THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

MISC. LAND APPLICATION NO. 02 OF 2021

(Originating from the District Land and Housing Tribunal, for Njombe, at Njombe, in Application No. 10 of 2013).

BETWEEN

ASHA JOSEPH NZIKU (Administratrix of the Estate of the Late Angelus Joseph Nziku)..APPLICANT

VERSUS

INNOCENT FABIAN SANGA.................................,.......RESPONDENT

RULING

9th June & 01st September, 2022.

UTAMWA, J.

The applicant, ASHA JOSEPH NZIKU (Administratrix of the Estate of the Late Angelus Joseph Nziku) filed this application under section 41 (2) of the Land Disputes Courts Act, Cap. 216 RE: 2019 (The LADCA) seeking the following orders:

i. For extension of time to file an appeal to this court out of time against a ruling of the District Land and Housing Tribunal, for Njombe, at Njombe (The DLHT), in Application No. 10 of 2013 (The original case), which said ruling was dated 28th March, 2014 (Henceforth the impugned ruling).

ii. Costs of this application.

iii. Any other reliefs this court will deem fit and just to grant.

The application was supported by an affidavit of the applicant herself.

In the affidavit the applicant stated that, she is administratrix of the estate of the late Angelus Joseph Nziku (Henceforth the deceased) who was the respondent in the original case. In that case, the deceased was not served with any summons and did not thus, file his written statement of defence (WSD). The case was thus, decided by the DLHT *ex-parte* (on 21st October, 2013) in favour of the respondent in this application, INNOCENT FABIAN SANGA.

The affidavit further deponed that, at the time of instituting the original case, the deceased was seriously sick and was attending medical treatment at the Anglican Health Centre in Njombe (Hereinafter called the Health Centre) and he ultimately died on the 2nd of March, 2016. Before his death, the deceased had filed an application to set aside the *ex-parte* Judgement. His application was dismissed vide the impugned ruling for want of sufficient reasons. Nonetheless, there are illegalities in the record of the DLHT that need to be corrected. The illegalities according to paragraph 7 of the affidavit include the following, which I reproduce for a readymade reference:

a. That, the assessors were not given chance to give their opinions.

b. That, the non-participation of one assessor at the *locus in quo*.

c. That, the late Angelus Joseph Nziku (Respondent by then) was not issued with the summons to attend on the date of judgment.

d. That, the trial tribunal failed to convene and discuss what had transpired at the *locus in quo*.

The affidavit also deponed that, unless the application at hand is granted, the applicant will suffer irreparable loss.

The record also shows that, following the leave of this court (Kente, J. as he then was) vide order dated 31st March, 2021, the applicant filed a supplementary affidavit. He did so on the same date of the order. In essence, the supplementary affidavit added to the original affidavit the following fact; that, what the deceased had filed subsequent to the *ex-parte* judgment against him was an application for extension of time to file an application for setting aside the *ex-parte* judgment.

In his counter affidavit the respondent did not refute the background of this matter as narrated above. He however, contested the fact that the deceased was not served with summons. He also deponed that, what the deceased had applied before the DLHT was for an extension of time to apply for setting aside the *ex-parte* decree. The alleged illegalities are in the ex-parte judgment and not in the ruling which decided the application for extension of time, hence it is premature to argue that there were illegalities. The application is also improper since the execution of the *ex-parte* decree was effected on 10th December, 2013, which is 7 years ago. Unless the application is dismissed, the respondent will be subjected to torture.

The respondent also, on the 27th April, 2021 filed an affidavit in reply to the supplementary affidavit of the applicant mentioned above. In his replying affidavit the respondent basically deponed that, the applicant was trying to use forged documents to justify the inordinate delay of 7 years. He further refuted the fact that the deceased was medically attended at the Health Centre. He attached a copy of the letter from the Centre (dated 21/04/2021) showing that the deceased was not attended there. He also attached a copy of a letter from Muhimbili National Hospital (dated 20th February, 2014) showing that the deceased had not been attended in that Hospital. This was in view of refuting what the deceased had once told the DLHT that he had been attended there. He further refuted the fact stated in the applicant's supplementary affidavit that in mid-December, 2013 the deceased got relief. This was because, the assertion that he was medically attended at the Health Centre is untrue. He finally deponed that the application was a delaying manoeuvre against his enjoyment of the victory in the matter.

