IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. LAND APPLICATION NO. 104 OF 2021

(Originating from the District Land and Housing Tribunal for Mbeya, at Mbeya in Application No. 117 of 2009)

MBEYA CITY COUNCIL.....APPLICANT

VERSUS

NDERUNGO M.R.A @ ROMUALD MATERU.....RESPONDENT

RULING

Date of Last Order: 04.08.2022
Date of Ruling: 19.08.2022

Ebrahim, J.

After almost seven (7) years of the decision made at the District Land and Housing Tribunal for Mbeya in Application No. 117 of 2009 which was delivered on 05/02/2014 and after four (4) years from when the previous appeal was struck out by this Court on 24/11/2017, the applicant **MBEYA CITY COUNCIL** has instituted the instant application seeking for this court to grant an extension of time to appeal to this Court out of time. The application was made under **section 41 (2) of the Land Disputes Act, Cap. 216 R.E 2019.** It was supported by an affidavit of one Modest Siwavula, counsel for the applicant.

Briefly stated, the facts leading to this application are that; in 2009 the respondent herein, **NDERUNGO M.R.A @ ROMUALD MATERU** instituted an application before the District Land and Housing Tribunal against the Applicant. It was alleged that in 1994, the applicant (by that time Mbeya Municipal Council) allocated a land to the respondent at Meta; Forest area within Mbeya City and allowed him to construct a business premise. Thereafter, in the year 2007 the respondent was served with a notice to demolish the same premise from the same applicant on the reason that the area was an open space. Upon that notice, the Respondent filed the application in which he prayed for the District Land and Housing Tribunal to order the applicant to pay compensation at the tune of Tshs. 30,000,000/=, permanent injunction restraining the applicant from demolishing the disputed premises and costs. Having heard both parties the trial Tribunal granted the application. It gave the order restraining the applicant from removing the respondent from the suit premise or do so upon paying him adequate compensation.

Aggrieved by the decision the applicant preferred an appeal in this Court vide Land Appeal No. 7 of 2014.

Unfortunately, on 24th November, 2017 that appeal was struck out for being incompetent. Then on 6th December 2021 the applicant filed the instant application.

At the hearing, the Applicant was represented by Mr. Davis Mbembela, learned advocate whereas the Respondent appeared in person without legal representation. The application was disposed of by way of written submissions.

Submitting in support of the application, advocate Mbembela, prayed to adopt the affidavit supporting the application. He however stated that the Applicant's reasons for extension of time are illegalities pointed out under paragraph 5 (i-v) of the affidavit. Those are as follows:

(i) Lack of opinion of assessors in the judgment of the District Land and Housing Tribunal.

(ii) Irregular change of assessors in the proceedings in the District Land and Housing Tribunal.

(iii) The Tribunal was not seized with jurisdiction to determine as description of location of land in dispute was improper.

(iv) That, the judgment and decree by the District Land and Housing Tribunal for Mbeya at Mbeya are not executable for having blanket description of

location of premises subject to the judgment and decree.

(v) Defective statutory notice before institution of the application before the District Land and Housing Tribunal for Mbeya at Mbeya.

According to Mr. Mbembela illegalities being point of law, are sufficient reason for this court to extend time. He further argued that there is no need for the applicant to account for each day of delay when the reasons advanced are on points of law.

Mr. Mbembela further argued that it is apparent on the face of record that there is lack of assessors' opinion on the impugned judgment. He relied on the case of **Ameir Mbarak and Azania Bank Corp Ltd V Edgar Kahwili, Civil Appeal No.154 of 2015 (Unreported);** and Tubone Mwambeta Vs Mbeya City Council, Civil Appeal No.287 of 2017, (CAT at Mbeya – Unreported) that lack of opinion involves a question of jurisdiction of the trial Tribunal. He also cited the decision of this court in the case of **Solo Mwandolonashi vs Fred Amon Mshashe (as Administrator of the Estates of the Late Nshashe Mwasupa)** Misc. Land Application No. 68 of 2019 HCT at Mbeya (unreported) where extension of time

was granted on reason that lack of opinion of assessor is illegality apparent on face of record. He also said that there was irregular change of assessor and referring to the dates.

Mr. Mbembela further contended that the trial tribunal was not seized with jurisdiction to decide the matter since there is no proper description of location of the disputed premise. According to him the decree could not be executed in the absence of the description of the land. He cited this court decision in the case of **Agast Green Mwamanda (as Administrator of the Estate of the late Abel Mwamanda vs Jena Martin,** Misc. Land Appeal No. 40 of 2019 HCT at Mbeya (unreported) where it was held that insufficient description of the disputed land touches the jurisdiction of the tribunal.

Furthermore, Mr. Mbembela argued that the notice which was served to the applicant before instituting the application was not in the eyes of law statutory notice as per **section 106 (1) and (2) of the Local Government (Urban Authorities) Act, Cap. 288 R.E. 2002** which mandatorily require the notice to state the cause of action, the name and place of abode of intending plaintiff and the relief claimed. He thus insisted that the said illegalities are

apparent on the face of record so they are sufficient reasons for this court to grant the application.

