

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOB A DISTRICT REGISTRY)
AT BUKOB A**

LAND APPLICATION No. 45 OF 2018

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 43 of 2007)

M/S KADAF A KAGANDO DAIRY

FARMERS ASSOCIATION ----- APPLICANT

Versus

DICKSON JOHN KIWIA ----- RESPONDENT

RULING

26/05/2020 & 27/05/2020

Mtulya, J.:

This is an application for enlargement of time to institute appeal out of statutory time (the Application) against the decision of the District Land and Housing Tribunal for Kagera at Bukoba (the Tribunal) in Application No. 43 of 2007 (the decision) preferred by M/S Kadafa Kagando Dairy Farmers Association (the Applicant).

The Application was drawn, filed and argued by Mr. learned counsel Zeddy Ally who registered two reasons in paragraphs 8 and 9 of his affidavit to persuade this court to decide in his favor, *viz*: that the delay was beyond Applicant's control and the Application was tainted with illegality.

During the hearing of the Application, Mr. Ally submitted briefly that the Applicant was not satisfied with the decision of the Tribunal in the Application and since 2016 preferred Appeal No. 47 of 2016 before this court, but it was struck out for want of competence as it was attached with defective Ruling of the Tribunal. According to Mr. Ally, application for rectification was registered at the Tribunal and rectified Ruling was made available to the Applicant on 12th July 2018. To his opinion, the defect in the Ruling was not caused by the Applicant and it was beyond his control. However, Mr. Ally declined to state when he filed the present Application.

With regard to illegality, Mr. Ally cited the drafted grounds of appeal and argued that they depict illegality of the decision of the Tribunal in the Application. To bolster his argument, Mr. Ally cited the authority in the **Principal Secretary, Ministry of Defence and National Service v. Duram P. Valambhia [1992] TLR 387** and submitted that where there is illegality extension of time may be granted to afford parties an opportunity to put record straight.

On the other hand, Mr. Dickson John Kiwia (the Respondent) hired the legal services of learned counsel Mr. Joseph Bitakwate to argue the Application for him. Mr. Bitakwate protested the Application

and briefly stated that Appeal No. 47 of 2016 had two defects, namely: it was filed out of statutory time limit and was accompanied with defective Ruling. With time limit, Mr. Bitakwate stated that the decision of the Tribunal was delivered on 19th July 2016 and the Applicant preferred appeal on 9th September 2016 and was unable to account on five days delay. On the defective Ruling, he contended that the Applicant admitted in paragraph 4 of the Affidavit and during submission in this Application. To Mr. Bitakwate opinion, as the appeal was registered out of time limit, it was supposed to be dismissed under the provision of section 3 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019], rather than struck out.

In a brief rejoinder, Mr. Ally argued that the issue of registered Appeal No. 47 of 2016, which was struck out is misconceived and misplaced in the present Application. In his opinion, if Mr. Bitakwate was not satisfied with the decision, he ought to have followed the law by preferring an appeal or revision, and in any case the matter of delay was not determined in Appeal No. 47 of 2016. Finally. Mr. Ally submitted that in the present Application the issue of accountability of the days of delay may not be necessary as there is issue of illegality.

In the present Application this court is invited to determine enlargement of time period for the Applicant to file an appeal out of statutory time. This court is empowered to do so. However, for enlargement of time, the practice of this court and our superior court reveals that three test are in place, namely: first, Applicant must show good cause or sufficient reasons; second, Applicant must produce materials that will persuade this court to see that there is really good cause or sufficient reason; and finally, the Applicant must show that he expeditiously applied for extension of time since became aware of the delay or accountable in every day of delay. In case the Applicant claim illegality, two test are put in place: viz: first, existence of special circumstances; and second, point of law of sufficient importance (the illegality) must be obvious at a glance.