In this squabble, the applicant was represented by Mr. Amani Simon Mwakolo, learned counsel while the respondent appeared without any legal representation. Following the consensus by the parties, the application at hand was argued by way of written submissions.

In his written submissions in-chief, the learned counsel for the applicant adopted the contents of the affidavit and the supplementary affidavit supporting the application. He added that, the learned Chairperson of the DLHT wrongly dismissed the application before her because, the ex-parte judgment was tainted with illegalities. He (learned counsel) is aware of the legal stance that an applicant for extension of time must adduce sufficient reasons and account for each day of delay. However, the law also provides that, where there is an allegation of illegality, the same constitutes a sufficient reason for extending the time. He cited a precedent of the Court of Appeal of Tanzania (The CAT) in the case of **Selina Chibago v. Finihas Chibago, Civil Application No. 182 "A" of 2007, CAT, at Dar es Salaam** (unreported) to cement his contention. He added that, the **Selina Chibago case** followed the case of **Principal Secretary, Ministry of Defence and National Service v. Devman Valambhia [1992] TLR. 189.**

The learned counsel for the applicant further argued that, the first illegality in relation to the *ex-parte* Judgment of the DLHT was that, the Chairperson failed to give opportunity to the assessors sitting with her for giving their opinion upon the closure of the evidence. This was against Regulation 19(2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003 (GN. No. 174 of 2003), henceforth the GN. The trial Chairperson could not thus, in law, remark in the *ex-parte* judgment (at page 2) that the assessors had given their respective opinions. This is because, she had not required them to do so as required by the law and the opinions were not reflected in the proceedings. He supported this particular legal stance by citing the CAT decisions in the cases of **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 of 2017, CAT at Mbeya** (unreported) and **Edina Adam Kibona v. Absolom Swebe (Sheli), Civil Appeal No.286 of 2017, CAT at Mbeya** (unreported).

The second point of illegality according to the applicant's counsel was that, the trial Chairperson permitted an assessor (one Ms. Ngwinamila) to give opinion in relation to the *ex-parte* judgement. This was irrespective of the fact that such assessor had not participated in court proceedings when the DLHT visited *the locus in quo*. This was improper in law. He cemented this contention by the decision of the CAT in **Ameir Mbaraka and Azania Bank Corporation Ltd v. Edgar Kahwili, Civil Appeal No. 154 of 2015, CAT at Iringa** (unreported).

Regarding the third point of illegality, the applicant's counsel contended that, the record of the DLHT shows that, the deceased was not summoned to appear on the date for pronouncing the *ex-parte* judgment. This was against the law and the deceased was thus, judged unheard.

It was further the contention by the learned counsel in respect of the fourth point of illegality that, upon visiting the *locus in quo* on the 4th October, 2013, the DLHT was enjoined to convene for discussing what had transpired there. Nonetheless, it did not do so. This omission was against the legal requirement. He supported this particular contention by citing the decision of the CAT in the case of **Nizar M. H. Ladak v. Gulamali Fazal Janmohamed [1980] TLR. 29.**

The applicant's counsel further challenged the assertion by the respondent in the counter affidavit that, the points of illegalities were raised prematurely and were irrelevant at this stage. He added that, these points are relevant at this stage since they relate to the *ex-parte* judgment which necessitated the subsequent application which was dismissed by the DLHT. He also challenged the respondent's assertion in the replying affidavit to the supplementary affidavit that, the deceased was not medically attended at the Health Centre. He argued that, the Centre was estopped from refuting that fact (by the letter attached by the respondent to his replying affidavit). This is because, such move constituted a contradictory assertion by the Centre itself. He also challenged the respondent's assertion in the replying affidavit that the deceased was not attended at the Muhimbili National Hospital. The applicant's counsel contended that, such fact was irrelevant since it was included neither in the applicant's affidavit nor in the supplementary affidavit.

