

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

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

**MISC. LAND APPLICATION NO. 19 OF 2019**

(From the District Land and Housing Tribunal for Kyela at Kyela in Land Appeal No. 03 of 2018. Originating from Katumbasongwe Ward Tribunal in Land Case No. 15 of 2017)

**STADE MWASEBA.....APPLICANT**

**VERSUS**

**EDWARD MWAKATUNDU.....RESPONDENT**

**RULING**

Date of Hearing: 27/11/2019  
Date of Ruling : 14/02/2020

**MONGELLA, J.**

The Applicant is seeking before this Court for extension of time within which to lodge his appeal out of time against the decision of the District Land and Housing Tribunal for Kyela in Land Appeal No. 03 of 2018. The application is brought under section 38(1) of the Land Disputes Courts Act, 2002. He is represented by Mr. Oswald Talamba, learned counsel.

In the affidavit sworn by the Applicant in support of his application as well in the submissions made by his Advocate, Mr. Talamba, the Applicant advanced two main reasons for seeking the extension of time. The first

reason is that the Applicant fell sick and was receiving treatment in various hospitals between 24<sup>th</sup> June 2018 and 7<sup>th</sup> March 2019, something which prevented him from filing the appeal within time. To support his claim he presented medical documents. Mr. Talamba also cited the case of **Richard Mgala & 9 Others v. Aikael Minja & 4 Others**, Civil Application No. 160 of 2015 and argued that in this case sickness was accepted as a good reason to warrant extension of time.

Mr. Talamba stated the second reason being the presence of illegality in the impugned judgment of the Tribunal. He argued that the Hon. Chairman departed from the opinion of assessors and relied on the evidence of witnesses in the Ward Tribunal. He as well faulted the proceedings of the Ward Tribunal and argued that the said Ward Tribunal committed an illegality by including the secretary of the Ward Tribunal as a member. He contended that the secretary of the Ward Tribunal is not a member but a mere employee. Mr. Talamba further argued that such irregularities can only be challenged in an appeal and therefore the same is a ground enough to warrant grant of extension of time. He cited a number of cases in which it was ruled that the illegalities apparent on the face of record in the proceedings or judgment warrants the court to extend time to file an appeal. These cases include: **City Bank (Tanzania) Limited v. TTCL & Others**, Civil Application No. 97 of 2003 which was quoted in approval in **Josephina Kalalu v. Isaack Michael Mallya**, Civil Reference No. 1 of 2010 (CAT, unreported); **Selina Chibogo v. Finehas Chibogo**, Civil Application No. 182 of 2007 which was quoted in approval in **Tropical Air Tanzania Ltd. v. Godson Eliona Moshi**, Civil Application No. 9

of 2017 (CAT, unreported) and **Kalunga and Co. Advocates v. National Bank of Commerce Ltd.** [2006] TLR 235.

The Respondent was represented by Mr. Anthony Mbogo, learned counsel. Mr. Mbogo vehemently challenged the Applicant's application. In reply to Mr. Talamba's arguments on the reason of sickness, Mr. Mbogo argued that the decision of the Tribunal was issued on 30<sup>th</sup> April 2018, but the application was filed on 20<sup>th</sup> March 2019 which is almost eleven months and is a very long time. He also pointed out that in the medical record presented by the Applicant, it is shown that the Applicant started getting treatment on 24<sup>th</sup> June 2018 which was three days before the lapse of time. He argued further that an appeal from the Tribunal to the High Court is supposed to be filed within 60 days as per section 38(1) of the Land Disputes Courts Act. He argued that this provision does not put the attachment of copies of judgment as a mandatory requirement and therefore the Appellant had ample time to file the appeal, but he did not.

Still on the reason of sickness, Mr. Mbogo argued that the treatment which the Applicant underwent was not consecutive. He referred to the medical record presented whereby the same reveals that the Applicant went for treatment on 24<sup>th</sup> June 2018, 15<sup>th</sup> July 2018 and 9<sup>th</sup> September 2018. He argued that there is no explanation provided by the Applicant as to what transpired in the days between the dates of treatment. He added that the record shows that the Applicant was treated in a dispensary something which shows that he was not admitted and his sickness was not serious. He was of the view that the Applicant has not provided thorough explanation of his sickness. He referred to the case of **Shembilu Shefaya v.**

**Omari Ally** [1992] TLR 245 in which an application for extension of time on basis of sickness was rejected because the applicant had not provided thorough explanation regarding the sickness.

On the issue of illegality, Mr. Mbogo argued that this issue was not raised in the affidavit. He argued that the Courts have always insisted on grounds for delay to be stated in the affidavit. In support thereof he cited the case of **Registered Trustees of the Arc Diocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006. He further argued that the reason on illegality was supposed to be raised on appeal and thus the Applicant's Advocate has submitted on the said reason prematurely. He also added that the illegality was supposed to be raised in the Appellate Tribunal, but was not. With that submission he concluded that the Applicant has not advanced any sufficient reason and his application ought to be dismissed with costs.

