

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

MISC. LAND APPLICATION NO. 51 OF 2021

*(Arising from the High Court of Tanzania, at Mbeya in Land Appeal No. 58 of 2018,
Originated in the District Land and Housing Tribunal for Kyela at Kyela in Land
Application No. 6 of 2017)*

MAUDUDI MUSA AMRI TINGWA (Administrator
of the estates of the late Musa Amri Tingwa)**APPLICANT**

VERSUS

KURUTHUM AMRI TINGWA **1ST RESPONDENT**
JAMILA AMRI TINGWA.....**2ND RESPONDENT**
RAMIA AMRI TINGWA.....**3RD RESPONDENT**
SHEHA AMRI TINGWA.....**4TH RESPONDENT**
ZAINAB ADAMU.....**5TH RESPONDENT**

RULING

*Date of last order: 12.11.2022
Date of Ruling: 25.11.2022*

Ebrahim, J.

The Applicant, MAUDUDI MUSA AMRI TINGWA instituted the instant application seeking for this Court to grant an extension of time within which to lodge a notice of appeal and an application for leave to appeal to the Court of Appeal of Tanzania out of time. The application was made under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E

2019 (the AJA). It was supported by an affidavit sworn by Emmanuel Clarence, counsel for the Applicant.

Facts of the case leading to the present application can be briefly narrated as follows; the 5th Respondent, **Zainab Adamu** is the biological mother of Musa Amri Tingwa who was the Appellant in Land Appeal No. 58 of 2018 (Now the deceased, and hereinafter to be referred as such). She is also mother of Kuruthum Amri Tingwa, Jamila Amri Tingwa, Ramia Amri Tingwa, and Sheha Amri Tingwa (the 1st to 4th Respondents respectively). The dispute therefore involves blood relatives i.e brother and sisters together with their mother.

The subject matter of the case is the landed property, a house in Plot No. 407 Block CC Kalumbulu area at Kyela in Kyela District (the suit premises) which was owned by the late AMRI TINGWA who was the father of the parties and husband of the 5th Respondent.

According to the records the late AMRI TINGWA died intestate in 1996. His estates were not legally administered, whereas the suit premises remained in the hands of the family members (the heirs). The dispute arose in 2006 when it came into the knowledge of the Respondents that the deceased had registered the suit premises in his own name without their permission nor informing them. That in the different family

meetings the deceased was assuring the respondents that the suit premises is the property of the family but later on in another family meeting he changed mind and told them that it belongs to him alone alleging that he was given by their father before his demise.

In 2016 the deceased and another person (not a party in the case) one Ally Ernest Kitumbika were appointed as administrators of the estates of the late Amri Tingwa. The deceased resigned from the office before they could fulfil their obligations as administrators, and Sheha Amri Tingwa (the 4th Respondent) was appointed to fill the gap. Again, the two did not accomplish their task due to the alleged unscrupulous habit of the deceased.

In 2017 therefore, the Respondents instituted the application against the deceased and Kyela District Council (not a subject in this application) before the District Land and Housing Tribunal for Kyela vide Application No. 6 of 2017. In the application they prayed for declaration of the suit premises as a family property/forming the estates of the late Amri Tingwa and not the property of the deceased only; the order restraining the deceased from using the proceeds of the suit premises for his own benefit; and the order nullifying the registration of the suit premises in the name of the deceased.

The deceased (the respondent at the trial tribunal) protested the claims and averred that the suit premises was given to him by the late Amri Tingwa since 1982. He thus claimed it as his personal property.

After considering and evaluating the evidence of the parties, the DLHT reached to the conclusion and decided that; the suit premises belonged to the family of the late Amri Tingwa. It nullified the registration in the name of the deceased, ordered the Registering Authority to deregister the deceased and register all heirs (the parties). The DLHT further ordered that the use, sell, transfer, mortgage or otherwise of the suit premises should be determined by all family members according to laws of administration of estates by the proper heirs.

The deceased was dissatisfied by the decision. He appealed to this court vide Land Appeal No. 58 of 2018. The appeal nevertheless, in the judgement dated 21st November, 2019 was dismissed for want of merit as the decision of the DLHT was confirmed.