In his replying submissions, the respondent contended basically that, the application at hand is time barred. This is because, the applicant filed the present application 7 years after the delivery of the impugned ruling. Nonetheless, according to section 38(1) of the LADCA the time limitation for filing appeals of this nature is 60 days. He added that, the applicant is cheating the court for alleging that the deceased was ill though the two medical institutions (the Health Centre and the Muhimbili National Hospital) refuted that fact as shown above. The delay was thus, caused by negligence, which is not a sufficient reason for extending the time.

It was also the argument by the respondent in respect of the first point of illegality that, assessors of the DLHT gave their opinion as shown at page 2 of the *ex-parte* judgment. The written submissions in chief by the applicant's counsel also indicates that fact at page 5. He further contented, regarding the second point of illegality that, the deceased was served in relation to the original case through publication in the Tanzania Daima Newspaper dated 7th June, 2013, hence the *ex-parte* proof of the original case.

The respondent further argued generally that, the applicant's allegations on illegalities are an afterthought upon her failure to account for the delay of 7 years. Such mere irregularities should not defeat substantial justice.

In his rejoinder submissions, the learned counsel for the applicant essentially reiterated the contents of his submissions in-chief. He further argued that, there is no any inordinate delay by the applicant in this matter. The contention by the respondent that the applicant did not account for each day of the delay is weightless since the points of illegality alone constitute a sufficient reason for the extension of time in law. He thus, urged this court to exercise its discretion and grant the application at hand.

In testing this application, I have considered the affidavit, the supplementary affidavit, the counter affidavit, the replying affidavit to the supplementary affidavit, the respective written submissions by the parties, the record and the law. However, before I consider its merits I feel obliged to firstly resolve one point of law raised by the respondent in his replying submissions though the applicant's counsel did not address it in his rejoinder submissions. I opt to resolve it firstly because, it has a flavour of a preliminary objection though raised a bit belatedly. The respondent contended that, the application at hand is time barred for being filed before this court after the expiry of the period of 60 days set by section 38(1) of the LADCA. This query will not detain me. In my view, it is based on a serious misconception of law since these provisions of the law apply only to appeals against decisions or orders of a DLHT in the exercise of its appellate or revisional jurisdiction. Nevertheless, the impugned ruling in the matter at hand was not of that nature. It resulted from the proceedings in which the DLHT exercised its original jurisdiction. I therefore, overrule the respondent's objection on time limitation.

Now in testing the merits of the present application, I am of the view that, the following material facts are not disputed: that, in fact, the DLHT decided the original case *ex-parte* and against the deceased. The deceased applied before the DLHT for an extension of time to apply for setting aside the *ex-parte* judgment/decree, but the application was dismissed for want of sufficient reasons through the impugned ruling. It is also not disputed that, the deceased died on 22nd May, 2016 as shown under paragraph 4 of the applicant's affidavit. The fact that the applicant was appointed administratrix of the deceased estate is also not at issue. The annexed copy of her letter of appointment (Annexture AJN 1 to the affidavit) indicates that, the letter was issued on 4th January, 2018 and there was no squabble on that fact. It is further not disputed that neither the deceased, nor the applicant filed the appeal against the impugned ruling to this court, hence the delay and the application at hand.

Certainly, since this is an application for extension of time, this court will be guided by the principles on that branch of the law in deciding this matter. The law is trite that, extension of time is granted at the judicious discretion of the court entertaining the application upon the applicant adducing sufficient reasons or good cause; see the case of **Mumello v. Bank of Tanzania [2006] 1 EA 227**. Admittedly, what amounts to good cause depends on the circumstances of each case, but the following factors may be considered in determining as to whether the applicant has adduced good cause: lengthy of the delay at issue, reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent, whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged, etc.; see the decision by the CAT in the case of **Peter Mabimbi v. The Minister for Labour and Youths Development and 2 Others, Civil Application No. 88/08 of 2017, CAT at Mwanza** (Unreported) or at [2018] TZCA 229 following its previsions decisions in **Dar es Salaam City Council v. Jayantilal P. Rajani, Civil Application No. 27 of 1987** and **Tanga Cement Company Limited v. Jumanne D. Masangwa and another, Civil Application No. 6 of 2001**.

