IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. CIVIL APPLICATION No. 96 OF 2021

(Arising from the Ruling of the District Land and Housing Tribunal for Mwanza at Mwanza in Misc. land Application No. 65 of 2006)

MAHAMUDI ALLY.....APPLICANT

VERSUS

OLIVER DANIEL (Administrator of the Estate of the Late Daniel Manywili).....1st RESPONDENTS

MWANZA CITY COUNCIL..... 2nd RESPONDENTS

TARACISIUS MISANA.....3rd RESPONDENTS

RULING

Last Order date: 12.07.2022
Ruling Date: 27.07.2022

M. MNYUKWA, J.

By way of chamber summons, the applicant Mahamudi Ally, applied to this court seeking for an order of extension of time to file revision to this court out of time from the decision of the District and Land Housing Tribunal for Mwanza at Mwanza (the trial tribunal) in Land Application No. 65 of 2006 delivered on 15/10/2021, that was struck out.

The present application is preferred to this court under section 14(1) of the Law of Limitation Act Cap 89 [Re: 2019] supported by the affidavit sworn by Mahamudi Ally, the applicant.

The brief background of the matter is that, the applicant instituted the Land Application before the DLHT for Mwanza at Mwanza praying for the following reliefs:

i. *A declaration that the applicant is the lawful owner of the disputed land.*
ii. *Vacant possession of the disputed land.*
iii. *Mesne profit as determined by the tribunal.*
iv. *Costs of the suit to be borne by the respondents.*
v. *Any other relief that the trial tribunal may deem fit and just to grant.*

At the hearing, the 1st respondent raised a Preliminary Objection claiming that, the trial tribunal had no jurisdiction to entertain the matter. When determining the preliminary objection raised, the trial tribunal dismissed the application for want of jurisdiction on 15.10.2021.

The applicant is now before this court applying for extension of time to file revision out of time. At the hearing, the applicant was represented by Mr. Ally Zaid, learned counsel while Mr. Joseph Vungwa learned counsel appeared for the 2nd respondent and Mr. Kasim Gilla & Mabula Maziku learned advocates represented the 3rd respondent. Consequently,

the matter proceeded exparte against the 1st respondent. The matter proceeded orally

The applicant was the first to submit whereas he avers that, he brought this application under section 14(1) of the Law of Limitation Act, Cap. 89 RE: 2019 supported by his affidavit where he prays for it to form part of his submissions.

He avers that, after the decision of the trial tribunal, he wrote a letter on 01.11.2021 to pray for the certified copies of the Ruling which he was supplied on 06.01.2022. Referring to section 19(2) of the Law of Limitation Act Cap 89 RE; 2019, he insisted that the law provides that, the period the applicant was waiting for the certified copies be excluded. He refers to the case of **Registered Trustee of Thaqaafa Education Foundation vs the Registered Trustees of Jumiar Mosque Mwanza,** Civil appeal No. 30 of 2020 and the case of **Valence MC Givern vs Salim Farkrudin Balal** Civil Appeal No. 386 of 2019. From the position he supplied, he insisted that the period of 60 days to file revision started from 06.01.2022 where the applicant was supplied with the copies of the Ruling.

He, therefore, avers that, the applicant delayed for four days which was not inordinate. Referring this court to **Mpoli Lutengano**

Mwakabata & Another vs Jane Jonathan, Civil Application No. 556/01 of 2018, this court had to proceed to grant the extension were the applicant delayed for four days.

He avers that, after the applicant received the copy of the Ruling, he found that his written submissions filed on 27.11.2020 was not considered in the Ruling and the same amounted to illegality. He went on averring that, illegality is a good ground for the extension of time citing the case of **Egbal Ebrahim vs Alexander K. Wakyungi,** Civil Application No. 235/17 of 2020 which allowed the application for the point of illegality to be cleared. Defending his ground, he cited the case of **Hassan Abdulhamid vs Erasto Eliphase** Civil Application No.402 of 2019 that illegality is a sufficient reason for grant of application for extension of time. He insisted that failure of the trial tribunal to consider the applicant written submissions goes contrary to the cardinal principle of the right to be heard as stated in **Samwel Kibwana vs Kassim Mohamed Hamisi** 1974, HCD 55. He retires prays this application to be granted with costs.

Responding to the applicant's submissions, Mr. Joseph Vungwa, learned counsel for the 2nd respondent, opposed the applicant's application and prays his counter affidavit to be adopted and form part of

his submissions. Referring to the cited case of **Omari Shabani S. Nyambu (as the administrator of the late IDDI MOHA) vs Dodoma Municipal Council & 2 Others,** Civil Application N. 125/3 of 2020, he begs to differ insisting that, the Court of Appeal provides for the criteria as what are the good causes. He went on to claim that, the applicant failed to account for the days of delay and failure to account for the four days he claims is not proper.