In reply, the respondent started by praying this court to disregard the averment by the applicant counsel in the affidavit supporting the application that he perused the file while he did not append the letter for perusal of court records. According to him the counsel who deponed the affidavit was not the one who prosecuted the case nor was he a party. He argued thus, the failure to append the letter lead the averment in the affidavit to be hearsay. He cited the case of **Arbogast C. Warioba vs National Insurance Corporation (T) Ltd & another,** Civil Application No. 24 of 2011 CAT Dar es Salaam where it was underscored that an affidavit should not contain statement based on information whose source is not disclosed.

I would stop here and say that, the Respondent's contention has no basis, this is because case file is a public document. The applicant was one of the parties in the case, her counsel therefore, has access to the applicant's case file where he can gather information like he did. Counsel for the Applicant did not state that he perused court file, but case file which in my view is in

the possession of the Applicant. That being the case, I will proceed to consider the averment in the affidavit.

Alternatively, the Respondent argued that the application was filed after the lapse of 7 years and 10 months without accounting where has she been for such a long time. According to him the application intends to prevent him from applying for costs and execution of the decree. That the law requires the applicant applying for extension of time to account for each day of delay, he argued.

Responding to the illegalities raised by the Applicant and argued by Mr. Mbembela, the Respondent vehemently objected them on the reason that they are not apparent on the face of the record. The Respondent thus prayed for this court to dismiss the application with costs.

In the rejoinder submissions, the learned counsel for the applicant basically reiterated the contents of the affidavits supporting the application and his submissions in chief.

I have considered the affidavit supporting the application, the counter affidavit by the Respondent and their rival

submissions. as I have hinted earlier, the Applicant's reasons for this court to grant extension of time are illegalities on the main case. The issue for consideration therefore is whether the illegalities raised are sufficiently worth for this Court to grant the application.

Generally, I agree with the learned counsel for the Applicant that the CAT has underscored that where a point at issue is illegality, the same constitutes a sufficient reason for extending time so that it can be cured - **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania,** Civil Application No. 2 of 2010 (unreported); **Principal Secretary, Ministry of Defence and National Service v. Devran Valambia** [1992] TLR 182; **Mohamed Salum Nahd vs Elizabeth Jeremiah**, Civil Reference No. 14 of 2017 CAT at Dar es Salaam (unreported). On the other hand, I also agree with the Respondent that, not every allegation of illegality will constitute a sufficient reason for extending time; **Tanzania Harbour Authority v. Mohamed R. Mohamed [2003] TLR. 76** (CAT).

Nonetheless, it is also settled principle that alleged illegality must be of sufficient importance and apparent on the face of the record. This means that there should be no long process or

argument in discovering them. See the case of **Lyamuya Construction** (supra) the CAT 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 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 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;*** *not one that would be discovered by a long drawn argument or process."*

In the case at hand the applicant's counsel has insisted that the alleged illegalities are on the face of the record and that they can be discovered upon reading the documents on record. However, having considered all alleged illegalities alongside the evidence in the affidavit and the attachment thereto; it is my position that the said illegalities are of insufficient importance due to the following reasons:

Firstly, the complaint that there was no opinion of assessors in the judgment it is not correct as the judgment indicates that they are there. As for the complaint that there was regular change of assessors in the proceedings, the applicant did not attach such

record to his affidavit. Therefore, this court cannot rely on his mere oral account without the copy of the proceedings for satisfaction.

Secondly, the averment that there was improper description of the disputed land is also wanting of merit. This is because, no proceedings were attached to the affidavit for this court to satisfy itself that the said irregularity was not cured by evidence.

Thirdly, the statement that there was a defective statutory notice, in my view this cannot uprightly regarded as illegality. This is because, whether or not the notice was defective needs a long process or argument to discover it. In my opinion thus, this kind of irregularity is both, a matter of fact and law.

Basing on the above reasons, it is my concerted opinion that the Applicant has failed to demonstrate sufficient reasons for this Court to grant extension of time.

On the other hand and for the sake of argument, the averment by the applicant counsel that when reason of illegality is raised there is not need of accounting for each day of delay in my opinion depends on the circumstance of each case. My position is based on the reason that, would that have been the

case that on every allegation of illegality the court should extend time, there would have been an endless litigation in courts of law. Again, the purpose of law on time limitation would have been subjected to jeopardy and rendered nugatory. For example, in the instant matter, the applicant counsel essentially deponed at para 4 and 5 of the affidavit that after a long period of time from when the case was finalised i.e on 05/02/2014 and the previous appeal struck out on 24/11/2017, he went to peruse a case file only to find that there were irregularities.

Absurdily, this kind of practice if condoned by the courts would not only bring about chaos to the opponent parties but would also lead to endless litigations and abuse of the court process. In the parity of reasoning, the CAT in the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 at Dar es Salaam (unreported) had this to say:

> *"The very object of the law of limitation would be defeated for, as C. K. Takwani writes in* ***CIVIL PROCEDURE, With Limitation Act, 1963****, 7th Edition, Eastern Book Company, at page 782:*
>
> *"Statutes on limitation are based on two well-known legal maxims:*

(i) *The interest of the State requires that there should be an end to litigation (**interest reipublicae ut sit finis litium**).*

(ii) *The law assists the vigilant and not one who sleeps over his rights **(Vigiiantibus non dormientibus jura-subveniunt)".***

At the end result, the Applicant has been hopelessly late and has not given any sufficient reason for granting the application. Therefore, I dismiss the application with costs.

Ordered accordingly.

R.A. Ebrahim
JUDGE

Mbeya
19.08.2022