The major issue in the case at hand is therefore, *whether the applicant has adduced good cause for this court to grant the prayed extension of time.* In the matter at hand, thought the applicant's counsel strived to show in his written submissions that the application is mainly based on the points of illegalities, the affidavit of the applicant apparently also tries to justify the delay on other grounds as shown above. This court will thus, consider the reasons for the present application as divided into the following two categories: firstly, reasons trying to explain the causes for the delay. Secondly, the four points of illegalities. I will test each category of the reasons one after another.

Regarding the first category of reasons, the law guides that, an applicant for extension of time has to *inter alia,* account for each day of delay, must be diligent or prompt in pursuing his/her rights and the delay should not be inordinate as hinted earlier. The sub-issue here is *whether the applicant in the case at hand had met the legal requirements for this court to decide in her favour.* In my view, the circumstances of the case do not attract answering the sub-issue affirmatively on the reasons below.

In the first place, it must be born in mind that, the relevant decision of the DLHT under discussion in the present application is the impugned ruling which was delivered on 28th March, 2014 and not the *ex-parte* judgment that had been pronounced on 21st October, 2013. This is because, the application at hand is for this court to extend time for the applicant to appeal to it out of time. The intended appeal is against the impugned ruling and not against the *ex-parte* judgment. It must also be noted that, the impugned ruling according to the record and the supplementary affidavit dismissed the deceased's application for extension of time so that he could apply before the same DLHT for setting aside the *ex-parte* judgment it. That impugned ruling did not therefore, dismiss the deceased's actual application for setting aside the ex-parte judgment as it was previously indicated under paragraph 5 of the applicant's original affidavit.

As to which is the time limitation for appealing against the impugned ruling, it is surprising that both parties in this matter did not mention it anywhere though they agree that time for doing so had lapsed, hence the application at hand. In my view, currently the law provides that, appeals from decisions of the DLHT in exercise of its original jurisdiction like it was in the matter at hand, have to be filed to this court within 45 days from the date of decision to be challenged; see section 41(1) of the LADCA as amended by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2016. However, when the impugned ruling was made in 2014, and before these statutory amendments, these provisions of law did not provide for the time limitation of such appeals. This court, nonetheless, held in the case of **Mwanaisha Mohamed Ngochele v. Mohamed Salum & 2 Others [2013] TLR. 394**, that, since there were no provisions under the LADCA setting time limit for appealing to this court against a decision of a DLHT exercising its original jurisdiction (hence a *lacuna)*, then the time limitation was 60 days like in appeals against the decision of the same tribunal when exercising appellate or revisional jurisdiction as per section 38 of the LADCA.

Nevertheless, since the **Mwanaisha Case** (supra) does not bind me under the doctrine of *stare decisis* for being decided by a Judge of this court with whom I enjoy concurrent jurisdiction, I would have a different view from that position. On my part, I hold the view that, since there was a *lacuna* under the LADCA, resort had to be made to the Law of Limitation Act, Cap. 89 (the LLA) which is the general law on time limitation. Item 2 of Part II in the Schedule to the LLA provides that, time limitation for an appeal for which no period of limitation is prescribed by the LLA itself or by any other written law is 45 days from the date of the decision concerned. In my view therefore, the time limitation for appealing to this court against a decision of a DLHT exercising its original jurisdiction was the same 45 days both before and after the above mentioned amendments. It follows thus, that, the intended appeal against the impugned ruling in the matter under consideration had to be filed to this court within 45 days from the date of the impugned ruling, i.e. from 28th March, 2014. Nevertheless the deceased, who was still alive at that time, did not do so.

I thus, join hands with both parties that, it is true, there was a delay in filing the intended appeal, though they did not mention the time limitation set by the law in filing the same as hinted earlier.

