IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF MWANZA

AT MWANZA

MISC. LAND APPLICATION NO.52 OF 2022

(Arising from the District Land and Housing Tribunal of Mwanza in Land Appeal No. 12/2017)

LAURENSIA MASHAURI GWAPE.....APPLICANT

Versus

TEREZIA HENERIKO GWAPE.....RESPONDENT

RULING

Oct. 25th, 2022 & Nov. 1st, 2022

Morris, J

The Court is, at the instance of the applicant above, being moved to determine the application for extension of time. Upon being successful, the applicant intends to appeal against the decision of the District Land and Housing Tribunal for Mwanza (DLHT) in appeal no.12 of 2017. The respondent is contesting the application. Both sides filed respective affidavits sworn by parties (Lurensia Mashauri Gwape and Terezia Heneriko Gwape respectively). During hearing of the application, the affidavits were adopted by each side's lawyer as part of their submissions.

From the available records, the respondent filed a land dispute (No.89/2016) with the Mahina Ward Tribunal against the applicant. She failed. Therefrom, she successfully pursued an appeal at DLHT. Inversely,

it was now the applicant's turn to continue the appeal-race at this Court. She is, however, still having a time-bar huddle to cross before filing the envisaged appeal following her failure to observe the timeline thereof. Hence, this application.

Each party is represented by own Advocate. Mr. Godfrey Goyayi is for the applicant as Mr. Joseph Mange is for the respondent. The rivalry submissions from each lawyer can be summarized as follows: The applicant's counsel submits that it is a long-settled position of the law that for an application for extension of time to succeed, sufficient reason(s) for the delay must be given. He refers the Court to paragraphs 5 and 6 of the applicant's affidavit which disclose the reason in support of the application. On the one hand, the applicant alleges to be a lay person who missed a timely legal assistance. She, on the other hand, fronts illegality apparent on the DLHT's decision as the second reason.

Evidently, the applicant's Advocate has nothing significant to submit in support of the first ground/reason than simply stating that his client missed the necessary legal guidance in time. A lot of efforts, however, is being exerted on illegality. Amplifying the latter ground, the learned Advocate submits that illegality on DLHT's decision is threefold: one; the Tribunal's misapplication of the doctrine of adverse possession; two; the decision missing assessors' opinion; and three; wrong use of the principle

of *locus standi*. He is resolute that law is now settled: illegality alone constitutes a sufficient ground to warrant extension of time. He makes reference to decisions in **Enelia Ipopo v Eva Kyeja**, Misc. Land Application No. 48/2019(HC at Mbeya- unreported); **VIP Engineering and Marketing Ltd and Ors v Citi Bank of Tanzania Ltd**; consolidated Reference No. 6,7&8 OF 2006 (Unreported); and **Registered Trustees of Catholic Diocese of Musoma v John Nyakimwi**, HC Misc. Land Application No. 08/ 2020 (especially, at pages 9 & 10).

Countering the application, the respondent through Advocate Mange, submits that the applicant's ignorance of the law does not make a good cause to support extension of time. He buttresses his point with the case of **Hamimu Hamis Totoro @ Zungu Pablo & Ors v R**, Criminal Application No. 121/2018 (CA, Mtwara -unreported). He prays that the Court should out-rule this ground for want of merit. As for illegality, he submits that the principle of illegally is not absolute. That is, not every illegality element sufficiently moves the court to extend time. He cites **Jonas Ntaliligwa v Fedia Nyayagara**, Misc. Land Application No. 20/2021(unreported) as authority in this connection. Further, he argues that per **Ntaliligwa's case** (*supra*) the Court is enjoined to consider several other factors to arrive at a founded decision. Such factors

include, length of the delay; the reason for delay; accounting for each day of delay; and existence of illegality curing of which results into significant public importance.

To him, all the foregoing ingredients are missing in the current application. For instance, he submits that while in **Ntaliligwa's case** (*supra*) the delay was for two (2) years yet the court held that such delay was excessive; in the present application, the applicant slept on her right for about four and a half ($4^1/_2$) years. He refers to this situation as a solid and negligent delay which should not be condoned by the Court. Further, he contends that the applicant's affidavit does not exhibit an account of each day of the delay; and the alleged points of illegality, if any, are not of any public significance.

Moreover, in a contra-argument, the respondent submits that the Court may refer to its previous decision in **Feruz Mustafa & Another v Ngibwa Farmers Association**, Misc. Land Application No. 16/ 2020(unreported) in which extension of time (though hinged on illegality) was denied because execution had already taken place. He beseeches the Court to reiterate such position because, per paragraph 5 of the respondent's counter affidavit; the present application has been overtaken by events. That is, execution has also been carried out already. In respect of non-existence of assessors' opinion; the learned counsel for the

respondent submits that it is not a mandatory requirement under the law [especially regulations 19(2) and 20 (1) of GN 174/2003]. Consequently, he prays for dismissal of the application with costs.

