

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

MISC. LAND APPLICATION NO 575 OF 2020

*(Arising from the Land Appeal No. 74 of 2017 and the decision of
Kinondoni District Land and Housing Tribunal at Mwananyamala in Land No.97
of 2015, Originating from Kijitonyama Ward Tribunal)*

JUMA MILAMBO APPLICANT

VERSUS

JUMA MGUTA RESPONDENT

RULING

Last order: 06.07.2021

Ruling date: 06.07.2021

A.Z.MGEYEKWA, J

This is an omnibus application whereas the applicant urged this court to exercise its discretion under section 11 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] and section 14 (1) of the Law of Limitation Act, Cap, 89 [R.E 2019] to certify that there is a point of law involved in the decision of this court in Land Appeal No. 74 of 2017, this court to extend the time for the applicant to file and serve a letter seeking

for copies of Judgment, Decree, proceedings in Land Case No. 74 of 2017 and the applicant is also seeking for extension for time for the applicant to file an application to file a Notice of Appeal out of time. The application is supported by an affidavit deposed by Juma Milambo, the applicant. The respondent is feverishly opposed to the application. In a counter-affidavit sworn by Juma Mguta, the respondent.

When the matter was called for hearing before this court on 24th March, 2021, the applicant had the legal service of Mr. Barnaba Luguwa, learned counsel whereas the respondent appeared in personal, unrepresented. By the court order and consent by the parties, the application was argued by way of written submissions whereas, the applicant's Advocate filed his submission in chief on 8th April, 2021 and the respondent filed his reply on 21st April, 2021 and the applicant's Advocate filed a rejoinder out of time, he was ordered to file a rejoinder on 28th April, 2021, however, he filed the same on 3rd May, 2021. Therefore the same means that the learned counsel for the applicant has wave his right to rejoin.

In support of the application, the learned counsel for the applicant urged this court to adopt the applicant's affidavit and annexes to form part of his submission. He submitted that the Ward Tribunal, the District Land and Housing Tribunal and this court decided the matter in favour of

the respondent. The applicant was dissatisfied hence the application for extension of time.

The learned counsel for the applicant went on to state that the applicant was feeling unwell, hence, he found himself out of time to file an appeal. To beef up his averment he referred this court to a medical sheet. He went on to state that in the application for extension of time the court has discretion to grant or not to grant. To support his position he cited the cases of **National Bank of Commerce Ltd v Sao Lego Holding Ltd and another**, Civil Application No. 267 of 2015 (unreported) and **Jumanne Hassan Billing v Republic**, Criminal Appeal No. 23 of 2013 (unreported).

The learned counsel for the applicant went on to state there is an issue of illegality involved as has been raised in paragraph 8 of the applicant's affidavit challenging the validity of the original proceedings of the Ward Tribunal. Tshs. 7,300,000, while the trial tribunal has no jurisdiction to try and determine the matter whose value is above Tshs. 300,000/=. To support his submission he cited the cases of **Mbaraka Omary v Abdulrazak Omary Laizer & Dedrick Hamphrey Jonas**, Civil Application No. 29 of 2014 (unreported) and the case of **VIP Engineering and Marketing Limited and three others v Citibank**

Tanzania Ltd, consolidated, Civil References No. 6, 7 and 8 (unreported). Confidently, he stated that the issue of illegality suffices to bring the matter to the attention of the Court of Appeal of Tanzania.

The Respondent opposed the application. He argued that the court of law can grant an extension of time to file an appeal if sufficient cause is shown. He went on to state that four principles have been laid down to determine the criteria for reasonable time. Fortifying his submission he cited the case of **Alliance Insurance Corporation v Arusha Art Ltd**, Civil Application No. 512/ 2 of 2016 the Court of Appeal of Tanzania cited with approval the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 that the applicant is required to account for the days of delay and the delay should not be ordinate, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and if the court feels that there are sufficient reasons such as the existence of a point of law of sufficient importance; such as illegality.

The respondent went on to state that in examining whether the applicant has accounted for each day of delay, he stated that the applicant in his chamber summons applied to file an application to certify points of law against the decision of Hon. Makani, J in Land Appeal No.24 of 2017, application for extension of time to file an appeal and his reasons for delay are stated in paragraph 6 of the applicant's affidavit.

The respondent vehemently contended that the applicant has no any documentary evidence to prove that he was hospitalized for three months and that he was seriously ill. He went on to argue that the sick sheet was issued on 16th July, 2019, the decision of this court was delivered on 25th November, 2019 and the instant application was lodged on 19th October, 2020. He added that the applicant delayed for 11 months. The respondent went on to submit that the delay of 11 months was inordinate as a result the applicant has demonstrated gross negligence and sloppiness in pursuing this application.

In his brief rejoinder, the learned counsel for the applicant reiterated his submission in chief and argued that the applicant is still not in good condition. He lamented that there was no apathy, sloppiness, or lack of diligence in following up the matter. Insisting, the learned counsel for the applicant stated that there is a point of law that attracts the attention of

the Court of Appeal that there is an error of law which are required to be mended on appeal, and the same is not opposed by the respondent.