It is in fact, conspicuous that, all the explanations offered in the applicant's affidavit amount to excuses for the failure by the deceased to attend in the original case which ended up with an *ex-parte* judgment. Such excuses include the alleged non-service of summons to the deceased and his illness. The said *ex-parte* judgement however, is irrelevant in the present application at this stage since this is an application for extension of time to appeal against the impugned ruling, and not against the ex-parte judgment, out of time. There is however, no any explanation in the affidavit and in the submissions by the applicant's counsel showing why the deceased (during his lifetime) could not file the intended appeal against the impugned ruling (which is relevant to the matter at hand as observed earlier) timely. Indeed, according to the record, the impugned ruling was certified by the DLHT as true copy of the original on 3rd June, 2014, hence ready for collection on that date. The deceased did not however, file the intended appeal until when he died on the said 2nd May, 2016. A period of almost two years had thus, lapsed from when the copy of the impugned ruling was ready for collection to the date when the deceased met his demise. Yet there is no explanation for that delay.

Moreover, the record show that, the letter appointing the applicant as administratrix of the estate was issued by court which appointed her on the 4th January, 2018. In the affidavit however, the applicant did not explain as to why a period of a year and 7 months had lapsed before she was appointed administratrix of the deceased estate. This period is computed from 2nd May, 2016 (when the deceased passed away) to 4th January, 2018 (when the letter of appointing the applicant was issued). The record further indicates that, the application at hand was lodged in this court on the 21st January, 2021. Nonetheless, the affidavit is silent as to what had obstructed the applicant from filing the application at hand promptly until when a period of almost three years lapsed. This period is reckoned from the date when she was appointed as administratrix (on to 4th January, 2018) to the date when this application was filed (21st January, 2021).

From the above observations, it is clear that, the time limitation of 45 days for filing the intended appeal against the impugned ruling expired on

18th July, 2014 (computed from the date when the impugned ruling was ready for collection, i. e. on 3rd June, 2014). It follows thus, that, the aggregate period of delay caused by the deceased during his lifetime and the applicant (after the death of the deceased) was more than six years and six months. This period is calculated from when the 45 days of appeal elapsed (on 18th July, 20) to when the appeal at application at hand was filed by the applicant (on 21st January, 2021). This delay is however, not explained in any way in the affidavit as observed previously.

In my settled opinion, owing to the above trend it is conclusive that the delay at issue is inordinate. It cannot also be said that the applicant accounted for each date of the delay in filing the intended appeal against the impugned ruling as required by the law: see the CAT decision in the case of **Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Application No. 138 of 2016, CAT at Dar es Salaam** (unreported) which followed its previous decision in **Bushfire Hassan v. Latina Lucia Msanya, Civil Application No. 3 of 2001** (unreported). It cannot also be said that the deceased (at his lifetime) and the applicant were diligent or punctual in pursuing the matter. Instead, what the deceased demonstrated (during his lifetime) and what the applicant has shown upon the death of the deceased, amount to none other than gross negligence in pursuing this matter. I accordingly answer the sub-issue posed above negatively that, the applicant in the case at hand did not meet the legal requirements for this court to decide in her favour regarding the reasons in the first category.

I will now consider the second category of the applicant's reasons for the application at hand, i.e. the alleged points of illegality. In my view, I agree with the learned counsel for the applicant to the extent that, a general rule on allegations of illegality in matters of extension of time is that, allegations of illegalities in the decision to be challenged constitute a good cause for extending time for purposes of rectifying the illegalities concerned. In fact, apart from the precedents cited by the applicant's counsel (supra) in supporting this stance of the law, other precedents by the CAT supporting it are bulky; see for example, **TANESCO v. Mufungo Leonard Majura & 15 Others [2017] TLR 525** and **Tropical Air (TZ) Limited v. Godson Eliona Moshi [2018] TLR.363.**

Nonetheless, the general rule on illegalities just highlighted above has an exception. The law guides that, not every such allegation of illegalities can have the results mentioned above; see the decision by the CAT in the case of **Finca (T) Limited and another v. Boniface Mwalukisa, CIVIL APPLICATION No. 589/12 of 2018, CAT at Iringa** (unreported). In the case of **Lyamuya Construction Company Ltd v. The Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT at Arusha** (unreported) also followed in the **Finca case** (supra), it was held that, for a point of law to constitute a good cause for extending time, it must be of sufficient importance and apparent on the face of the record, such as the question of jurisdiction. It should not be one that would be discovered by a long drawn argument or process.