I have considered the arguments by both counsels and I proceed to deliberate as follows:

The Applicant has advanced a reason that he fell sick and could not lodge the appeal within time. On this reason I agree with Mr. Mbogo's argument that sufficient reason has not been advanced as thorough explanation has not been provided. The medical documents provided reveal that the Applicant attended the dispensary for treatment on three different times. He as well started to attend the treatment for his sickness two months after the judgment was pronounced. The last time he attended treatment was on 7<sup>th</sup> March 2019 whereas this application was

filed in this Court on 20<sup>th</sup> March 2019. The Applicant neither in his affidavit in support of the application nor in the submissions by his Advocate have given any explanation on what transpired on the dates between the pronouncement of the judgment and the date he fell sick and started to attend the dispensary for treatment. He has also not provided explanation on what transpired on the dates in which he was not attending any treatment, as well as on the dates between his last attendance in hospital and filing of this application. As decided in the case of **Shembilu Shefaya** (supra), it does not suffice to only mention that the applicant was sick. Thorough explanation regarding the sickness ought to have been provided. The Applicant should have explained as to when exactly did he become fit to work on filing his appeal and accounted for each and every day of the delay. See: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 (CAT-unreported) quoted in **Moto Matiko Mabanga v. Ophir Energy PLC, Ophir Services PTY LTD & British Gas Tanzania Limited**, Civil Application No. 463/01 of 2017.

Mr. Talamba raised an issue of illegality on the proceedings and decision of both lower Tribunals. In essence, Mr. Mbogo did not challenge the substance of arguments by Mr. Talamba on the illegality. He instead argued that the same was never raised in the Applicant's affidavit. In support thereof he cited the case of **Registered Trustees of the Arc Diocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others** (supra). I have read this case and in my settled view I find the case distinguishable on the matter at hand. In this case the reasons for the delay in filing an appeal were discussed to the effect that a political settlement out of court was being sought. The issue raised in this case

concerned a matter of fact or evidence, which I agree cannot be brought up if not addressed in the affidavit. In the case at hand, however, the Applicant's Advocate has raised an issue of law concerning illegality on the proceedings and judgment of lower Tribunals. In my considered opinion an issue of illegality is not a reason constituting delay in filing an appeal, but rather a legal mistake which ought to be corrected by an appellate court for purposes of settling the position of the law. The same amounts to a sufficient ground to warrant extension of time to file an appeal out of time. See, ***The Principle Secretary, Ministry of Defence and National Service v. Devram Valambhia*** (1992) TLR 182; ***City Bank (Tanzania) Limited v. TTCL & Others***, (supra); ***Josephina Kalalu v. Isaack Michael Mallya***, (supra); ***Selina Chibogo v. Finehas Chibogo***, (supra); ***Tropical Air Tanzania Ltd. v. Godson Eliona Moshi***, (supra) and ***Kalunga and Co. Advocates v. National Bank of Commerce Ltd.*** (supra).

Mr. Mbogo also argued that the point on illegality has been raised prematurely by the Applicant's Advocate as the same ought to have been argued in an appeal. With all due respect to the learned counsel I think he has misconceived the application of the ground of illegality in granting extension of time. There is a plethora of decisions from this Court and the Court of Appeal, as cited above, directing that a party can raise a ground of illegality for obtaining extension of time to lodge an appeal. Once such a ground is raised and points out an illegality that is apparent on face of record, is of sufficient importance and the determination of it shall not involve a long drawn process or argument then the Court is bound to extend time regardless of the time of the delay or regardless of other sufficient reasons for the delay being advanced by the applicant.

See: ***Lyamuya Construction Company Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010 (unreported). In ***Jehangir Aziz Abdulrasul v. Balozi Ibrahim Abubakar & Bibi Sophia Ibrahim***, Civil Application No. 79 of 2016 (CAT DSM) it was held:

*"The Court has a duty even if it means extending the time for the purpose of ascertaining the point and to take appropriate measures."*

The Applicant's Advocate argued that the Hon. Chairman of the Appellate Tribunal departed from the opinion of assessors and relied on the evidence of witnesses in the Ward Tribunal whose composition was illegal for having a secretary of the Ward Tribunal as a member. I find this to be an illegality apparent on the face of record and thus necessitate the intervention of an appellate Court. Mr. Mbogo argued that this point ought to have been raised in the first appellate Tribunal. In my considered view, however, it being a point of law, it can be raised at any stage including at a second appellate stage so long as parties are accorded the opportunity to address the Court on the same. The Respondent got the chance to address this Court on this issue at the hearing of this application and he shall have another chance during the hearing of the appeal.

For the reasons I have stated above, I find the point of illegality raised by the Applicant in this application to be sufficient to warrant extension of time to lodge the appeal out of time. The Applicant's application is

therefore granted and the Applicant is given fourteen (14) days from the date of this Ruling to file his appeal. I make no orders as to costs.

Dated at Mbeya on this 14<sup>th</sup> day of February 2020.

  
**L. M. MONGELLA**  
**JUDGE**  
**14/02/2020**

**Court:** Ruling delivered in Mbeya in Chambers on this 14<sup>th</sup> day of February 2020 in the presence of the Respondent and his Advocate, Mr. Anthony Mbogo.



  
**L. M. MONGELLA**  
**JUDGE**  
**14/02/2020**