

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPLICATION NO.120 OF 2020

(Arising from Judgment and Decree of the District Land and Housing Tribunal for Mwanza in Appeal No. 2 of 2018. Originating from the Judgement of Buhongwa Ward Tribunal in Land Case No. 91 of 2017)

BEBI SWALEHE APPLICANT

VERSUS

IDDY RASHIDRESPONDENT

RULING

Date of last Order: 24.05.2021

Date of Ruling 25.05.2021

A.Z.MGEYEKWA, J

The applicant has lodged an application which is brought under section 38 (1) of the Land Dispute Courts Act, Cap. 216 [R.E 2019]. The Order sought is for an extension of time to file an appeal out of time against the Judgement and Decree of the District Land and Housing Tribunal for Mwanza. The application is supported by an affidavit deposed by Bebi

Swalehe, the applicant. The application has encountered formidable opposition from the respondent and has demonstrated his resistance by filing counter affidavit deponed by Iddy Rashid, the respondent.

In prosecuting this application, the applicant enjoyed the legal service of Ms. Hidaya, learned counsel while the respondent enjoyed the legal service of Mr. Mainde, learned counsel.

Submitting on the application, the counsel for the applicant urged this court to adopt the applicant's affidavit and form part of her submission. She stated that the applicant intends to challenge the decisions of both tribunals. The learned counsel for the applicant contended in respect of technical delay, that events that led to the delay have been sufficiently covered in paragraph 7 of the affidavit. The applicant's Advocate submitted that the applicant found herself out of time after spending time in search for an Advocate to assist her in filing an appeal.

With respect to illegality, the counsel for the applicant contended that instances of illegality have been cited in paragraphs 5 of the affidavit. These are the contention that the Ward Tribunal decision was a product of an illegality. In her view, the Ward Tribunal composition was formed contrary

to the law since the secretary to the Ward Tribunal was among the Ward Tribunal members. The applicant has relied on the Court of Appeal of Tanzania decision in **Mwambura N. J Waryba v The Principal Secretary Ministry of Finance and Attorney General**, Civil Application No. 320/01 of 2020 (unreported). The counsel submitted that the established principle is that whenever illegality is raised as a ground for challenging the decision then the same may constitute the ground for extension of time.

In view of the said grounds, the applicant urged this Court to grant extension of time within which to prefer an appeal against the decision of the District Land and Housing Tribunal for Mwanza.

In his rebuttal submission, Mr. Mainde, learned counsel for the respondent shrugged off the applicant's contention and held that no sufficient cause has been adduced to warrant the extension. He contended that the applicant contentious on paragraph 5 is wanted taking to account that Ms. Hidaya has not cited any supporting law. He spiritedly argued that the issue of illegality is not applicable in this matter He lamented that one of the grounds for appeal at the appellate tribunal, the applicant complained that the composition of Ward Tribunal was constituted contrary to the law since all member were men. He added that the issue of secretary to the

meeting was not raised. He stated that the ground of illegality is baseless since there is no any issue of illegality involved in this case.

Mr. Mainde continued to argue that the applicant at the appellate tribunal was well represented by Mr. Abubakari, learned counsel. Therefore she cannot claim that she was not legally represented. Fortifying her contention, the learned counsel for the respondent cited the case of **Ally Kinanda and 2 Others v R**, Criminal Application (unreported), where the Court of Appeal of Tanzania held that the lack of legal representation is not a sufficient ground for extension of time. He went on arguing that the applicant has not accounted for each day of delay. To bolster his submission he cited the case of **Yazidi Kassim Mbakileka v CRDB 1996 Ltd Bukoba Branch and Another**, Civil Application No. 412 and 414 of 2018 TZCA 359 (unreported), the requirement of accounting for each day of delay was emphasized. Insisting he contended that the applicant's application is demerit as the issue of illegality does not exist and the applicant has not accounted for each day of delay.

On the strength of the above argumentation, Mr. Mainde urged this court to dismiss the application.

In her rejoinder submission, the applicant's Advocate reiterated what she submitted in chief and maintained that the secretary of Ward Tribunal was involved in decision making thus it is a fit ground for extension of time. Insisting, she claimed that the applicant was not able to hire an Advocate therefore she was searching for an Advocate to represent her in court. She lamented that the issue of ignorance of the law does not arise in this case. She claimed that as long as she has raised ground of illegality, the same suffice without elaborating it.

