as ground for extension of time there is a danger of opening floodgate of applications of this nature for all ills, that as long as there is a purported illegality then should be a right to a party to be granted extension of time even though there is plenty of days lapsed without taking action, negligence and inordinate delay by the applicant. When an applicant wants the court to grant him/her extension of time in order to take certain step he/she must show diligence in pursuing the matter and not showing negligence, inordinate or sloppiness in doing so. The applicant has been negligent. She did not advance reasonable or sufficient cause for the delay. Her plea of illegality of the decision sought to be challenged cannot be accepted. But the Court of Appeal in the case of ***Finca (T) Limited and Another vs. Boniface Mwalukisa***, Civil Application No 589/12 of 2018, at page 10 has this to say:-

*"Every party intending to appeal seeks to challenge a decision either on point 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 demonstrate that his intended appeal raises a point of law should as a right be granted extension of time if applies for one".*

(Emphasis added).

Having so explained, and on the basis of the cases cited above, a principle of illegality of the decision sought to be challenged cannot be applied even where it is not proved. The applicant has failed to account for the whole period of delay, she has also failed to prove the alleged illegality. That said therefore, I find this application without merit. The same is dismissed with costs.

It is so ordered.



*F. N. Matogolo*  
**F. N. MATOGOLO**

**JUDGE**

**16/08/2022**

**COURT:**

Ruling delivered in the presence of the applicant in person and Mr. Hern Jongo on behalf of the first respondent, Ms. Grace Mfyuji (clerk) also present.



**MALEWO, M. A.**  
**DEPUTY REGISTRAR**

**16/08/2022.**

Right of appeal explained.



**MALEWO, M. A.**  
**DEPUTY REGISTRAR**

**16/08/2022.**