

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 41 OF 2021**

*(C/F Application No. 104 of 2012, District Land and Housing Tribunal for Arusha at  
Arusha)*

- 1) HAMZA HATIBU ----- 1<sup>ST</sup> APPLICANT**
- 2) BAKARI HATIBU----- 2<sup>ND</sup> APPLICANT**
- 3) HADIJA HATIBU-----3<sup>RD</sup> APPLICANT**
- 4) AMINA HATIBU----- 4<sup>TH</sup> APPLICANT**
- 5) HAWA BENI----- 5<sup>TH</sup> APPLICANT**
- 6) MWANARABU BENI-----6<sup>TH</sup> APPLICANT**
- 7) JUMAA BENI-----7<sup>TH</sup> APPLICANT**
- 8) ADAM BENI----- 8<sup>TH</sup> APPLICANT**
- 9) HAJI BENI----- 9<sup>TH</sup> APPLICANT**
- 10) MWINYI BENI-----10<sup>TH</sup> APPLICANT**
- 11) KHAO JUMA----- 11<sup>TH</sup> APPLICANT**
- 12) HADIJA MSAMBO-----12<sup>TH</sup> APPLICANT**
- 13) BEKI KHALILI----- 13<sup>TH</sup> APPLICANT**

**VERSUS**

**RULING**

25/10/2021 & 22/11/2021

**D.C. KAMUZORA. J:**

Hamza Hatibu & 12 others preferred this application seeking for extension of time to appeal to this court against the decision of the District Land and Housing Tribunal (the tribunal) of Arusha in Application No. 104 of 2012 that was delivered on 18<sup>th</sup> November 2019. The application was brought under the provision on section 41(2) of the Land Disputes Court Act, Cap 216 RE 2019 and Order XXII Rule 3(1) of the Civil Procedure Code Cap 33 RE 2019 and supported by an affidavit sworn by Mnyiwala Mapembe. The application is strongly opposed by counter affidavit deposed by Bashir Ibrahim Mallya, counsel for the respondent.

During hearing of the application, the applicant was represented by Mr. Mnyiwala Mapembe, learned advocate and the respondent was represented by Mr. Bashiri Ibrahim Mallya, learned advocate. Hearing of the application was by way of written submission and parties filed their submissions in accordance with the schedule.

The brief background story is that, the applicants sued the respondent in the District Land and Housing Tribunal vide Application No. 104/2012 and the judgment was in favour of the respondent. Dissatisfied, the applicants lodged an appeal to the High Court, Land Appeal No. 01 of 2020 and on 11<sup>th</sup> June 2021. The appeal struck out on the ground that it was incompetent for lack of proper parties. The parties were at liberty to file a proper appeal after the appointment of a legal representative for the deceased appellant. As the time to appeal was already lapsed, the applicant preferred this application seeking an order of this court enlarging time to appeal.

The main issue calling for the determination by this court is whether the applicant has demonstrated sufficient reasons for the delay.

~~Submitting on the substance of the application~~ Mr. Mapembe argued that, the impugned judgment and decree of the trial tribunal was issued on 18/1/2019 and there after the applicant filled an appeal to this court on 02/01/2020 being Land Appeal No. 01 of 2020.

Mr. Mapembe went on to submit that, on 11/06/2021 Land Appeal case No. 01/2020 was struck out by this court for want of proper parties with leave to refile a fresh appeal after the appointment of an administrator for the 12<sup>th</sup> Applicant herein. That, when the said order

was issued by this court, Mr. Mapembe was not present before the court hence he made an application for the court to avail him with the copies of ruling, proceeding and drawn order and that it was until 23/06/2021 when he was supplied with a copy of ruling which again was wrongly dated. That, on 24/06/2021 the applicant made an application before the court for rectification of the date in the ruling and he collected the rectified ruling from JSDS on the same date.

Mr. Mapembe insisted that the applicant was not sitting idle as they were trying to pursue Appeal no 1 of 2020 before this very court. He was of the view that spending time in court is sufficient ground to warrant extension of time. To buttress his submission Mr. Mapembe cited the case of **Philomena Mang'ehe t/a Bukine Traders v. Gesbo Hebron Bajuta**, Civil Application No. 8 of 2016 CAT at Arusha, **Dr. Fortunatus Masha V Dr. William Shija and another** [1997] TLR 41, **Salvand K.A Rwegasira v. China Henas Internation Group Co. Ltd**, Civil reference No. 18/2006 CAT Dar es Salaam (Unreported), **Lyamuya Construction company Ltd v Board of registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported), and **Bushiri Hassan V**

**Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 CAT Arusha  
(Unreported)

Mr. Mapembe also submitted that, there is an apparent error on the face of record in the impugned judgment and decree in Application No. 104 of 2012 which he termed as illegality. That, chairperson departed with the opinion of the assessors without assigning the reason contrary to section 24 of the Land Dispute Courts Act. To cement his submission, he cited the case of **S.D.A Church Keisangura v Nyaikwabe Masare**, Civil Appeal No 122 of 2015 CAT (Unreported). Mr. Mapembe urged this court to regard the issue of illegality and to make an order for extension of time as was held from the case of **Principal Secretary, Ministry of Defence & National Service vs. D.P Valambhia** [1992] TLR185.