On the strength of the above submission, the learned counsel for the applicant urged this court to allow the applicant's application as prayed.

Having carefully considered the submissions made by the learned counsels in their written submission and examined the affidavit and counter affidavit, the issue for our determination is ***whether the application is meritorious.***

The position of the law is settled and clear that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, Tanga

Cement Company Ltd v Jumanne D. Massanga & Another, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter affidavit, Mr. Luhogi has shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decision of this court. The applicant's Advocate has raised two main limbs for his delay, technical delay, and illegality.

In determining the applicant's prayers, I want to state that this court can determine the combination of prayers as stated in the case of **Tanzania Knitwear Ltd v Shamshu Esmail** (1989) TLR 48, Mapigano; J (as he then was) that:-

"In my opinion, the combination of the two applications is not bad in law. I know of no law that forbids such a course. Courts of the law abhor multiplicity of proceedings. Courts of law encourage the opposite."

Applying the above authority I find that the three prayers are properly before this court as they are not diametrically opposed to each other, but

one easily follows the other. Once extension of time is granted then an application for certification on point of law and the order to supply the applicant with copies of judgment, decree and proceedings follow. The same was observed in the case of **MIC Tanzania Ltd v the Ministry for Labour and Youth Development and the Attorney General** Civil Appeal No. 103 of 2004 Dar es Salaam (unreported) delivered in December, 2006. Therefore, I proceed to determine all three prayers and find out if the applicant has adduced sufficient evidence to move this court to grant what he is sought.

In addressing the first prayer, the central issue for consideration and determination is whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant. In accordance with the applicant's application, the main issue that emerges and cries for my determination is whether the applicant has disclosed a sufficient cause to warrant the court to grant his application for extension of time to *file an appeal out of time*.

There is no gainsaying that the power to extend time is at the court's discretion. It is settled law that a party who seeks an extension of time must disclose sufficient cause for the delay. The decisions are equally relevant for the requirement to account for each day of delay and failure

to do so the Court cannot exercise its discretion in his favour. That position is reflected in several decisions of the Court of Appeal in applications for extension of time, and I have no doubt the principle applies to this court too. It is equally not in dispute, and indeed it is settled law that such discretion must be exercised judiciously on the basis of material placed before the court for its consideration.

The requirement of accounting for every day of delay has been emphasized by the Court of Appeal in numerous decisions; examples are such as the recent case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) delivered in May, 2019 and the case of **Karibu Textile Mills v Commissioner General (TRA)**, Civil Application No. 192/20 of 2016, **Tanzania Coffee Board v Rombo Millers Ltd**, AR CAT Civil Application No 13 of 2015 (unreported) the Court reiterated its decision in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported) which had held that:-

"Dismissal of an application is the consequence befalling an applicant seeking extension of time who fails to account for every day of delay."

After taking into consideration what has been stated in the affidavit filed by the applicant and the applicants' advocate submission I would like to make an observation that the applicant's Advocate in his submission prayed for this court to grant his prayer of extension of time and in his affidavit has not accounted for days of delay, he banked on the issue of illegality as stated on paragraph 8 of his affidavit. On his side, the respondent in his submission did not submit on this issue of illegality. However, on paragraph 6 of his counter affidavit, the respondent has disputed this ground.

The legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same may constitute the basis for extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185 at page 89 thus:

"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 straight." [Emphasis added].

Similarly, in the cases of **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, Civil Application No. 6 of 2016 (unreported) and **Lyamuya Construction** (supra); the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaiambia'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."* [Emphasis added].

Applying the above authorities, it is clear that the ground of illegality that has been cited by the applicant touches on pecuniary jurisdiction. In my view, the raised illegality bears sufficient importance, and its discovery does not require any long-drawn argument or process. In my considered

view, this point of illegality meets the requisite threshold for consideration as the basis for enlargement of time and that this alone, weighty enough to constitute sufficient cause for extension of time. Therefore, I am satisfied that the ground of illegality is evident that the present application has merit.

Regarding the first prayer, the applicant has not stated the grounds for certification on the point of law to move this court to grant his application. In the absence of credible grounds on certification on point to law to move this court to certify the point of law, will be asking too much from this court to accept the submission made by the applicant as sufficient material in support of the application on certification on point of law. Taking to account that the reasons for certification on the point of law was not stated in the applicants' affidavit. The only logical conclusion must be that the applicant acted negligently, the applicant is to blame for failing to consider his first prayer in his affidavit and submission.

Having failed to surmount that hurdle, the Court cannot exercise its discretion by granting the applicant's first prayer, However, I proceed to grant the second and third prayers as follows:-

1. The Deputy Registrar to supply certified copies of proceedings, Judgment and Decree in respect to Land Case No. 74 of 2017 dated 25th November, 2019 within 21 days from today.

2. Extension of time to file a Notice of Appeal to the Court of the Appeal of Tanzania within 30 days from today.

Order accordingly.

Dated at Dar es Salaam this date 13th July, 2021.


A.Z.MGEYEKWA
JUDGE
13.07.2021

Ruling delivered on 13th July, 2021 in the presence of both parties.


A.Z.MGEYEKWA
JUDGE
13.07.2021