On the issue of illegality, he insisted that the same case insisted that illegality must be on the face of the record of the challenged decision. Referring also to page 6 of the case of **Hassan Abdul Hamid**(supra) he avers that the Court of Appeal insisted that the illegality challenged must be seen or mentioned. Reverting to the application at hand, he insisted that the applicant did not state the illegality on his affidavit and therefore insisted that there is no illegality.

He went on citing the case of **Shabani Amuri Sudi (the Administrator of the estate of the late Amuri Sudi) vs Kazumari Hamis Mpala,** Misc. Land Application No.30 of 2019, he avers that, failure of filing a written statement of defense amounts to non-appearance and the court may proceed ex-parte. Reverting to this application at hand, he insisted that the chairman was right to proceed ex-parte and the

remedy available for the applicant was to file an application to set aside the ex-parte order in terms of Order IX Rule 9 on the same court in terms of Order XXXII Rule 1(b). He went on that the applicant stood no position to file this application for revision while he has other avenues available for him. He, therefore, insisted that the filing of this application is premature and prays the same not to be granted and the costs be borne by the applicant.

Mr. Kassim Gila & Mabula Maziku for the 3rd respondent submitted and subscribed to what was submitted by Mr.Joseph Vungwa for the 2nd respondent. He avers that, the applicant is complaining for his right to be heard as reflected on the first page of the impugned Ruling and para 6 of the applicants' affidavit and the remedy was for the applicant to file an application to set aside the exparte order and not to file this application. Responding to the cited case of of **Shabani Amani Sudi (Supra),** he avers that it is clear that failure to file submissions resulted to exparte hearing and the remedy is an application to set aside the exparte order.

On the issue of illegality, he avers that, he referred to the cited cases and insisted that illegality should be apparent on the face of the record. Reverting to this application, he insisted that there is no illegality on the face of the records for the failure of the applicant to present proof that he

filed his submissions as he claims. He insisted that on the aid of the cited case of **Omari Shabani S. Nyambu** (supra), the claimed illegality do not qualify and therefore should not be considered.

He went on that, the delay even of a single day, must be accounted for. Responding to the applicant's submissions that he delayed for four days, the applicant did not account for every day of delay. Insisting he cited the case **Shabir Tayabali Essaji vs Farida Seifuddin Tayabali Essaji,** Civil Application No 206/06 of 2020. He, therefore, retires insisting that the applicant failed to show sufficient reasons for extension of time and prays this application to be dismissed with costs.

Rejoining, the applicant reiterated what he submitted in chief insisting that the remedy where there is illegality is revision and not review. Insisting, he avers that the cited case of **Shabani Amani Sudi** (supra) is distinguishable. He insisted that where there is an issue of illegality, the need to account for each day of delay is immaterial. He, therefore, prays for the application to be allowed with costs.

I have given careful consideration to the arguments for and against, advanced by the applicant's learned counsel as well as the counsel for the 2nd and 3rd respondents. From the submissions, I find it wanting to point out that this is an application for extension of time which requires this

court to make assessment whether good cause have been given for the application to be granted. As further submitted by both respondents learned counsels that this application is improperly before this court, I find it not to be a matter that I am placed to determine for it will be the subject of determination if this application will be granted.

For this reason, therefore, the central issue for consideration and determination is whether sufficient reason has been advanced to warrant the extension of time sought by the applicant.

It is an established principle that, decision to grant or not grant an order of extension of time is within court discretion and that discretion should be exercised judiciously and supported by logical, valid, authentic and sound reasoning as it all depends upon a party seeking an order to adduce sufficient reason(s) that prevented him from doing what he was supposed to do within time or the existence of illegality apparent on the face of records of the impugned decision which cannot be left un-interfered. This is reflected in the case of **Benedict Mumelo vs. Bank of Tanzania** Civil Appeal No. 12 of 2002 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 this application at hand, the applicant gave two reasons as to why his application for an extension of time is to be granted. First, he claims that, his delay was a result of a failure of the trial tribunal to supply him with the decision, insisting that it was a technical delay. And second, he claims that there is illegality which needs to be rectified and that is a good ground for allowing this application.

Having in mind the reasons that the applicant relied on for this court to allow his application, I find it wanting to start determining the issue of illegality which when proved, the application will be granted for the law is settled that where illegality is raised as a ground for seeking an extension of time, such ground amounts to sufficient cause. The Court in **Ngao Godwin Losero vs Julius Mwarabu,** Civil Application No. 10 of 2015 CAT observed as follows when the issue of illegality was raised:-

"In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record straight"

The Court has further reaffirmed the stated stance in **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited,** Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported) wherein it was clearly stated: -

> *"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay"*

Guided by the above principles, I perused the court records and go through the applicant's affidavit and annexures, the impugned Ruling of the trial tribunal and his submissions in support of this application and submissions by the respondents against the application. In the records, the applicant claims that there was a point of illegality as stated in para 6, 7, 8, 9 and 10 of his affidavit. The applicant claimed that the trial tribunal directed him on 26th November 2020 to file his written submission within 7 days and he filed the same on 27 November 2020. He annexed his copy of the written submissions to prove his claim. Going to the trial tribunal Ruling dated 15.10.2021, on the first page, it reads: -

