

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS LAND APPLICATION NO. 83 OF 2017

(Arising from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Appeal No. 68 of 2015. Originating from the decision of the Ward Tribunal of Saranga in Land Case No. 90 of 2014)

DR. ZAKARIA L. KANYEKA-----APPLICANT

VERSUS

HUSSEIN KASSIM NGWEMBE-----RESPONDENT

RULING

MUTUNGI, J.

The applicant herein is seeking for the following reliefs: -

1. *This Honourable Court be pleased to extend time for the applicant to appeal against the decision of the District Land and Housing Tribunal of Kinondoni at Mwananyamala dated 10th March, 2017 on the grounds as per the affidavit in support and other grounds of illegality of the decision to be expounded at the hearing.*

2. *Costs of this application be provided for.*

3. *Any other order as the Honourable Judge may deem fit.*

The Application has been made via a chamber summons under section 38 (1) of the Courts (Land Disputes Settlement) Act No. 2 of 2002. It is further supported by a corresponding Affidavit dully sworn by Mr. Samson Mbamba learned Advocate for the applicant.

Briefly according to the sworn Affidavit, the applicant was aggrieved by the decision of the Saranga Ward Tribunal. He subsequently appealed in the District and Housing Tribunal for Kinondoni at Mwananyamala. In the said appellate tribunal, the matter was argued by way of written submissions before Honourable R. B. Mbilinyi, the Chairperson. Thereafter the judgment was composed by a different Chairperson Honourable J. Y. Mlyambina. The counsel for the applicant alleged to have subsequently applied and supplied with the copies of the proceedings and judgment by the appellate tribunal. Mr. Mbamba went further by stating, the successor Chairperson took over the case file without issuing notice to the parties. More so, he has noticed a glaring illegality in

the proceedings and judgment, in that assessors were not involved at all.

On the other side of the coin, basically the respondent in his affirmed counter affidavit strongly opposed the application.

When the appeal was called for hearing, it was agreed the matter be argued by way of written submissions. Both parties did file their respective submissions on time within the court's schedule.

In his submissions Mr. Mbamba argued, the appellate tribunal had pronounced the judgment in the absence of the applicant while there was no notice or summons issued to notify him. This was contrary to *Order XX Rule 1 of the Civil Procedure Code*. In due thereof he referred this court to the cases of **TANZANIA PETROLEUM DEVELOPMENT CORPORATION AND ANOTHER VERSUS POWER HOUSE PRODUCTION CO. LTD AND ANOTHER, CIVIL APPLICATION NO. 2 OF 2012** and **DAR ES SALAAM EDUCATION AND OFFICE STATIONERY AND ANOTHER VERSUS NBC HOLDING CORPORATION AND 2 OTHERS, CIVIL APPLICATION NO. 39 OF 1999**.

Regarding the issue of change of Chairpersons as pointed in his affidavit, Mr. Mbamba suggested the same had contravened Order 18 Rule 10 (1) of the Civil Procedure Code [Cap. 33 R.E 2002]. He referred this court to the case of **NATIONAL INSURANCE CORPORATION (T) LTD VERSUS JACKSON MAHALI, CIVIL APPEAL NO. 94 OF 2011.**

Mr. Mbamba went on to argue, the Chairperson who had pronounced the judgment did not record the opinions of the assessors. According to him the same had contravened sections 23 (1) and (2) and 24 of the Land Disputes Settlements Act (supra). Mr. Mbamba referred this court to the case of **HAMISA S. MOHSIN AND 2 OTHERS VERSUS TANINGRA CONSTRUCTORS, CIVIL APPEAL NO. 51 OF 2013.** He thus concluded the decision of the appellate tribunal was tainted with illegality, being a sufficient ground for extension of time. He referred this court to the cases of **PRINCIPAL SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICE VERSUS DERVAN VALAMBHIA [1992] T.L.R 185; VIP ENGINEERING AND MARKETING LTD AND OTHERS VERSUS CITIBANK LTD, CONSOLIDATED CIVIL REFERENCE NO. 6, 7 AND 8 OF 2006** and **PAUL JUMA VERSUS DIESEL AND AUTO**

**ELECTRIC SERVICE AND OTHERS, CIVIL APPLICATION NO. 54
OF 2007** to back up his stance.

In the upshot, Mr. Mbamba prayed the application be granted.

In reply, the respondent who enjoys the legal services of the Legal and Human Rights Centre opposed the applicant's submissions. The respondent insisted the applicant had failed to advance sufficient reasons for the delay. He further submitted that the applicant and his advocate were normally absent when the matter was scheduled for hearing in the appellate tribunal.

Regarding the change of the Chairpersons, he submitted that the successor Chairperson came in since the predecessor Chairperson was out of the office.

On the account of the absence of assessors' opinions, he strongly opposed the said allegation since the judgment of the said tribunal is to the contrary.

