

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS LAND APPLICATION NO. 04 OF 2021

*(Arising from Land Application No. 65 of 2019 in the District Land and Housing Tribunal for Mbeya)*

BETWEEN

JOSEPHAT JOSEPH MUSHI ..... 1<sup>ST</sup> APPLICANT

TANZANIA CAPITAL FISHERIES

& TRANSPORT COMPANY LIMITED.....2<sup>ND</sup> APPLICANT

VERSUS

TANZANIA POSTAL BANK (PLS) ..... 1<sup>ST</sup> RESPONDENT

TAMBAZA AUCTION MART & GENERAL

BROKER LIMITED ..... 2<sup>ND</sup> RESPONDENT

RULING

**A.A. MBAGWA J.**

This is an application for extension of time within which to file an appeal against a consent judgment. It is made under section 41(2) of the Land Disputes Courts Act. The present application emanates from Land Application No. 65 of 2019 in the District Land and Housing Tribunal for Mbeya.

The 1<sup>st</sup> applicant herein filed a suit to wit, Land Application No. 65 of 2019 in the District Land and Housing Tribunal of Mbeya against the 2<sup>nd</sup> applicant, 1<sup>st</sup> and 2<sup>nd</sup> respondents. The present 2<sup>nd</sup> applicant was sued as 3<sup>rd</sup> respondent in the trial District Land and Housing Tribunal. The



particulars of claims in the said land application are not clear as the pleadings therein are not part of this application. However, what is important and which is undisputed is the fact that the said application was disposed of by way of settlement out of court as such, a deed of settlement was prepared and filed in court. In the result, a consent judgment dated 16/12/2019 was entered.

According to paragraph 9(1) of the consent judgment, one of the terms agreed upon by the parties was that the 3<sup>rd</sup> respondent now the 2<sup>nd</sup> applicant **TANZANIA CAPITAL FISHERIES & TRANSPORT COMPANY LIMITED** would pay a total of Tshs 360,413,181.55 to the 1<sup>st</sup> respondent **TIB Corporate Bank Limited**.

After more than a year since the conclusion of the Application No. 65 of 2019, the applicants herein, for the reasons best known to themselves, filed the present application basically seeking for extension of time to file a memorandum of appeal. The extension is sought to impugn the consent judgment which resulted from a settlement deed. The application is supported by the affidavits of Josephat Joseph Mushi (1<sup>st</sup> applicant) who is also a Managing Director of **TANZANIA CAPITAL FISHERIES & TRANSPORT COMPANY LIMITED** and Daud Ramsey Mwamakamba, counsel for the applicant.

It is contended, in the supporting affidavits, that there are illegality and irregularities in the proceedings before the trial Tribunal in that the amount settled is Tshs 360,413,181.55 which is beyond the pecuniary jurisdiction of the District Land and Housing Tribunal. As such, it is the applicants' averment that the consent judgment sought to be impugned resulted from nullity proceedings.



On the 3<sup>rd</sup> day of June, 2021 when the matter came for hearing before this Court (Hon. D.B. Ndunguru J), he ordered the matter to be argued by way of written submissions, an order which was duly complied with. I commend both counsels for timely filing of written submissions.

It was the applicant's submission that the District Land and Housing Tribunal for Mbeya had no jurisdiction to entertain a suit for a claim of Tshs 360,413,181.55. The counsel submitted that, in terms of section 33(1) the Land Disputes Courts Act, the District Land and Housing Tribunal is empowered to entertain matters whose monetary value does not exceed two hundred million shillings. Since the amount settled out is above two hundred million shillings, the District Land and Housing Tribunal had no jurisdiction, the applicants' counsel submitted. The counsel went on to submit that the issue of jurisdiction can be raised at any time even at appellate stage. The counsel referred the Court to the case of **Tanzania-China Friendship Textile Co. Ltd vs Our Lady of Usambara Sisters [2006] T.L.R 70** to support his contention.

Further, the applicants' counsel submitted that jurisdiction is purely an issue of law hence a good ground for the court to extend time within which an appeal can be filed. He said that the purpose of granting extension of time on illegality ground is to allow the appellate court to ascertain the illegality and thereafter take appropriate measures to put the record clear. The applicants' counsel relied on the case of **Kalunga and Company Advocates vs NBC Ltd [2006] T.L.R. 235** to convince the Court that illegality in the decision sought to be impugned is a good ground for extension of time.



In contrast, the respondents opposed the application. The respondent's counsel submitted that the applicants failed to adduced sufficient reasons for their delay. The respondents' counsel referred the court to the case of **Bruno Wenceslaus Nyalifa vs the Permanent Secretary of Home Affairs & another, Civil Appeal No. 82 of 2017** and submitted that the applicants had to account for each day of delay but in this matter they failed to discharge this duty.