> *"...katika kusikiliza pingamizi hilo, uwasilishwaji ulifanywa kwa njia ya maandishi kwa amri ya baraza ya tarehe*

07.08.2020. Mleta maombi hakuwasilisha mawasilisho yake..."

In the circumstance, what is claimed by the applicant contradicts what reads in the Ruling of the trial tribunal. While the applicant claims that his written submissions could not be considered, he claimed that he filed the same on 27.11.2020 vide the order of the trial tribunal given on 26.11.2020 which gives him 7 days to file. The applicant does not dispute that he was not given the right to file his submissions, rather he claimed that his submissions were not considered and therefore raised the point of illegality. On assessment, his allegations did not match the impugned Ruling which states as quoted above that, the trial tribunal order was given on 07.08.2020 and not 26.11.2020. That being the case, the point claimed can not be traced on records. It is my considered view that the above claim is curable, upon filling application to the trial tribunal.

It is my settled opinion that, the alleged illegality cannot raise any arguable point of law worth to be addressed by this Court. In the case of **Omari R. Ibrahim vs Ndege Commercial Services LTD,** Civil Application No. 83 of 2020 which referred with authority the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania,**

Civil Application No. 2 of 2010 (unreported) the Court of Appeal stated that: -

> *"Since every party intending to appeal seeks to challenge a decision either on points of iaw or facts, it cannot in my view, be said that in VALAMBIA '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 iaw 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; not one that would be discovered by a long-drawn argument or process.*

Being guided by the above decision, I must state that nothing on the record of this application is suggesting that there was illegality worthy of consideration, to justify this court to exercise its discretionary powers to extend time as sought by the applicant. In the circumstance therefore, I agree with the respondents' counsels that, the applicant did not manage to establish his point of illegality.

On the second reason, the applicant claimed that his delay was a technical one for the reasons that he was waiting for the copy of the impugned Ruling delivered on 15.10.2021 which he received on 06.01.2022 and filed this application on 11/3/2022. The applicant referred

to section 19(2) of the Law of Limitation Cap 89 RE: 2019 insisting that the time limitation runs from 06.01.2022, when he received the copy. Taking his position, the applicant also agrees that he delayed for four days but claims that four days of delay was inordinate citing the persuasive case of **Mpoli Lutegano Mwakabata & Another (supra)**. His position was opposed by both the 2nd and 3rd Respondents learned counsels insisting that the delay even of a single day must be accounted for.

I agree with the applicant that there are circumstances that the law made exclusions of computation of time as provided for under section 19(2) of the Law of Limitation Act, Cap. 89 RE: 2019. In this application at hand, when the exclusion is made from the date the Ruling was delivered, the limitation of time started to run therefore, from 06.01.2022 when the applicant received a certified copy of the Ruling.

The applicant admitted that he delayed for four days which he insisted that it was not inordinate. The respondents' learned counsels claimed that the position is clear that every day of delay must be accounted for. I went through the cited cases by both parties, to find whether the 4 days delay by the applicant was inordinate and this court to proceed to grant the application without the applicant to account for each day of delay.

The law is settled that, the applicant needs to account for every day of delay for the court to exercise its discretion in extending time. This stand was taken by the Court of Appeal in the recent case of **The Registered Trustees of Bakwata vs The Registered Trustees of Dodoma General Muslim Association**, Civil Application No. 512/03 of 2019 that the applicant must account for every day of delay for the court to grant extension of time.

In fact, countless authorities of the Court of Appeal emphasized on the applicant to account for each day of delay even if the delay is of a single day. In the case of **Dar es Salaam City Council v Group Security Co. Ltd,** Civil Application no 234 of 2015, CAT at Dar es Salaam where it was stated that:-

> *"... the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for each day of delay."*

Also, in the case of **Bushiri Hasani vs. Latifa Lukiko Mashayo,** Civil Application No. 03 of 2007 CAT it was held that: -

> *"...Delay of even a single day, must be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

The applicant admitted to have received his certified copies on 06.11.2022 and filed this application on 11/3/2022 as he delayed for four days. On his submissions, he insisted that the delay of four days was not inordinate. Guided by the principles stated in the cases above, the applicant was required to account for every day of delay to move this court to extend time.

For the foregoing and taking into consideration the circumstances pertaining in the current application, it is my view that no good cause has been shown by the applicant to warrant extension of time sought. In the final result, this application is devoid of any merit and the same is dismissed with costs.

It is so ordered.

M. MNYUKWA
JUDGE
27/07/2022

Court: Ruling delivered on 27/07/2022 in the absence of the applicant and in the presence of the second and third respondents' learned counsels.

M. MNYUKWA
JUDGE
27/07/2022