THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

MISCELLANEOUS LAND APPLICATION NO. 16 OF 2020
(From the District Land and housing Tribunal for Rungwe at Tukuyu in Land Application No.22 of 2017)

JAILO JOTAN KABONDE (As Administrator of
The Estate of the Late **Jotam Kapola Kabonde**).....**APPLICANT**

VERSUS

HOSEA M. KABONDE.....**RESPONDENT**

RULING

Date of Last Order: 17/06/2020
Date of Ruling : 22/07/2020

MONGELLA, J.

The applicant herein is moving this Court for an order to extend time within which to lodge an appeal against the decision of the District Land and Housing Tribunal (Tribunal) for Rungwe at Tukuyu in Land Application No. 22 of 2017. The application is brought under section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2002 as amended by Miscellaneous Amendment Act No. 2 of 2016. The application is supported by the affidavit of the applicant **Jailo Jotam Kabonde**.

The applicant enjoyed legal services of Ms. Joyce Kasebwa, learned advocate. The respondent informed this Court that he had engaged an

advocate, one Mr. Philip Mwakilima, but the said Mr. Mwakilima never entered appearance. For purposes of saving the time of the court and the parties, an order was made by this Court on 20th May 2020 that the application be disposed by written submissions. The scheduled orders for filing submissions was to the effect that the applicant was to file his submission on or before 22nd May 2020; the respondent was to file his reply submissions on or before 05th June 2020 and rejoinder by the applicant, if any, was to be filed on 12th June 2020. The respondent was present in person before this Court. When the matter came for necessary orders on 17th June 2020, it was only the applicant who had filed his submission in chief. The respondent defaulted in filing his submission in reply. This situation was discussed by this Court in the case of ***Olam Tanzania Limited v. Halawa Kwilabya***, DC Civil Appeal No. 17 of 1999 whereby it was held:

> *"Now what is the effect of a court order that carrier instructions which are to be carried out within a pre-determined period? Obviously such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or it will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submission is part of hearing. So if a party fails to act within prescribed time he will be guilty of in-diligence in like measure as if he defaulted to appear...This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos."*

In ***Andrea Njumba v. Trezia Mwigobene***, PC Civil Appeal No. 1 of 2006 (HC Mbeya, unreported) this Court held:

> *"If a party fails to act within the time prescribed he will be guilty of diligence in like measures as if he has defaulted to appear and submissions which were filed out of time will not be acted upon."*

For failure to file his written submission the respondent is as good as he has failed to enter appearance on the date fixed for hearing whereby there are consequences to follow, being that the matter is decided ex parte. The determination of this matter therefore proceeds ex parte in accordance with the settled legal position as demonstrated above. See also: ***P3525 LT Idahya Maganga Gregory v. The Judge Advocate General***, Court Martial Criminal Appeal No. 2 of 2002 (unreported); ***Wananchi Marine Product (T) Limited v. Owners of Motor Vehicle***, Civil Case No. 123 of 1996 (HC, DSM-unreported) and ***Leonard Nyang'ye v. The Republic***, Misc. Criminal Application No. 39 of 2016 (HC Mbeya, unreported).

In the affidavit in support of the application as well as in the submission by the applicant's counsel, a number of reasons for the delay were advanced. The applicant stated that he fell sick even before the matter was finalized in the Tribunal. Thereafter he filed an appeal which was struck out for being time barred. He then filed an application for extension of time which was struck out for being incompetent.

Apart from the reasons stated above, Ms. Kasebwa in her submission argued that there are illegalities in the impugned Tribunal decision

whereby the records do not indicate the active involvement of assessors. She argued that the existence of illegality in the impugned decision is a sufficient reason to warrant extension of time. To support her position she cited a number of authorities including: ***Yazidi Kassim Mbakileki v. CRBD [1996] Ltd & 2 Others***, Civil Reference No. 14/04 of 2018 (CAT at Bukoba, unreported); ***Harrison Mandali & Others v. The Registered Trustees of the Archdiocese of Dar es Salaam***, Civil Application No. 482/17 of 2017 (CAT at DSM, unreported).

