

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

MISC. LAND APPLICATION NO. 46 OF 2019

(From the District Land and Housing Tribunal for Mbeya in Land
Application No. 21 of 2014.)

MBWIGA MPOLA.....APPLICANT

VERSUS

IKHOHO VILLAGE COUNCIL & 26 OTHERS.....RESPONDENT

RULING

Date of Last Order: 30/04/2020

Date of Ruling : 01/07/2020

MONGELLA, J.

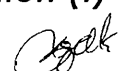
The Applicant is seeking before this Court for extension of time within which to lodge an appeal out of time against the decision of the District Land and Housing Tribunal for Mbeya (Tribunal) in Land Application No. 21 of 2014. The application is brought under section 41(2) of the Land Disputes Courts Act, Cap 216 R.E. 2002 as amended by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016. It is supported by the affidavit of the applicant Mbwiga Mpola.



The applicant appeared in person while the respondents enjoyed legal services of Mr. Benjamin Mbembela, learned Advocate. The application was argued by written submissions.

In his affidavit as well as in the written submission, the applicant stated that after the decision delivered against him by the Tribunal, he lodged in this Court Civil Appeal No. 60 of 2015. The said appeal was struck out for being incompetent as it was filed out of time. He then filed Misc. Land Application No. 102 of 2018 which was also struck out for wrong citation of the enabling provision of the law. Regarding this Court's rulings he referred to annexure MB-1 and MB-2 respectively. He has thus filed this application. He argued further that the delay to file an appeal at the beginning was due to waiting for copies of judgment and proceedings of the Tribunal. He added that he has strong points of law on irregularities by the Tribunal which need to be determined by this Court on appeal.

In reply, Mr. Mbembela first of all challenged the annexures referred to by the applicant, that is, MB-1 and MB-2. He argued that the same are not to be considered by this Court because they offend the rules and practice regarding submissions. He contended that during submissions parties are not required to attach documents as doing so shall be introducing new evidence which the other party has not been afforded the chance to test its validity. He said the annexures referred to by the applicant are evidences and not authorities thus making the submission defective. He cited the case of ***Tanzania Union of Industrial and Commercial Workers (TUICO) v. Mbeya Cement Company & National Insurance Corporation (T) Limited*** [2005] TLR 41 in which this Court held:

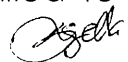


"It is now settled that a submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence. In principle all annextures, except extracts of judicial decisions or textbooks have been regarded as evidence of facts and, where there are such annextures to written submission, they should be expunged from submission and totally disregarded..."

Relying on the above authority he prayed for the annextures to be expunged from the Court record.

Mr. Mbembela also challenged the applicant's reason that he delayed while waiting for copies of judgment and proceedings. He argued that the applicant failed to provide proof of a letter requesting for the said copies. He was of the view that the applicant was negligent on his part. He argued that the Tribunal delivered its decision on 28th September 2015 and the appellant filed his initial appeal on 04th December 2015, which was the 66th day. He thus exceeded the statutorily prescribed time of 45 days. He argued that the law requires each day of the delay to be accounted for. To buttress his position he cited the case of **Isawakwe Iduwandumi Ng'unda v. Jenifer Danister & Another**, Civil Application No. 339/02/2017 (unreported) cited in approval in the case of **Samwel Kobelo Muhulo v. National Housing Corporation**, Civil Application No. 302/17/2017 (unreported).

He argued further that the applicant has failed to account for the further delay in filing this application after the initial appeal and application got struck out by this Court. On the assertion that there are irregularities in the impugned decision, Mr. Mbembela argued that the applicant failed to



point out the said irregularities in his affidavit and submissions as required by the law. Rather he just mentioned the same without any specification. He referred again to the case of **Samwel Kobelo Muhulo** (supra) and contended that the Court of Appeal in this case laid down six factors to be considered in the grant of extension of time being: the lengthy of the delay, the reason for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent and last, whether there is point of law of sufficient importance such as illegality. He concluded that the applicant failed to comply with the conditions set in this case. He prayed for the application to be dismissed with costs.

I have given the submissions of both parties due consideration. I must point from the outset that granting extension of time is entirely within the court's discretion which however, must be exercised judiciously. See: **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported) and **Jaluma General Supplies Limited v. Stanbic Bank Limited**, Civil Application No. 48 of 2014 (unreported). In exercising its discretion judiciously the court has to consider the reasons advanced and a number of factors as set forth in a number of decisions by the Court of Appeal (CAT) and this Court, for instance as stated in the case of **Samwel Kobelo Muhulo** (supra) cited by Mr. Mbembela. See also: **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 applicant stated that after obtaining copies of judgment and proceedings from the Tribunal he filed Land Appeal No. 60 of 2015 and

later Misc. Land Application No. 102 of 2018 which were both struck out for being incompetent. He referred to them as annexure MB-1 and MB-2. He however never attached the said documents in his application to enable this Court to ascertain the exact dates the same were struck out. It was therefore a futile exercise to refer to them in his submissions. This Court is thus not in a position to deliberate on the reasonableness of his delay to file this application after the initial appeal and the application was struck out.

The applicant stated also that there are points of law based on the irregularities of the Tribunal in handling the matter. He however, as argued by Mr. Mbembela, did not specifically state the said irregularities to warrant this Court to grant the extension sought. It is imperative to show the court called upon to grant extension of time the existing illegalities to enable it determine if the same meet the criteria set under the law being: is an error on face of record, is of sufficient importance and shall not involve long drawn process of argument in its determination. See for instance: ***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 and ***Lyamuya Construction Company Ltd.*** (supra).

In his rejoinder, the applicant fumbled to explain the illegality to the effect that the respondents never proved as to when and how they got ownership over the disputed property and the Tribunal ruled that the



respondents acquired title through inheritance and that the suit land was allocated by the Village government. With all due respect to the applicant, this kind of illegality is first of all an afterthought as it was never raised in the affidavit in support of the application or in his submission in chief. It cannot be entertained as the respondent shall have no opportunity to counter it. Even if I decide to entertain the same, I find it to be farfetched and not meeting the criteria set in the above mentioned cases. It is not an error on face of record, and shall definitely involve a long drawn process of argument because it is highly based on evidence.

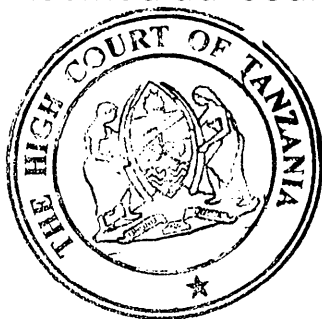
Having observed as above, I find the applicant's application devoid of merits for failure to advance sufficient reasons for him to be granted extension of time. Consequently, the application is dismissed with costs.

Dated at Mbeya on this 01st day of July 2020.


L. M. MONGELLA

JUDGE
01/07/2020

Court: Ruling delivered in Mbeya in Chambers on this 01st day of July 2020 in the presence of both parties and Mr. Benjamin Mbembela, learned advocate for the respondents.




L. M. MONGELLA

JUDGE
01/07/2020