It is therefore important for Applicant of extension of time to file an appeal before this court to abide with the established practice of this court and Court of Appeal. The practice as extracted in various decisions of this court and Court of Appeal reveals the interpretation of the stated tests. There is a large family of precedent to that effect (see: **Alliance Insurance Corporation Ltd v. Arusha Art Ltd, Civil Application No. 33 Of 2015; Eliah Bariki v. Republic,**

Criminal Appeal No. 321 Of 2016; Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited, Civil Application No. 116 Of 2008 (Unreported), Sebastian Ndaula v. Grace Rwamafa, Civil Application No. 4 Of 2014, Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010).

For instance when interpreting the *word reasonable cause or good cause*, Court of Appeal in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd, Civil Application No. 13 of 2010**, stated as follows:

*What constitutes **good cause cannot be laid down by any hard and fast rules**. The term good cause is a relative one and is dependent upon party seeking extension of time to provide the **relevant material** in order to move the court to exercise its discretion.*

With regard to specific definition of good cause, the decision in **Dar Es Salaam City Council v. Jayantilal P. Rajani, Civil Application No. 27 of 1987**, the Court of Appeal observed that:

What amounts to sufficient cause has not been defined.

From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly. The absence of any explanation for delay lack of diligence on the part of the applicant.

This decision was amplified in 2010 in the decision of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010**, where the following principles were set, viz:

- i. The applicant must account for all period of delay*
- ii. The delay should not be inordinate*
- iii. The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take; and*
- iv. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

With regard to illegality, the claimed illegality must fulfill two important conditions as per practice of our superior court, namely:

- i. Existence of special circumstance (a point of law) that of sufficient importance (see: **The Bishop of the Roman Catholic Diocese of Tanga v. Casmir Richard Shemkai, Civil Application No. 507/12 of 2017, Lyamuya Construction Company Ltd v. The Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010, and Samwel Munsuro v. Chacha Mwikwabe, Civil Application No. 539/08 of 2019**); and
- ii. Such point of law of sufficient importance (the illegality) must be obvious at a glance (see. **The Principal Secretary, Ministry of Defense and National Service v. Devram P. Valambia [1992] TLR 387, The Bishop of the Roman Catholic Diocese of Tanga v. Casmir Richard Shemkai, Civil Application No. 507/12 of 2017 and Hanspaul Automechs Limited v. RSA Limited, Civil Application No. 126/02 of 2018**).

In the present Application, the Applicant's counsel, Mr. Ally at paragraph 7 of the Affidavit stated that he was supplied with a copy of the rectified Ruling on 12th July 2018, but declined in the same Affidavit to state as to when he filed the present Application. Again, during the submission in favor of the Application, he remained silent as to when the Application was brought in this court so that this court can assess whether it was brought promptly or there is any delay of days to be accountable.

Upon perusal of the record I found out that it is correct that the Applicant was supplied with the copy of rectified Ruling on 12th July 2018, but had preferred the Application on 20th July 2018 as depicted in exchequer receipt numbered 19378890, without any further explanation of the one week delay. This cannot be said is expeditious filing of the Application as per decision in **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited, Civil Application No. 116 of 2008**, where the Court of Appeal stated that:

*It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, **act very expeditiously** and that the*

application has been brought in good faith (emphasis supplied).

It is the practice of this court and our superior court is that, if the Application is not brought promptly, then the Applicant must account on every day of delay. This is certain and settled. In the authority of **Sebastian Ndaula v. Grace Rwamafa, Civil Application No. 4 of 2014**, it was stated that:

The applicant has suggested in his supporting affidavit that he has all along been pursuing his case both in the High Court, and in this Court. But, on a closer look, there are some gaps which the applicant has not accounted for (emphasis supplied).

The said accountability in the gaps is tested in every day of delay. The Court of Appeal in the decision of **Bashiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** stated that:

...a delay of even a single day has to be accounted for. Otherwise, there would be no point of having rules

prescribing periods within which certain steps have to be taken (emphasis supplied).