Furthermore, discussing on an allegation of illegality in respect of an extension of time where an applicant had delayed to take a legal step for 98 days, the CAT in the case of **Tanzania Harbour Authority v. Mohamed R. Mohamed [2003] TLR. 76** held (at pages 80-81) that, and I quote the pertinent passage for a readymade reference;

> "Admittedly, this Court has said in a number of decisions that time would be extended if there is an illegality to be rectified. However, this Court has not said that time must be extended in every situation. Each situation has to be looked at on its own merits. In this case the defence has been grossly negligent and surely cannot be heard now to claim that there is a point or law at stake....This Court is duty-bound to see that Rules of Court are observed strictly and cannot aid any party who deliberately commits such lapses."

Another sub-issue at this juncture is therefore, *whether the points of illegality raised by the applicant in the matter at hand, constitute good cause under the circumstances of the case for granting the prayed extension of time.* In my settled opinion, such prevailing circumstances do not attract a positive answer to the sub-issue under discussion for the reasons shown hereunder.

Firstly, like I observed earlier, the principle which the applicant relies upon guides essentially that, an allegation of illegality in the decision to be challenged constitute a good cause for extending time. Now, the pertinent question here is this; *which is the actual decision to be challenged in the matter under consideration for purposes of considering the points of illegalities raised by the applicant?* As I observed previously, the applicant in the matter at hand seeks extension of time to appeal against the impugned ruling dated 28th March, 2014 which dismissed her application for extension of time to apply for setting aside the ex-parte judgment/decree of the DLHT. She is not seeking any extension of time to appeal against the said the *ex-*

parte judgment/decree. She is not even seeking extension of time to appeal against a decision of the DLHT refusing to set aside the *ex-parte* judgment. This is because, she did not get any opportunity to file an application for setting aside the *ex-parte* judgment. The answer to the pertinent question posed above is therefore that, the actual decision to be challenged in the matter under consideration for purposes of discussing the points of illegalities raised by the applicant, is the impugned ruling dated 28th March, 2014.

Now, though the actual decision to be challenged in the matter at hand is the impugned ruling, the applicant did not point out any illegality in that ruling in her affidavit in-chief. She did not do so even in her supplementary affidavit. Her advocate did not also do so in his written submissions. In fact, the record shows that, even in her application before the DLHT which led to the impugned ruling, the applicant did not at all, allege any illegality. It is thus, clear, as hinted earlier, that, all the four points of illegalities were related to the ex-parte judgment only, which is not the actual decision to be challenged on appeal in case the present application will be granted.

In my settled view therefore, there is legal sense in the respondent's counter affidavit that the allegations on illegalities under discussion have been prematurely raised by the applicant. This is because, the present application is not for extending time for her to appeal before this court against the *ex-parte* judgment as shown previously. It would have been a difference case had it been that the application at hand was intended to seek extension of time to appeal against the *ex-parte* judgment so that the illegalities could be rectified. In fact, under the prevailing circumstances, it is common ground that, legally, for the applicant to get a proper forum to challenge the *ex-parte* judgment and discuss the illegalities, she has to firstly succeed in the following 3 chronological legal steps: firstly, she needs to succeed in the application at hand by obtaining extension of time so that she can appeal to this court against the impugned ruling out of time. Secondly, she is required to succeed in the intended appeal against the impugned ruling. Thirdly, in case she will succeed in the intended appeal, she will need to go back to the DLHT and successfully apply for setting aside the *ex-parte* judgment.