From the above contentious arguments, the Court will determine the application by answering one major question: whether or not grounds advanced by the applicant (applicant's ignorance of law and illegality on DLHT's decision) suffice in making this court to allow the application. I will analyze one ground at a time.

As pointed out above, erudite submissions of the applicant's Counsel gave little or no weight to the first ground. He was simply blunt. To him, after the applicant raised illegality as her ground upon which to seek extension of time, she had no further obligation to, among others, account for each day of the delay; or prove the reasons for her tardiness. The opposite lawyer, however, did not support such approach. He was insistent that ignorance of the law forms no sufficient ground on which to seek extension of time. I associate myself with the latter position. Law would be absurd if it allowed litigants to seek refuge under this legal mangrove contemplated by the applicant. Surely, in a society where a small proportion of population is knowledgeable or qualified in law, litigants would take statutory time prescriptions for granted. I am up and

alive to courts' decisions which limit this otherwise luxury to appropriate scopes.

In **Omari R. Ibrahim v Ndege Commercial Services Ltd**., Civil Application No. 83/01 of 2020 (unreported) the Court of Appeal (Dar Es Salaam) is categorical by holding that: 'it should be stated once, that neither ignorance of the law nor counsel's mistake, constitute good cause' for extension of time. Other cases in this line of approval are **Bariki Israel v Republic**, Criminal Application No. 4 of 2011 (unreported); **Charles Salungi v Republic**, Criminal Application No. 3 of 2011 (unreported); and **Umoja Garage v National Bank of Commerce** [1997] TLR 109.

Further, the law requires that the applicant should demonstrate sufficient reason(s) as to why he/she did not take the necessary step(s) in time. In so doing, he/she will discharge the obligation of proving how each day of delay justifiably passed by at no applicant's fault. Accordingly, the subject applicant will deserve a favourable Court's discretionary advantage as it was held in **Hamis Babu Bally v The Judicial Officers Ethics Committee and 3 Others**, CAT-Dar Es Salaam, Civ. Application No. 130/01 of 2020 (unreported)].

The essence of setting the time limits in law is, among other objectives, to promote the expeditious dispatch of litigation, [**Costellow**

v Somerset County Council (1993) IWLR 256]; and to provide certainty of time tables for the conduct of litigation [**Ratman v Cumara Samy** (1965) IWLR 8]. Subsequently, the present applicant is not, as I hold, supposed to benefit from her alleged ignorance of the law. The first ground lacks merits and it is, thus, disallowed.

The Court now turns to the remaining ground; illegality allegedly marring the DLHT's decision. I will, however, address this point sparingly so that the Court does not delve into the merits of the envisaged appeal. The applicant's lawyer argues that one of the guiding pillars to grant extension of time is, if allowing it, the application will cure illegality in the to-be challenged decision. He mainly faults the first appellate Tribunal for wrongly applying the doctrines of adverse possession and *locus standi*, and not appending assessors' opinion in its judgment. He, thus, invites this Court to allow the application so that such legal anomalies are rectified through the envisaged appeal.

I am in agreement with the applicant's counsel that illegality apparent on the to-be impugned court's proceedings and/or outcomes therefrom presents a sufficient cause for the grant of an application for extension of time. A plethora of authorities, in addition to the ones cited by the applicant's advocate, includes: **Khalid Hussein Muccadam v Ngulo Mtiga** (***As A Legal Personal Representative of the Estate of***

Abubakar Omar Said Mtiga) **and Another** CA-Dar Es Salaam, Civ. Appl. No. 234/17 of 2019 (unreported); **Shabir Tayabali Essaji v Farida Seifuddin Tayabali Essaji**, CA-Dar Es Salaam, Civ. Appl. No. 206/06 of 2020 (unreported); **Hassan Ramadhani v R.**, CA- Tabora, Crim. Appeal No. 160 of 2018 (unreported); **Eqbal Ebrahim v Alexander K. Wahyungi**, CA-Dar Es Salaam, Civ. Appl. No. 235/17 of 2020 (unreported); **Ngolo S/O Mgagaja v R.**, CA- Tabora, Crim. App. No. 331 of 2017 (unreported); **Lyamuya Construction Co. Ltd. v Board of Trustees of Young Women's Christian Association of Tanzania**, Civ. Appl. No.2 of 2010, CA-Arusha (unreported); **Lycopodium (T) Ltd v Power Board (T) Ltd and Others**, Comm. Appl. No. 47 of 2020, HC-Dar es Salaam(unreported); **Chandrakant Joshubhai Patel v R [2004] TLR 218; PS Ministry of Defence & National Service v Devram Valambia** [1993] TLR 185; and **Keres and Others v Tasur and Others** [2003]2EA 531.