Mr. Mapembe referring Order XXII Rule 3(1) of the Civil Procedure Code, Cap. 33 [RE 2019] prayed that, since the 12<sup>th</sup> Applicant (Hadija Msambo) passed away on 17.08.2020 and her cause of action survives, her administratrix Fatina Maulidi who was appointed on 10.5.2021 be allowed to replace the deceased and be impleaded as the 12<sup>th</sup> Appellant in the intended appeal.

In concluding, Mr. Mapembe referred the case on **Mobrama Gold Corporation Ltd Vs Minister for Energy and Minerals & 2 others (1998) TLR 425** and prayed for the application to be granted as the respondent will not be prejudiced by the grant of application as both parties will have a chance to defend their rights.

Opposing the application Mr. Mallya submitted that, from 20<sup>th</sup> November 2019 when the judgment of the tribunal was passed to 28<sup>th</sup> June 2021 when this application was filed almost 224 days have passed and the applicant has not accounted for each day of the delay.

Mr. Mallya argued that, in an application for extension of time the applicant has to show sufficient reasons for the delay, due diligence, account for each day of delay and the application should not prejudice the respondent. To support his arguments, he cited the case of **Emmanuel Lohay Nughus & Paulo Lohay Nughus V. Marco Saqware Genda**, Misc. Land Application No. 2 of 2020 (Unreported).

On the ground of illegality of the decision of the tribunal Mr. Mallya replied that, under page 9 of the judgment, the reason for departing with the opinion of the assessors was given and he added that from the case of **Kaunda Obando V Yunes Sese, Misc. Land Appeal No. 321 of 2020** (Unreported) it held that the reason the chairman advanced

may not be sufficient or convincing all the same but that cannot be the ground to condemn him that he failed to give reason. Mr Mallya therefore prayed for this court to dismiss the application with costs.

In a brief rejoinder Mr. Mapembe added that, the respondent has not stated the exact date which the applicant has not accounted for. He explained that, the applicant's application was filled through the JSDS – e case Registration system on 24/06/2021 as per the requirement of Rule 21 of the Judicature and Application of Laws (electronic filing) Rules, GN No. 148/2018. To support his submission, he cited the case of **Mohamed Hanshil V. National Microfinance Bank Ltd (NMB Bank), Revision No.106/2020** HC at Mwanza (Unreported).

On the issue of illegality, he re-joined that the respondent has ~~failed to refer this court to where the chairman gave reasons for the~~ departure from assessors' opinion. He thus insisted that there is an apparent error on the face of record warranting extension of time.

Mr. Mapembe prayed that, since prayer for substitution of the administrator with the deceased was not contested, the same be granted.

In this application, the pertinent issue is whether the applicant has adduced sufficient reasons for extension of time.

The grant of extension of time is a matter of discretion of the court, the discretion which however must be exercised judiciously. In **Mbogo Vs. Shah [1968] EA 93**, certain factors were highlighted to assist the court in deciding to either grant or refuse to grant extension of time. It was held: -

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the **length of the delay**, the **reason for the delay**, **whether there is an arguable case on the appeal** and **the degree of prejudice to the defendant** if time is extended".*

The Court of Appeal of Tanzania also formulated the guidelines to be considered in granting the extension of time in the case of **Lyamuya Construction Company Limited V Board of Registered Trustees of Young women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported). The court held that: -

*"On the authorities however, the following guidelines may be formulated:*

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*



- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

In the case at hand the applicant has relied on two reasons for the extension of time, one being the issue of technical delay and the second reason is the illegality of the impugned decision.

Regarding the first reason, the applicants' counsel demonstrated the reasons for the delay in filing the appeal on time. Based on the affidavit in support of the application and the submission by the counsel for the applicants, the following were observed.

The judgment of the trial tribunal was pronounced on 18/11/2019 and appeal No. 01 of 2020 was preferred to this court on 02/01/2020 well within time to appeal. However, that appeal was struck out by this court in its ruling dated 11<sup>th</sup> June 2021. The applicants then preferred this application which was filed in court on 28/06/2021 as per exchequer receipt No.EC1009571857200IP. This application was filed in court

almost 17 days from the date to which appeal No. 1 of 2020 was struck out.