After considering the respondent's submissions, I wish first to point out that it is purely in the discretion of the court to grant extension of time. However, the same has to be exercised judiciously taking into account the sufficient reasons for the delay advanced by the applicant. This position has been set in a plethora of decisions. For instance, in ***Benedict Mumello v. Bank of Tanzania***, Civil Appeal No. 12 of 2002 (unreported), the Court of Appeal ruled:

> *"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time is where it has been sufficiently established that the delay was with sufficient cause."*

In another case of ***Jaluma General Supplies Limited v. Stanbic Bank Limited***, Civil Application No. 48 of 2014 (unreported) it was held:

> *"All that the applicant should be concerned is showing sufficient reason why he should be given more time and the most persuasive reason that he can show is that the delay has not been caused or contributed by the dilatory conduct on his part."*

From the above authorities, the court cannot grant extension of time in the absence of sufficient reasons. See also: ***Michael Leseni Kweka v. John Eliafe*** [1997] TLR 152 and ***Daudi Haga v. Renatha Abdon Machafu***, Civil Reference No. 19 of 2006 (unreported). The respondent as pointed out above, has raised a number of reasons. First he said that he fell sick even before the matter was finalized in the Tribunal whereby he was admitted several times at Ikonda and Makandana hospitals. To substantiate this claim he presented medical documents. The courts have treated sickness as sufficient reason where the applicant proved the same by providing authentic medical documents. See: ***Richard Mgala & 9 Others v. Aikael Minja & 4 Others***, Civil Application No. 160 of 2015 (unreported) and ***Kennedy Mushi v. General Tyre & Another***, Civil Appeal No. 215 of 2001 (unreported).

The respondent also submitted that there is existence of illegality in the impugned decision involving the non-active participation of Tribunal assessors. I agree with Ms. Kasebwa that existence of illegality amounts to sufficient reason. However, illegality can only be entertained if it meets the required criteria. That is, if the illegality is apparent on face of record, is of sufficient importance and the determination of it shall not involve a long drawn process of argument. These criteria were settled by the Court of Appeal in 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 (unreported).

The illegality raised by the applicant on the active involvement of Tribunal assessors, in my settled view, meets the criteria settled in ***Lyamuya***

Construction (supra). The law as settled in a number of cases such as ***Edina Adam Kibona v. Absalom Swebe (Sheli)***, Civil Appeal No. 286 of 2017 and that of ***Tubone Mwambeta v. Mbeya City Council***, Civil Appeal No. 287 of 2017 (both unreported) is to the effect that the opinion of assessors has to be filed in writing in the Tribunal and the proceedings and judgment have to clearly show the assessors' active participation in the matter. This illegality is therefore of sufficient importance because it is mandatorily provided under the law to the extent that non-compliance thereof vitiates the whole Tribunal proceedings. It shall also not involve a long drawn process of argument because it is an error that is apparent on face of record. The illegality cannot be rectified unless the same is tested on appeal. See also: See: ***Kalunga and Company Advocates v. National Bank of Commerce Ltd***, Civil Application No. 124 of 2005; ***Aruwaben Chagan Mistry v. Naushad Mohamed Hussein & 3 Others***, Civil Application No. 6 of 2016 ***Jehangir Aziz Abubakar v. Balozi Ibrahim Abubakar & Another***, Civil Application No. 79 of 2016

In the upshot, this Court considers the reasons advanced by the applicant for the delay being sufficient to warrant extension of time. The application is therefore granted. The applicant is given 14 days from the date of this ruling to lodge his appeal.

Dated at Mbeya on this 22nd day of July 2020

THE HIGH COURT OF TANZANIA

L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 22nd day of July 2020 in the presence of both parties.

L. M. MONGELLA
JUDGE