Now, discussing the alleged illegalities in the *ex-parte* judgment under the application at hand while the same is not the actual decision which the applicant seeks to challenge if the application is granted, will amount to *short-circuiting* the procedure for seeking justice. This is because, all the rules related to the 3 legal steps mentioned above and in related to the law on time limitation will be rendered nugatory.

Furthermore, as I found earlier, the delay in the matter under discussion is seriously inordinate and no explanation was given by the applicant for justifying the same, hence the imputation of negligence on her and on the part of the deceased during his lifetime. These points of illegalities cannot thus, be relied upon to take back the matter under the circumstances of this case. It is more so considering the apparently undisputed fact that the execution of the *ex-parte* decree was effected on 10th December, 2013, being more than 7 years now as shown in the counter affidavit of the respondent. Accepting the applicant's contentions will thus, cause a serious prejudice on the part of the respondent. It must also be born in mind that, the law also guides that, among the factors to be considered in applications of this nature is the degree of prejudice the respondent stands to suffer if time is extended; see the **Peter Mabimbi case** (supra). The points of illegalities under discussion thus, fall in the four corners of the exception of the general rule on illegalities mentioned above which guide that, not every alleged illegality will constitute a good cause for extending time. In this regard, I am fortified by the **Tanzania Harbour case** (supra) the holding of which was quoted previously.

Indeed, the rationale for the exception rule set by the CAT in the **Tanzania Harbour case** (supra) is, in my view that, the general rule on allegations of illegalities in extension of time was not intended to be a sword by an applicant against the respondent. Instead, it was aimed at giving room for rectifying the illegalities in the decision to be challenged for purposes of doing justice to parties. An applicant for extension of time cannot therefore, deliberately or negligently slumber on his/her rights and raise belatedly for taking legal steps at his/her own whims merely on the basis of allegations of illegalities. Courts should not bother to give a helping hand to such kind of applicants as observed in the **Tanzania Harbour case.** If such applicant will be permitted by a court to do so, delays of cases will triumph in our courts and injustice will prevail. It will be so because, that general rule will be used by dishonest applicants to torment the adverse party, and not for seeking justice. That will in fact, amount to an unfair trial on the part of the respondent and the law of limitation will be rendered nugatory. Court proceedings are required to come to an end irreversibly and speedily, unless there is good reason for resuming them. The law would thus, require an applicant who approaches a court for extension of time basing on illegalities in the decision to be challenged to come with clean hands and avoid deliberate delays merely because, he/she will rely upon the general rule on illegalities. Nonetheless, as underscored in the **Tanzania Harbour case** (supra), each case will be consider under its own circumstances.

According to the rationale of the exception-rule just highlighted above, it is not true that an allegation of illegality is always an overriding factor for extending time. Other factors must also be considered in opportune circumstances like those prevailing in the case at hand.

In my further opinion, for the above reasons, accepting the applicant's mission in the matter at hand will also offend the useful principal of overriding objective. This principle has been recently underscored in our written laws. It essentially requires courts to decide matters justly, speedily, to have regard to substantive justice, avoid procedural technicalities and reduce costs of the parties. It was also emphasized by the CAT in the case of **Yakobo Magoiga Kichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza** (unreported) and many other decisions by the same court.

Having observed as above I answer the second sub-issue posed above negatively that, the points of illegality raised by the applicant do not constitute any good cause under the circumstances of the case at hand for extending time.

Now, having answered the two sub-issues posed above negatively I am obliged to answer the major issue posed earlier negatively too, that, the applicant has not adduced any good cause for this court to grant the prayed extension of time. I accordingly dismiss the application with costs since costs follow event. It is so ordered.

JHK UTAMWA
JUDGE
01/09/2022.

01/09/2022.

CORAM; JHK. Utamwa, J.

For Applicant: present in person and Mr. Amani Mwakolo, advocate.

For Respondent; present in person.

BC; Gloria, M.

Court; ruling delivered in the presence of the applicant, her advocate; Mr. Amani Mwakolo, and the respondent in person, in court, this 1st September, 2022.

JHK UTAMWA
JUDGE
01/09/2022.