From these rival submissions of both learned counsels, the question for this Court's determination is whether sufficient cause has been adduced to warrant the exercise of discretion of this Court to grant extension of time. To begin with, I wish to restate that in granting or refusing to grant an application like the one at hand is entirely in the discretion of the Court. However, that discretion is judicial and so it must be exercised according to the rules of reason and justice. There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business Limited v Amos David Kassanda & 2 others**, Civil Application No.48/17/2018 and the case of

Benedict Mumelo v Bank of Tanzania [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

In order to establish that the delay was with sufficient cause, the applicant must not only demonstrate reasons for the delay but also satisfactorily declare and explain the whole period of delay to the Court. In other words, the applicant must account for each day of delay, consistent with the position of the Court of Appeal in the cases of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported) which was delivered in May, 2019 and the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), it held that:-

"Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay."

Applying, the above authority, in the instant application, the applicant in her affidavit specifically paragraph 7 stated that the delay occasioned by the applicant was struggling to find a lawyer to help her to draft the document without success until when she had legal assistance from TAWLA. In my considered view, this ground of delay of struggling to hire a lawyer is not a *prima facie* panacea for a case of delay whenever it is pleaded.

The applicant also raised the issue of illegality, the appellant's gravamen of the complaint is that the Ward Tribunal decision was a product of illegality. The learned counsel for the applicant lamented that the secretary to the Ward Tribunal was one of the Ward Tribunal members. It is worth noting although the issue of illegality is regarded as a sufficient ground in applications of extension of time but the same does not mean that any illegality raised by a party intending to appeal constitutes a point of law.

In the case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported), the Court of Appeal of Tanzania held that:-

*" Since every party intending to appeal seeks to challenge a decision either on points of law or facts, **it cannot in my view be said that in Valambhia's case the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance** and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction, (but), not one that would be discovered by a long drawn argument or process."* [Emphasis added].

Equally, in the case of *The Commissioner of Transport v The Attorney General of Uganda and Another* [1959] E.A 329, the Court of Appeal held that:-

*" In other words, the Court refused to extend time because the point of law at issue was not of sufficient importance to justify the extension. **The corollary of that is that in some cases a point of law may be of sufficient importance to warrant extension of time while in others it may not.** "* [Emphasis added].

Applying the above authority, it cannot in my view, be said that the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for it. Each case has to be determined on its own merit and all pertinent circumstances must be considered. In the case of **Moto Matiko Mabanga v Ophir Energy PLC and 2 Others**, Civil Application No.463/01 of 2017, delivered on 17th April, 2019, the Court of Appeal of Tanzania emphasized that:-

*"... for the ground of illegality to stand, the challenged **illegality of the decision must clearly be visible on the face of the record**, and the illegality in focus must be that of sufficient importance."*
[Emphasis added].

After taking in consideration what has been stated in the affidavit and the applicant's Advocate submission I would like to make an observation that in the applicant's affidavit particular paragraphs 5 and 8 the applicant complained that the Ward Tribunal was improperly constituted while knowing that the alleged illegality is not on the face of the record since the records clearly show that the composition of Ward Tribunal members were five without counting the Secretary to the Meeting who appeared in the Coram

of the Ward Tribunal as a secretary to the meeting, not as a member. Section 4 (1) of the Ward Tribunal Act, Cap.206 [R.E 2019] governs the composition of the ward Tribunals, requiring them to be not less than four members. In my view, as long as four members participated in the trial of the matter subject of this appeal at the level of the Ward Tribunal, the proceedings were properly constituted.

The respondent's Advocate strongly argued that the issue of illegality cannot stand because the ground of composition of Ward Tribunal members was not raised at the District Court and the learned counsel for the applicant did not object.

Guided by the above findings, I am in accord with the respondent Advocate submission that, the question of illegality in the conduct of the trial proceedings does not arise. The same cannot, as a matter of law, be termed as illegality thus cannot be a ground for applying for extension of time. It should be noted that extension of time is not a right of a litigant against a Court but a discretionary power of courts which litigants have to lay a basis [for] where they seek [grant of it] the same was held by the Supreme Court of Kenya in the case of **Nicholas Kiptoo Arap Korir Salat v IEBC & 7**

Others, Sup. Ct. Application No. 16 of 2014. I recapitulate that I accede to Mr. Mainde's views that the applicant's application is devoid of merit.

The upshot of the above is that I am inclined to disallow the application for extension of time to file an appeal against the District Land and Housing Tribunal for Mwanza. No order as to the costs.

Order accordingly.

Dated at Mwanza this 25th May, 2021.




A.Z.MGEYEKWA

JUDGE

25.05.2021

Ruling delivered on 25th May, 2021 via audio teleconference whereas both learned counsels for the applicant and respondent respectively were remotely present.


A.Z.MGEYEKWA

JUDGE

25.05.2021

Right to appeal fully explained.