

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

MISC. LAND APPLICATION NO. 1983 OF 2024

(Originating From Land Application No. 36 of 2020, Kinondoni District Land and Housing Tribunal)

EMMANUEL RUPIA.....APPLICANT

VERSUS

JANE MATOWO.....1ST RESPONDENT

KINONDONI MUNICIPAL COUNCIL.....2ND RESPONDENT

FORCE FOCUS AUCTION MART COMPANY LIMITED.....4TH RESPONDENT

RULING

18th to 25th April, 2024

E.B. LUVANDA, J

This application is made under the enabling provisions of section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019; regulation 4 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation, GN 124 (sic, 173) of 2003. Principally , the Applicant is asking for extension of time for instituting an appeal against the ruling and order date 7/03/2023 in the above captioned application.

In the affidavit in support, the Applicant pleaded illegalities on the impugned ruling, faulting the Tribunal for introducing assumptions on elements of res

judicata, *functus officio*, denial of the right to be heard; and reasons for the delay was premised on the fact that the Applicant was encumbered in proceedings of Criminal Case No. 1130 still pending at Kawe Primary Court and serious financial constraints. Also averred that copies of decision dated 7/03/2020 (sic, 2023) was supplied very late in terms of time.

In the counter affidavit, the First Respondent stated that the grounds pleaded by the Applicant neither constitutes illegalities on the face of records nor explain the delay to file appeal. He stated that criminal case commenced in June 2023 when the period of appeal had already expired, arguing in no way the said case could prevent the Applicant from taking action in time. He stated that financial constraints is not a ground for extension of time. He stated that both parties were dully heard and objection was conclusively determined. He stated that the Applicant did not attach evidence for requesting copies of proceedings, ruling and drawn order, nor stated as to when he was supplied with the same. He stated that copies were ready for collection on 10/03/2023.

The Second Respondent made a counter affidavit that the impugned matter was adjudged in accordance with procedures. He stated that the intended appeal is a wastage od time, and is based on frivolous and vexatious reasons.

Mr. Benitho L. Mandele and Mpwaga Bernard learned Advocates for the Applicant submitted that in the affidavit contain reasons for delay being delay by the Tribunal to provide the Applicant with proceedings and judgment necessary for the intended appeal. They submitted that they are illegalities on the impugned decision, arguing it is purely founded on assumptions which is contrary to the law, arguing the law requires judgment to be based on evidence. They submitted that other illegalities included disregarding parties submission and pleadings; blessing illegal demolition; non trial of fundamental issues arising from the counter claim; dealing with extraneous facts of the case.

Mr. Wilson Edward Ogunde learned Counsel for First Respondent submitted that the affidavit paragraph eight does not constitute sufficient reason for delay, arguing the Applicant cannot claim that he was denied the right to be heard for reason that his arguments were not accepted. He submitted that the Applicant does not show as to when he requested for copies of proceedings and ruling. He submitted that the ruling and drawn order was certified on 10/03/2023, arguing is a proof that it was ready for collection only within three days after the decision. He submitted that the Applicant does not state in his affidavit as to when he was supplied by the Tribunal

with certified copies of the proceedings, ruling and drawn order, arguing the Court cannot be in a position to gauge the extent of delay. He submitted that the Court of Appeal held several times that illegality cannot be used a shield to hide against in action on the part of the Applicant. He submitted that the Applicant has not been able to show sufficient cause for delay of 287 days and the purported illegalities are not on the face of records, arguing are merely grounds of appeal which can be established through long chain of arguments. He cited the case of **Mtengeti Mohamed vs Blandina Macha**, Civil Application No. 344/17 of 2022 CAT.

The learned State Attorney for the Second Respondent submitted that the Applicant's affidavit bears insufficient reason, arguing that the Applicant failed to attach a letter requesting copies of judgment and proceedings alleged supplied to him late. He cited section 110 of the Evidence Act, Cap 6 R.E. 2019. He submitted that there is no illegality on the face of records, arguing the Applicant was accorded the right to be heard.

It is common ground that the court can only extent time upon reasonable and sufficient cause be shown. Section 14(1) Cap 89 (supra) which was cited by the Applicant to enable their application, provides,

'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 the 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'

Herein the reasons for delay were pleaded to have been attributed by delay of the Tribunal to supply copies of proceedings and decision timely. But the Applicant could not tell as to when exactly he obtained the same. In the counter affidavit of the First Respondent stated that copies of ruling and drawn order were ready for collection 10/03/2023 as per the date of an extracted drawn order. The Applicant did not file a reply to the counter affidavit to controvert this fact, therefore it is taken as amounting to concession being the correct position. The Applicant pleaded that he was attending criminal proceedings in Criminal Case No. 1130 before Kawe Primary Court, which alleged is still pending. However, the Applicant did not say if he was denied bail, or state circumstances under which the alleged criminal proceedings impeded him to take essential steps within time. Above all, in the counter affidavit by the First Respondent asserted that the said criminal case was initiated in June 2023 well after expiry of the time for

lodging appeal. This fact was not dispelled by the Applicant, which is taken as acceptance to this fact on his part.

In the affidavit the Appellant had grounded illegalities: faulting the Tribunal for introducing assumptions on elements of *res judicata*, *functus officio*, denial of the right to be heard. However, in the submission the learned Counsels for Applicant made a departure and introduced new grounds of illegalities: including disregarding parties submission and pleadings; blessing illegal demolition; non trial of fundamental issues arising from the counter claim; dealing with extraneous facts of the case, and last assumptions was also pleaded as a substantive ground of illegality. This was a new set of grounds of illegality which were not pleaded in the affidavit. Introducing them by way of submission, is a purely an afterthought.

Therefore, the Applicant's application is doomed to fail, because no sufficient reasons for the delay and sufficient reasons for extending time were established.

The Application is dismissed with costs.

E. B. LUVANDA
JUDGE
25/04/2024

Ruling delivered in the presence of Ms. Rose Sanga holding brief for Mr. Benitho Mandele learned Counsel for Applicant, also holding brief for Mr. Benedict Fungo State Attorney for the Second Respondent; Mr. Wilson Edward Ogunda learned Counsel for First Respondent.



E. B. LUVANDA
JUDGE
25/04/2024