

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

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

**MISCELLANEOUS LAND APPLICATION NO. 55 OF 2020**

*(From the Decision of the High Court of Tanzania at Mbeya in Misc. Land Application No. 1 of 2016. Originating from Land Appeal No. 14 of 2009)*

**WATSON MWAKYOSI.....APPLICANT**

**VERSUS**

**VENANCE HALALE.....1<sup>ST</sup> RESPONDENT**

**EMMANUEL MWAFONGO.....2<sup>ND</sup> RESPONDENT**

**ANNA TEDDY.....3<sup>RD</sup> RESPONDENT**

**BONIPHACE MWALUSWASWA.....4<sup>TH</sup> RESPONDENT**

**RULING**

Date of Last Order: 26/08/2020

Date of Ruling : 16/10/2020

**MONGELLA, J.**

The applicant is seeking for extension of time within which to file a notice of appeal to the Court of Appeal and to file an application for leave to appeal to the Court of Appeal. He is seeking to challenge the decision of this Court issued in Misc. Land Application No. 01 of 2016. The application is brought under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and supported by the applicant's affidavit. Both parties were unrepresented and therefore for interest of justice the application was argued by written submissions.



In his written submission, the applicant stated that he was the decree holder in Land Appeal No. 14 of 2009. Upon executing the said decree some new parties filed Misc. Application No. 1 of 2016 in which he was the respondent. The said application resulted from Land Appeal No. 14 of 2009. He said that in Land Appeal No, 14 of 2009 the parties were one Watson Mwakyosi, Eliudi Mwakyosi, Lupakisyo Mwakyosi, Yesaya Mwakyosi (deceased), Obet Mwakyosi (deceased), against Joseph Mwakyoma (deceased) and in Misc. Land Application No. 1 of 2016 the parties were one Venance Halale, Emmanuel Mwafongo, Anna Teddy, Boniphase Mwaluswaswa against Watson Mwakyosi and Mohamed Mashango (Mashango Investment Company Ltd.).

Considering the different sets of parties in these two cases, it was the applicant's contention that the High Court misdirected itself in declaring the execution illegal and giving the respondents the right over ownership of the land in dispute. He was of the position that this is an illegality calling for intervention by the Court of Appeal, thus warranting extension of time by this Court. In support of his argument he referred the court to the case of ***Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia*** [1992] TLR 182, which held that an issue of illegality raised suffices to extend time to the applicant.

The applicant stated another reason for the delay being that he wasted time pursuing his right in other matters. He however, did not explain which cases he exactly wasted time pursuing.



In reply the respondents argued that the applicant has not adduced any genuine and strong reasons for the delay. They conceded that they were not parties to Land Appeal Case No. 14 of 2009, but they are the legal owners of the land in dispute following legally purchased the same from the respondents. They argued further that Misc. Land Application No. 1 of 2016, in which they were applicants, was instituted following illegal acts done by the applicant at hand of purporting to execute an unknown decree on the land in dispute. They added that there is no case from any court in which the applicant was declared the decree holder be it in land Case No. 14 of 2009 or in Misc. Land Application No. 1 of 2016.

After considering the arguments by both parties, 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. See for instance; **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).

The court therefore 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 applicant as presented above has basically raised two reasons. One, that there is an illegality in the decision sought to be impugned and two, that he wasted time pursuing his rights in other cases.



First of all, I agree with the applicant 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).

Considering the illegality raised by the applicant and the submission made by the respondent, I am of the view that the same is not an error apparent on the face of record and it shall as well involve long drawn process of argument. This is because, the respondents herein filed an application to challenge execution which was about to be done by the applicant herein over a land in dispute they claim to have legally purchased. These obviously were objection proceedings against the execution. By the nature of these proceedings, the respondents herein, though not parties in the original suit, that is, Land Appeal No. 14 of 2009, had an interest to defend over the land in dispute. In protecting this interest, it is obvious that the illegality claimed by the applicant herein shall not go unchallenged by involving long arguments. It is therefore not an error apparent on face of record to warrant this Court to grant the extension of time.

On the second reason, the applicant is basically alleging technical delay. However, like I pointed out earlier, the applicant has not given sufficient explanation as to which matters he was pursuing in defence of his rights

and how long the same did take. This court is therefore not in a position to assess as to whether the applicant really qualifies to be saved under principle of technical delay.

Considering the observation I have made above, I am of the settled finding that the applicant has not advanced any sufficient reason to warrant this court to grant his application for extension of time. The application is therefore dismissed with costs.

Dated at Mbeya on this 16<sup>th</sup> day of October 2020.

  
**L. M. MONGELLA**

**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 16<sup>th</sup> day of October 2020 in the presence of the applicant appearing in person.



  
**L. M. MONGELLA**

**JUDGE**