However, in determining the merit of this ground (illegality) in the present application, the Court considers various aspects. Firstly, it is guided by principles of justice, reason and rules pursuant to **African Airlines International Ltd. v Eastern and Southern Africa Trade and Development Bank** [2003] 1 EA 1. Secondly, it is also mindful of the undisputed fact that in the present application, the DLHT delivered its

judgement on May 4th, 2018. This application was filed on July 13th, 2022. That is, 4.2 years after the judgement was delivered. Thus, consciously, the applicant condoned the alleged illegality for about a half a decade. Thirdly, the Court makes inference to the applicant's revitalized enthusiasm to seek justice. To decrypt the applicant's sudden awakening from inactiveness, the respondent deposes that the execution processes regarding the DLHT's appeal has been done (para 5 of the counter affidavit). Fourthly, the alleged illegality should meet the long-laid legal threshold.

Having raised the four concerns above, the Court holds that for an applicant to benefit from the ground of illegality in an application for extension of time; various conditions must be fulfilled. Predominantly, the point of law constituting illegality must be of sufficient significance to the public. Further, it must be a point which is apparent on the face of the record; and that would be discovered without a long-drawn argument or process. The case of **Lyamuya Construction** (*supra*) is of valuable authority in this regard.

Let us now apply each of the foregoing legal tests to the present application. Vide the envisaged appeal, the applicant wishes to, *albeit* belated, move the appellate Court to put back in squares proper application of both doctrines of adverse possession and *locus standi*; and

underscoring the importance of appending assessors' opinion on the DLHT's judgement. The doctrines of adverse possession and *locus standi* are not, by any standards, new phenomena in Tanzanian jurisprudence. They are for a long time well enshrined in the country's legal regime. [See, for example, cases of **Alex Senkoro and Three Others v Eliambuya Lyimo**, CA-Dar es Salaam, Civ. App. No. 16 Of 2017 (unreported); **Registered Trustees of Holy Spirit Sisters Tanzania v January Kamili Shayo and 136 Others**, Civ. App. No: 193 of 2016 (unreported); **AG v Mwahezi Mohamed and Two Others**, CA-Tanga Civ. App. No. 391 of 2019 (unreported); **Omary Yusuph v Albert Munuo**, CA - Dar es Salaam Civ. App. No. 12 of 2018 (unreported); **Peter Mpalanzi v Christina Mbaruka**, CA - Iringa Civ. App. No. 153 of 2019 (unreported)].

The Court finds that, the above doctrines are readily available to anybody to harness. I hold that the same should not be ignored or condoned by any party during the trial or thereafter so as to be used in seeking extension of time. That attempt will reduce the Courts' judicious mandate to one of sanctifying afterthoughts of the otherwise dormant litigant.

Further, to prove or pursue the two doctrines on appeal, parties will likely indulge in protracted arguments and analysis of evidence such as to when one occupied another person's land; or what credentials give locus

to a party alleged to lack it; or whether, when and how the assessors were involved in part or whole proceedings. It is noteworthy that in **Enelia Ipopo**'s case (*supra)* this Court (Her Ladyship Mongella, J) holds that:

> '*It is a mandatory requirement of the law that Tribunal assessors must be* ***fully involved*** *and their* ***opinion filed*** *in the Tribunal and read before the parties before the* ***judgment is composed****. Failure to do that vitiates the proceedings and judgement of the Tribunal.*' (Bolding rendered for emphasis).

Moreover, from records of the DLHT; the point of *locus standi* seems to emanate from erroneous swap of the parties by the Tribunal. In my view, this is an error which could be cured administratively by requesting the tribunal to correct its judgment. I hold so because parties do not dispute that it indeed was the respondent who had preferred the case at the trial Ward Tribunal. I further subscribe to the wise holding from **The Commissioner of Transport v The Attorney General of Uganda** (1959) EA 329 that "in some cases a point of law may be of sufficient importance to warrant extension of time while in others it may not." The present case squarely falls in the latter category.

In view of the conclusions and reasons given above, this application does not stand the just-test of law. It is accordingly dismissed. The respondent will have her costs from the applicant.

It is accordingly ordered.

C.K.K. Morris
Judge
November, 1st 2022

Ruling delivered in the presence of Godfrey Goyayi, learned advocate for the applicant and Joseph Mange, learned advocate for the respondent.

C.K.K. Morris
Judge
November, 1st 2022