With regard to the jurisdiction issue, the respondents' counsel submitted that pecuniary jurisdiction is determined based on the value of the subject matter. The counsel for the applicants said that the 1<sup>st</sup> applicant instituted Land Application No. 65 of 2019 seeking for injunction against the respondents from auctioning the mortgaged property. According to the respondents' counsel, the subject matter was the mortgaged property whose value was within the pecuniary jurisdiction of the Land Tribunal. The counsel argued that it is the mortgaged property (subject matter) which was used to determine the pecuniary jurisdiction of the Land Tribunal and not the outstanding amount that the respondents were claiming against the applicants. The respondents' counsel, however, did not mention the value of the said mortgaged property.

More so, the respondents' counsel was in agreement with the applicants that existence of point of law is one of the factors for consideration in determining an application for extension of time. He referred the Court to the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010** on this point. The counsel, however, strongly argued that the applicants have failed to establish



illegality in the deed of settlement. The respondents' counsel thus prayed the Court to dismiss the application for being devoid of merits.

Having gone through the documentations and rival submissions by the parties, the critical point for determination is whether the applicants have established a good cause to warrant extension of time. Section 41(2) of the Land Disputes Courts Act empowers this Court, upon good cause, to extend time within which to file an appeal. However, it is common cause that there is no decisive definition of what a good cause is. It is a settled that the Court may take into account various factors in determining the good cause including illegality, length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer and the conduct of the parties. See the case **Jalia Felix Rutihwa vs Kalokola Bwasha & Another, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam** and **Sabina Technics Dar Limited vs Michael J. Luwunzu, Civil Application No. 451/18 of 2020.**

From the foregoing account therefore it is clear that illegality in the decision sought to be challenged is one of the factors that the Court may take into account in determining application for extension of time.

The applicants herein have advanced illegality as a sole ground for extension of time. The alleged illegality is predicated on the pecuniary jurisdiction of the trial Tribunal in that it settled the amount Tshs 360,413,181.55 which is above two hundred million shillings.

To the contrary, the respondents dispute this fact. It is the respondents' argument that the subject matter on which pecuniary jurisdiction could be determined was the mortgaged property which was the subject matter in





Land Application no.65 of 2019. However, the respondents' counsel did not mention the value of the said mortgaged property.

Neither the applicants nor the respondents bothered to attach a copy of the application/plaint which was filed in Land Application No. 65 of 2019 in the District Land and Housing Tribunal for this court to see that there is prima facie legal issue on jurisdiction.

It is a settled law that pecuniary jurisdiction is determined based on substantive claims and not the reliefs granted by the court. See the cases of **Mwananchi Communications Limited & 2 others vs Joshua A. Kajula & 2 others**, Civil Appeal No. 126/01 of 2016, CAT at Dar es Salaam and **Tanzania-China Friendship Textile Co. Ltd vs Our Lady of Usambara Sisters** [2006] T.L.R 70

The substantive claims are usually found in the plaint or application in so far as land matters are concerned. To my dismay, the applicants did not want to refer to the application nor did they find it fit to attach it in order to convince the Court that the subject matter had the value exceeding two hundred million shillings. With due respect to the applicants' counsel it is my considered views that one cannot challenge the pecuniary jurisdiction of the Tribunal by looking at the reliefs granted by the Tribunal rather, pecuniary jurisdiction is looked at from the substantive claim. Thus, the applicants were expected to annex a copy of the application/ plaint to exhibit that that it contained substantive claims whose value was exceeding Tanzanian shillings two hundred million and therefore the District Land and Housing Tribunal had no jurisdiction to entertain it.



In the premises, it is my considered findings that the applicants have failed to establish illegality in the decision sought to be challenged. In similar vein, it is my unfeigned views that a part from the illegality, the applicants have not pleaded other reasons for delay let alone establishing them.


I have also considered the length of delay and found that the delay of more than a year was unjustifiably inordinate.

On all this account, it is the findings of this Court that the applicants have not shown good cause for this Court to grant extension of time.

In the upshot, I find this application devoid of merits and consequently dismiss it with costs.

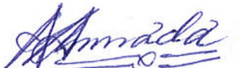
It is so ordered.



  
**A.A Mbagwa**  
Judge  
29/10/2021

This ruling has been delivered in the presence of Amani Mwakolo, counsel for the applicants and in absence of respondents this 29<sup>th</sup> day of October, 2021.



  
**A.A. Mbagwa**  
Judge  
29/10/2021