

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISC LAND APPLICATION NO. 61 OF 2020**

*(Arising from decision of the District Land and Housing Tribunal for  
Mara at Musoma in Application No. 105 of 2018)*

- 1. JAMHURI WAMBURA ..... 1<sup>ST</sup> APPLICANT**
- 2. TATU KWETE ..... 2<sup>ND</sup> APPLICANT**
- 3. RHOBIMANYAMA ..... 3<sup>RD</sup> APPLICANT**
- 4. MWAJUMA WAMBURA ..... 4<sup>TH</sup> APPLICANT**

***VERSUS***

**NYABUKE RYANGARO MONGU**

**(Administrator of the estate of the late**

**MANYASI MONGU JIBHEWA) ..... RESPONDENT**

**RULING**

*16<sup>th</sup> and 16<sup>th</sup> October, 2020*

**KISANYA, J.:**

This application for extension of time has been made under section 41 (2) of the Land Disputes Courts Act, Cap. 216, R.E. 2019. The applicants, Jamhuri Wambura, Tatu Kwete, Rhobi Manyama and Mwajuma Wambura request for extension of time to file an appeal in respect of the judgment of the District Land Housing Tribunal for Mara at Musoma in Application No. 105 of 2018. The application is supported by the applicants' joint affidavit sworn on 4<sup>th</sup> September, 2020.

When this matter was called on for hearing today, the applicants enjoyed the legal services of Mr. Steven Makwega, learned advocate. On the other hand, Mr. Ostack Mligo, learned Advocate appeared for the respondent.

Pursuant to section 41(2) of the LCDA, an appeal against the decision of the District Land and Housing Tribunal as in the case at hand is required to be lodged within forty five days after the date of the impugned decision or order. However, this Court has a discretion of extending the time for filing an appeal upon being satisfied that there is good cause. In that regard, the issue for consideration and determination is whether the applicants have advanced good court for this Court to exercise its discretionary powers of extending the time

In his submission in support of the application, Mr. Makwega, contended that, the applicants filed their petition of appeal through online system on 10/06/2020. He contended further that, it is the Court which delayed to give control number for the applicants to pay the required court fees. However, Mr. Makwega failed to produce evidence to prove that the petition of appeal was filed on 10/06/2020. He went on to argue that, there is a point law related to the capacity of the applicants to defend the suit filed before the trial Tribunal. The learned counsel contended that, the delay from 13/08/2020 when the applicants' appeal was dismissed to 9/09/2020 when the present appeal was filed was caused by delay in obtaining the copy of ruling which was availed to the applicants on 28/08/2020.

In reply, Mr. Mligo moved the Court to dismiss the application for want of merit. The learned counsel argued that, the applicants had not proved that their appeal was filed on 10/06/2020. As to the reason that, the control number could not be issued in time, Mr. Mligo submitted that, the applicants were required to

submit evidence to such effect. He cited the case of **John Chuwa vs Antony Sizya** (1992) TLR 233 to support his argument. The learned counsel argued further that, the applicants were required to consult the Deputy Registrar upon facing challenges related to the control number.

The learned advocate argued further that, the applicants had failed to account for the delay from 13/08/2020 to 09/09/2020. Citing the case of **Yazid Kassim Mbakileki vs CRDB (1996) Ltd, Bukoba Branch and Another**, Civil Application No. 412/04 of 2018 (unreported), Mr. Mligo submitted that the applicants were required to account for each day of delay. He argued further that, the Court cannot rely on submission made from the bar by the learned counsel for the applicant. His argument was based on the decision of the Court of Appeal in **Attorney General vs Nkongo Building and Civil Works and Another**, Civil Application No. 81 of 2019 (unreported).

Lastly, Mr. Mligo argued that the applicants have not shown a serious point of law that needs attention of this Court. The learned counsel conceded that, ground of illegality is a sufficient cause for extension of time. However, he argued that, the applicant were duty bound to explain such ground. The learned counsel cited the case of **Zuberi Nassor MohD vs Mkurugenzi Shirika la Bandari Zanzibar**, Civil Application No. 93/15 of 2018 (unreported) to support his argument. It is for the foresaid reasons that, Mr. Mligo urged the Court to dismiss the application with costs.

In his brief rejoinder, Mr. Makwega argued that, the applicants had advanced the ground of illegality in paragraph 8 of the affidavit and explained the same at the hearing of this application. He then prayed the Court to grant the application.

After due consideration of the facts deposed in the affidavits by both parties and the rival argument made by the learned counsel for the parties, I wish to restate that, section 41(2) of the LDCA empowers this Court to extend time when there is good cause. The phrase "good cause" has not been defined in the said statute and hence, considered and determined basing on the circumstances of each case. It is also a settled law that, each day of delay has to be accounted for by the applicant.

I subscribe to the authorities cited by Mr. Mligo. The applicants have failed to prove that their appeal filed on 10/06/2020 and that, there was a challenge in securing the control number. Such evidence was necessary to prove their delay from 12/06/2020 which was the last day for filing the appeal to 16/06/2020 when the struck out appeal was filed in the Court. Further, the applicants had not accounted for the delay from 13/08/2020 when their appeal was struck out to 09/09/2020 when the present application was filed. It was pertinent for the appellants to account for the said days to express their promptness in prosecuting this matter.

However, it is settled law that where a ground of illegality is raised, that is in itself as sufficient ground for extension of time. See for instance, the case of **Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia** [1992] TLR 182 where the Court of Appeal held that:

*"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 right."*

Similar position was held in **VIP Engineering and Marketing limited and 3 Others vs Citibank Tanzania limited**, Consolidated Civil Reference No. 6,7

and 8 of 2006 CAT (unreported) and **Zuberi Nassor MohD vs Mkurugenzi Shirika la Bandari Zanzibar** (supra).

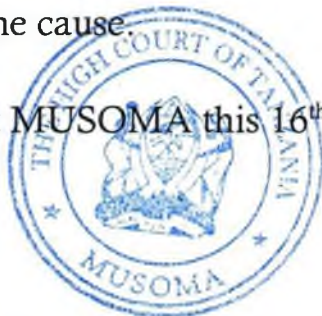
Reading from paragraph 8 of the affidavit in support of the application, I find that the applicants have raised the grounds of illegality worthy of determination of this Court. This is so when the said paragraph is read together with Annexure JW-2 to the affidavit which shows the intended grounds of appeal as follows:

1. *THAT, the trial Court (sic) erred in law to entertain the land dispute no. 15/2018 without joining the administrator of the estate of the late Maheri Kyaro.*
2. *THAT, the appellants were wrongly suing (sic) at their own personal capacities before the Trial Tribunal.*

In my view, the above grounds might affect the proceedings before the trial Tribunal. Thus, although the applicants have not accounted for each day of delay, the above ground on illegality is in itself a good cause for extension of time in the case at hand.

For the above stated reasons, the application is granted. The appeal must be filed within a period of thirty (30) days from the date of delivery of this Ruling. Costs will be in the cause.

DATED at MUSOMA this 16<sup>th</sup> day of October, 2020.



  
E. S. Kisanya  
JUDGE

Court: Judgment delivered this 16<sup>th</sup> October, 2020 in the presence of Mr. Steven Makwega, learned advocate for the applicants and holding brief for Mr. Ostack Mligo, learned advocate for the respondent. B/C, Mariam, present.



  
E. S. Kisanya  
JUDGE  
16/10/2020