

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

MISCELLANEOUS LAND CASE APPLICATION NO. 06/2020

**(Originating from Land Appeal No. 102 of 2017 which arose from
Land Case No. 93 of 2017 Kihagala Ward Tribunal)**

FRAVIA MAPUNDA APPLICANT

VERSUS

BENEDICT NJOWOKA RESPONDENT

RULING

Date of Last Hearing: 13/10/2020

Date of Ruling: 23/10/2020

BEFORE: S.C. MOSHI, J.

The application is filed in terms of section 38(1) of the Land Disputes Courts Act Cap 216 R.E 2019. The applicant is seeking for extension of time to file an appeal out of time against the decision made by the District Land and Housing Tribunal for Mbinga in respect of Land Appeal Number 93/2017 which originated from Land case Number 93/2017 of Kiwanga Ward Tribunal.

The application is supported by an affidavit deposed by Fravia Mapunda, the applicant. The respondent opposed the application by filling a counter affidavit, the application was disposed of by way of written submission and both parties appeared in person.

The applicant submitted among other things that, the appeal which she intends to lodge has greater chances of success as the impugned decision is tainted with illegality and irregularity. She buttressed his submission by citing the cases of **Rajabu Kadinwa Ng'eni & Another Vs Iddi Adam** (1991) TLR 38 where it was held that chances of success of the intended appeal was considered as a sufficient reason for granting leave to appeal out of time.

She argued that in the record of the trial Tribunal shows that the applicant acquired the suit land by way of inheritance while the respondent alleged to have acquired the same by way of purchase. In the first appellate Tribunal the respondent stated that he acquired the suit land by way of purchase. The first appellate tribunal in its judgment exchanged the parties submission on how the parties acquired the suit land that is, the applicant acquired the same by way of purchase and the respondent

acquired the same by way of inheritance, because of this exchange of parties submission it found all grounds of appeal to be non meritorious.

She submitted that, that being the case, there is every reasonable cause to grant orders for extension of time so as to enable this court to cure the illegality of the decision of Mbinga District Land and Housing Tribunal which is tainted with illegality that prejudiced the applicant's rights.

On the other hand, the respondent submitted *inter alia* that the applicant has cited the provisions of section 38(1) of the Land Disputes Courts Act, Cap. 216 R.E 2002 as the enabling provision the law which does not exist as it has been repealed and replaced by Cap. 216 R.E 2019. However he stated section 38(1) of the Land Disputes Courts Act Cap. 216 R.E 2019 provides that:-

"Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction may within sixty days after the date of the decision or order, appeal to the High Court

Provided that, the High Court may for good and sufficient cause extend the time for filling an appeal either before or after such period of sixty days has expired”.

He argued that the word “for good and sufficient cause” under the above provision has not been defined by the Act, the same with only slight modifications is provided by section 14(1) of the Law of Limitation Act Cap. 89 R.E 2019 that:-

“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, other than an application for execution of a decree, and 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”.

He stated further that a reasonable or sufficient cause in the above cited provision has not been defined by the Act. He cited the case of **Joseph Lugata Vs Republic**, Criminal Application No. 89/11 of 2019 (Unreported) where the Court of Appeal referred to the case of **Tanga**

Cement Company Limited Vs Jumanne Msanga, Civil Appeal No. 06 of 2001 (Unreported), where it was held that:-

"What amounts to sufficient cause has not been defined from the decided cases several factors have not been defined, from the decided cases several factors have to be taken into account, including whether the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence on the part of the applicant".

He also cited the case of **Benedicto S.B Mahela Vs Tanzania Bureau of Standard**, Miscellaneous Application No. 632 of 2019 at page 5 where Z.G.Mruke J, referred the case of **Lyamuya Construction Company Ltd Versus Board of Registered Trustees of Young Women Christian Association of Tanzania** , Civil Application No. 2 of 2010 (Unreported) where it was stated that:-

"as a matter of general principle it is in discretion of the court to grant extension of time. But that discretion is judicial and so it must be exercised according to the rules of reason and justice and not according to the private opinion or

arbitrary. On the authorities however, the following guidelines may be formulated:

(a) The applicant must account for all the period of delay

(b) The delay should be inordinate"

In the case of **Benedicto S.B Mahela Vs Tanzania Bereau of Standards**, (supra) it was held thus:-

"Indeed, it is my view that applicant case does not only demonstrate lack of seriousness and diligence, but also gross negligence on the part of the Counsel for the applicant in handling the affairs of his client. In the case of William Shija Vs Fortunatus Masha (1997) TLR 213, the Court of Appeal held that negligence on part of the Counsel who caused the delay cannot constitute sufficient reason".