Now the question is whether the applicants delay was reasonable, and the applicants accounted for the days of delay as it was so propounded in the case of **Bushiri Hassan V Latifa Lukio Mashayo**, (supra). In that case it was held that a delay of even a single day, has to be accounted for, otherwise, there would be no proof of having rules prescribing periods within which certain steps have to be taken.

The counsel for the applicant explained that on 11<sup>th</sup> June when the ruling was delivered, he was preparing himself to travel to Mwanza for family matter and he travelled on 12<sup>th</sup> June 2021 and returned to Arusha on 14<sup>th</sup> June 2021. The copies of the bus ticket and air ticket were attached to the affidavit in support of this application. That, on 15<sup>th</sup> June 2021 is when he came to know through one of his clients that the appeal was struck out on 11<sup>th</sup> June 2021 and on 16<sup>th</sup> June 2021, he wrote a letter applying for copies of ruling, proceedings and drawn order. A copy of the letter and receipt for perusal of the court file were attached to this application.

The affidavit and the submission also reveal that on 17<sup>th</sup> to 18<sup>th</sup> June 2021 the counsel was unable to peruse the file for reasons that the

file was still with the Hon. Judge for preparation of documents. The reminder letter is one of the attached documents in the affidavit in support of this application. The following two days of 19<sup>th</sup> and 20<sup>th</sup> June were Saturday and Sunday and on 21<sup>st</sup> to 22<sup>nd</sup> June, the counsel was informed that the documents were still being prepared and he was supplied with the documents of 23<sup>rd</sup> June 2021 except for the drawn order. On 24<sup>th</sup> he applied for the rectification of the ruling and to be supplied with the drawn order and the same were supplied on the same date. The rectified ruling and drawn order were also attached to this application. The counsel for the applicant claims that he proceeded on filing this application through JSDS e- filing on the same date on 24<sup>th</sup> June 2021. However, the records reveal that, the filing was complete upon payment of court fees on 28<sup>th</sup> June 2021.

With the above analysis, this court is satisfied that the applicants have accounted for the delay from 11<sup>th</sup> June when the appeal was struck out to the date of filing this application. Even though the exchequer receipt shows that the application was successful filed on 28<sup>th</sup> June 2021, but the document was submitted to the court registry on 24<sup>th</sup> June 2021 soon after being supplied with all necessary copies. In this regard and in considering the decision **Emmanuel Lohay Nughus**

(supra) cited by the counsel for the respondent, it is my settled mind that, the applicants successful accounted for each day of delay. With the available facts, one cannot say that the applicants were reluctant or negligent or acted in apathy or sloppiness in taking proper action on time. The delay was not inordinate, and the applicants acted diligently in taking proper action as it was well demonstrated in the affidavit in support of application and the submission by the counsel for the applicants.

I will not labour much on the second reasons on the illegality of the impugned decision. The illegality raised by the counsel for the applicants is that the assessor's opinion was not considered by the trial tribunal. The counsel for the respondent strongly opposed this reason on ~~account that the judgment of the trial tribunal considered the opinion of~~ assessors. In my view, any party who is aggrieved by the decision of the court has a right to appeal. Illegality of the decision can be a reason to be considered by the court in granting the extension of time. Where a party alleges illegality as a reason why the extension of time should be granted, it does not mean that the court must determine the facts establishing the illegality alleged. To me doing so, will be preempting the intended appeal. It is enough where a part pleads illegality and point

out the illegality referred to. The court will then ascertain if what is claimed as illegality is real so under the law. The court determining the application for extension time therefore cannot go further to discuss the said illegality if valid or not as doing so will amount to discussing the merit of intended appeal. The law does not impose mandatory requirement for a party to plead. The court can grant extension of time if it feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

Having determined that the applicants' delay in filing the appeal was reasonably explained, to me that warrant good reason for the grant of extension of time. In considering the decision in the case of **Benedict Shayo Vs Consolidated Holdings Corporation as Official Receiver of Tanzania Film Company Limited, Civil Application No. 366/01/2017**, I do not see how the respondent will be prejudiced by the grant of extension of time.

Regarding the prayer to implead the administrator on behalf of the 12<sup>th</sup> applicant in the intended appeal, I think that such a prayer became automatic when this court struck out Appeal No. 1 of 2020 for want of proper parties.

The application is therefore granted. The applicants shall file their appeal within fourteen (14) days from the date of this ruling. No order for costs.

**DATED** at **ARUSHA** this 22<sup>nd</sup> Day of November 2021



  
D.C. KAMUZORA

JUDGE