The firm entrenchment of this position was reiterated in the same Court in the decision of **Elius Mwakalinga v. Domina Kagaruki and Five Others, Civil Application No. 120/17 Of 2018** where it stated that:

*...in this regard, I am obliged to reiterate this Court's firm entrenched position that an application seeking extension of time...**is required to account for each day of the delay*** (emphasis supplied).

The only exception which may be invited and considered in some cases is filing Application in good faith (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited** (supra) or when there is complaint on illegality. However, in the present Application, counsel for the Applicant concealed the date when the Application was filed in this court to justify bad faith to deny the Respondent of his enjoyment on the right to land.

Even if the tests of illegality are invited, I do not see if the Applicant is shielded. The Applicant's counsel listed and attached six

(6) grounds of appeal to justify illegality of the decision of the Tribunal in the Application. However, I do not think we have that practice in our courts. The tests as I have stated are: existence of special circumstance or a point of law that of sufficient importance (see: **The Bishop of the Roman Catholic Diocese of Tanga v. Casmir Richard Shemkai** (supra) **Lyamuya Construction Company Ltd v. The Board of Trustees of Young Women's Christian Association of Tanzania** (supra) and **Samwel Munsuro v. Chacha Mwikwabe** (supra); and such point of law of sufficient importance (the illegality) must be obvious at a glance (see: **The Principal Secretary, Ministry of Defense and National Service v. Devram Valambia** (supra), **The Bishop of the Roman Catholic Diocese of Tanga v. Casmir Richard Shemkai** (supra) and **Hanspaul Automechs Limited v. RSA Limited** (supra). This Application does not meet the requirement.

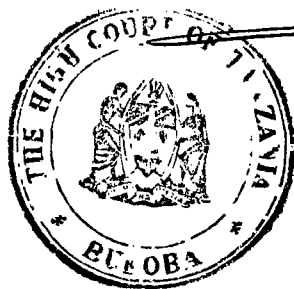
Again, it must be understood that not every alleged illegality may invite extension of time, especially when the tests are not complied with. That is why the Court of Appeal in **Tanzania Harbors Authority v. Mohamed R. Mohamed [2003] TLR 77**, stated that:

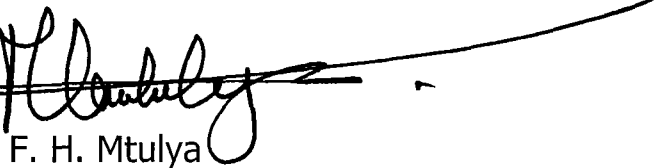
This Court has said in a number of decisions that time would be extended if there is an illegality to be rectified; however, this Court has not said that time must be extended in every situation.

It is now certain that not every claim of illegality may be invited and applied in an application for enlargement of time to file an appeal out of time. This Application is one of them. The Applicant cannot be granted extension of time based on illegality of the decision of the Tribunal in the Application.

Having said so and reasons adduced in this Ruling, the Applicant has failed to advance any good cause or sufficient reason to justify extension of time to file his appeal out of time. This Application is hereby dismissed with costs.

Ordered accordingly.

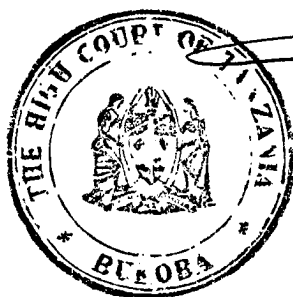


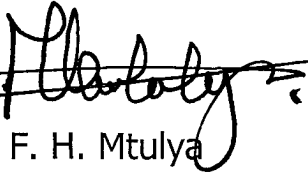

F. H. Mtulya

Judge

27/05/2020

This Ruling was delivered in Chambers under the seal of this court in the presence of the Applicant's, learned counsel Ms. Pilly Hussein Ally and in the presence of the Respondent Mr. Dickson John Kiwia accompanied with his learned counsel, Mr. Joseph Bitakwate.




F. H. Mtulya

Judge

27/05/2020