The respondent went further by submitting that, since the matter had originated from the Ward Tribunal, the applicant was not required to apply to be supplied with the copies of

the judgment and decree under section 38 of the Act. He referred this court to the case of **KELVIN AGUTU NYAMORI VERSUS HUSSEIN UGULUMO AND ANOTHER, LAND APPEAL NO. 160 OF 2014.**

All in all, the respondent was of the settled view that the applicant has failed to advance sufficient reasons to justify the said delay. He thus prayed the application be dismissed. The issue is whether the application has merits or otherwise. Basically Mr. Mbamba's grounds for extension of time suggest there is illegality in the decision sought to be challenged on the aspect of assessors' involvement as well as the change of the presiding Chairpersons.

Before I venture into the merits of the application at hand, I have noted one observation which in my settled view has to be pointed out at the earliest opportunity. The applicant's chamber summons indicates the application has been made under section 38 (1) of Courts (Land Disputes Settlements) Act No. 2 of 2002. It goes without saying the applicant has cited the statute wrongly. However, I am of the settled mind the applicant in his mind had meant to refer section 38 (1) of the Land Disputes Courts Act [Cap.

216 R.E 2002] and not section 38 (1) of Courts (Land Disputes Settlements) Act No. 2 of 2002.

Since the above observation has not been raised by the respondent and there being no injustice occasioned to the respondent then in the event I proceed to determine the matter on merits as I hereunder do.

Turning to the merits of the application, it is settle law that, the instant application can only be granted where sufficient reasons are advanced by the applicant. There is a plethora of authorities from the Supreme Court of this land. To mention but a few the cases of **BENEDICT MUMELLO VERSUS BANK OF TANZANIA (supra)**; **D.N. BAHRANI LOGISTICS LTD AND ANOTHER VERSUS NATIONAL BANK OF COMMERCE LTD, CIVIL APPLICATION NO. 44/16 OF 2016 (CAT-DSM)**; **PHILIP TILYA VERSUS VEDASTIN BWOGI, CIVIL APPLICATION NO. 448/17 OF 2016 (CAT-DSM)** and **TANESCO VERSUS MUFUNGO LEONARD MAJURA, CIVIL APPLICATION NO. 94 OF 2016 (CAT-DSM) (ALL UNREPORTED)**. In the **TANESCO's (supra)** case at page 10 the Court cited with approval the case of **LYAMUYA CONSTRUCTION COMPANY LIMITED VERSUS BOARD OF TRUSTEES OF YOUNG WOMEN'S CHRISTIANS**

ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2 OF 2010 (UNREPORTED) where the conditions to be considered in such an application were enumerated. These are as follows: -

1. *The applicant must account for the delay for the period of delay.*
2. *The delay should not be inordinate.*
3. *The applicant must show diligence, and not apathy, negligence or sloppiness in prosecution of the action that he intends to take.*
4. ***If the court feels that, there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.***
[Emphasis is mine]

In a similar vein, in the case of **EZRON MAGESA MARYOGO VERSUS KASSIM MOHAMED SAID AND IBRAHIM MWANKYUSYE, CIVIL APPLICATION NO. 227 OF 2015 (CAT-DSM) (UNREPORTED)** at page 8 Hon. Mugasha, J.A citing with approval the case **VIP ENGINEERING MARKETING**

**LIMITED AND 2 OTHERS VERSUS CITI BANK TANZANIA LIMITED,
CONSOLIDATED REFERENCE NO. 6,7 and 8 of 2006
(Unreported) stated: -**

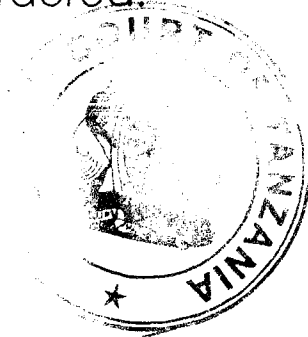
"...a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless whether or not reasonable explanation has been given by the applicant to account for the delay".

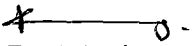
In light of the foregoing, the court at this juncture turns round to find whether the application filed fits within the ambit of the principle laid down in the above cited cases of the apex court of this land. Upon my thorough scrutiny of the court record in relation to what has been submitted by both camps, the court finds there are aspects of illegality in the decision of the appellate tribunal. The applicant has raised the issue of the opinions of assessors and the manner in which the matter was determined. These are matters to be looked into and if found tainted with illegality be put right by a higher court.

From the foregoing analysis, I find the application has merits. The applicant is ordered to file the intended appeal within

thirty (30) days from the date of this ruling. Each party to bare own costs.

It is so ordered.



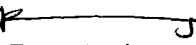

B. R. Mutungi

JUDGE

21/06/2018

Read this day of 21/6/2018 in presence of the respondent in person and in absence of the applicant dully notified.



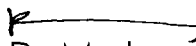

B. R. Mutungi

JUDGE

21/06/2018

Right of appeal explained.




B. R. Mutungi

JUDGE

21/06/2018