He contended further that the applicant was represented by an Advocate who knows the laws and procedure in general. The negligence on the part of the advocate cannot amount to good and sufficient cause for the extension of time as stated in the case of **William Shija Vs Fornatus Masha (supra)** because the applicant is responsible to attend all the

proceedings regarding his case and to make due diligence in following up his case in court or to his advocate and if the advocate misbehaves in any way can be subjected to professional misconduct to the relevant disciplinary authorities.

On the issue of irregularities of the decision of the Land and Housing Tribunal of Mbinga and the difference between the court records and the counter affidavit as argued by the applicant in his submission, he stated that all that has been stated by the applicant in his written submission is a confusion and far from the truth whereby the decision of the Land and Housing Tribunal of Mbinga considered all the law and facts and evidence in deciding the appeal. The evidence regarding acquisition of land between the applicant and the respondent is the same in the tribunal record affidavit as the applicant argued that he acquired the land by inheritance and failed to show the evidence for the same and the respondent alleged to have bought the land and was able to show the evidence for the same.

He stated that the application lacks foot to stand because the applicant failed to show good and sufficient cause for this court to grant extension of time to file an appeal. On the other hands, if this application is

granted the respondent shall suffer irreparably and it will be tantamount to punishing the responsible party and awarding the irresponsible party.

Having considered the submission of both parties, the main issue for determination is whether the applicant has shown sufficient cause for the delay.

Before embarking into the merits of the application I would like to point out that Cap. 16 R.E. 2019 did not repeal Cap. 16 R.E. 2002 as suggested by respondent's counsel. It only supersedes it as per the General Laws Revision Notice, 2020. The 2019 Revised edition incorporates amendments including and up to November, 2019. I am of the view therefore, that citing the 2002 edition is not fatal and did not occasion any miscarriage of justice.

It is now a cardinal principle that when the time has expired there must be explanation or material upon which the court may exercise its discretion to extend it. This stance has been taken by this court and the court of Appeal in a number of decisions. See **Regional Manager, Tan roads Kagera Vs Ruaha Concrete Co Ltd**, Civil Application No. 96 of 2007 Court of Appeal (Unreported), **Godwin Ndeweri and Karoli Ishengoma Vs Tanzania Indil Corporation** (1995) TLR 200.

On the issue of illegality, the applicant asserted that the decision intended to be appealed before this court is tainted with illegality on the face of it which prejudiced the rights of the applicant. The said illegality is based on the issue of exchange of submission of the parties. Upon consideration of parties submission it is my view that, the complaint relates to the analysis of evidence; it is not an irregularity on a point of law.

Indeed, there are several decisions of the court of Appeal regarding extension of time basing on the issue of illegality. In **Vip Engineering and Marketing Ltd and Two others Vs Citibank Tanzania Ltd** Consolidated Civil Reference No. 6, 7, and 8 of 2006 (Unreported) it was held that:-

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reasons for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rules to account for the delay".

See also the case of **TanESCO Vs Mfungo Leonard Majura and 15 others**, Civil Application No. 2016 (Unreported) where it was held thus:-

"Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that there is a complaint of illegality in the decision intended to be impugnedsuffices to move the Court to grant extension of time so that, the alleged illegality can be addressed by the court."

However the illegality must be on points of law which are of sufficient importance see case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, where it was held thus:-

"Since every party intending to appeal sees to challenge a decision either on points of law or facts, it cannot in my view, be said that in Valambia'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 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”.

Upon consideration of the affidavit and submission, there is nothing demonstrating a novel point of law of importance to justify extension of time.


Furthermore it is the position of the law that any applicant seeking extension of time is required to account for each day of delay, that is delay of even a single day has to be accounted for. See the case of **Interchick Company Ltd Vs Mwaitenda Ahobokile Michael**, Civil Application No 218 of 2016 Court of Appeal at Dar es Salaam (Unreported). In this application, the applicant averred in her affidavit that she filed a land case No 93 of 2017 before Kihagala Ward at Kihagala where it was decided in her favor. The respondent appealed to the District Land and Housing Tribunal where its decision was in favor of the respondent. The applicant appealed to this court timely enjoying the services of Mr. Edmund Mnyawami, advocate the appeal was withdrawn by his advocate on 24/9/2019 with leave to refile but he didn't comply with the order, till March 2020 when the applicant came to Songea to inquire on her appeal hence this application.

The applicant's appeal was withdrawn on 24th day of September 2019; this application was filed on 5th day of May 2020. The applicant stated that he become aware that his appeal had been withdrawn on March 2020. It is evident that she has failed to account for a period of almost two months since she knew that her appeal was withdrawn. With this, in light of what I have discussed above, it is obvious that the applicant was negligent, she didn't exercise due diligence.

From the above observations, I find that, the applicant has not demonstrated good cause that would entitle her extension of time. In the end result, this application fails and is, accordingly, dismissed with costs.

Right of appeal explained.

It is so ordered.


S.C. MOSHI
JUDGE
23/10/2020