According to the record, the deceased passed away on 2nd February, 2021 as the result MAUDUDI MUSA AMRI TIGWA (the Applicant herein) was appointed as an administrator of the estates of the deceased. Intending to take over from where the deceased left since 21st November, 2019, the Applicant lodged the instant application on 9th July,

2021. The application was resisted through a counter affidavit sworn by Jennifer Alex Biko.

At the hearing of the application, the applicant was represented by advocate Emmanuel Clarence whereas the Respondents enjoyed the service of advocate Jennifer Biko. It was argued by way of written submissions.

Submitting in support of the application, advocate Clarence adopted the chamber summons and the affidavit to form part of his submissions. In essence, the reasons for extension of time advanced in the affidavit, and as argued in the written submissions are the alleged illegalities of the decision. That the DLHT passed the decision without requiring or inviting the assessors to give opinion at the conclusion of the trial; that one of the assessors gave opinion while he was absent at the commencement of the defence case; and that the assessors cross-examined witnesses. Advocate Clarence argued that illegality of the decision has been considered as good reason for extension of time if well deponed in the affidavit as he did in the affidavit supporting the application. To strengthen his argument, he cited the cases of **Principal Secretary, Ministry of Defence and National Service vs Devram**

P. Valambhia [1992] TLR 387 and in **Kalunga and Company Advocates vs NBC Limited** [2006] TLR 235.

Counsel for the Applicant argued further that it is not always the requirement that the applicant should account for each day of delay and the exception is where illegality is claimed. His argument based on the decision in the case of **Enock Kalibwani vs Ayubu Ramadhani and Others**, Civil Application No. 491/17 of 2018 Court of Appeal of Tanzania at Dar es Salaam (unreported). According to him, failure to invite the assessors to give opinion is an illegality contravening **Regulation 19(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003**; and it is on the face of the record. He referred this court at page 50 of the proceedings. To substantiate his submission, he cited the cases of **Edina Adam Kibona vs Absolom Swebe (sheli)**, Civil Appeal No. 286 of 2017 CAT at Mbeya and the case of **Ameir Mbaraka and Another vs Edgar Kahwil**, Civil Appeal No. 154 of 2015 CAT at Iringa (unreported).

Counsel for the Applicant also raised a concern about the counter affidavit of the Respondent's counsel that it has defect on its verification clause which shows that the advocate deposed the facts founded on

hearsay information. At the conclusion, he implored this court to grant the application.

In reply, counsel for the Respondent resisted the application. She adopted her counter affidavit and submitted that the Applicant has failed to advance reasons for the delay from 21st November, 2019 to 9th July 2021. She argued that the point of illegality not a panacea to all applications for extension of time since the alleged illegality will not be cured in the application for leave to appeal to the Court of Appeal which the Applicant is intending to file. In that regard she relied on the case of **Ibrahim Twahil Kusundwa & Another vs Epimaki S. Makoi & Another**, Civil Application No. 437/17 of 2022 CAT at Dar es Salaam (unreported).

Counsel for the Respondent begged this court to find that all the cases cited by the Applicant's counsel are distinguishable from the facts and circumstances of this application. She also argued that the issue whether or not the Chairman read the opinion of assessors depend on the scrutinizing of the proceedings thus not a pure point of law which can be gathered on the face of the record. Counsel for the Respondent referred this court to its decision in the case of **Rehema Yacuub and Others**

vs Amiri Malema, Misc. Land Application No. 112 of 2018 High Court of Tanzania at Mbeya.

As to the claim that her counter affidavit contains hearsay, she maintained that the verification clause is clear that she received the information from the respondent but she believed it to be true. Further that in case this court finds the verification clause to be defective the same is curable. She referred to the case of **Ramadhani Mikidadi vs Tanga Cement Company Ltd**, Civil Application No. 275/01 of 2019 (unreported).

I have considered the application and the submissions by the counsel for the parties. The issue regarding the verification clause of the counter affidavit in my considered view has not offended the law. This is because counsel for the Respondent has categorically stated the source of the information and has shown that she believes the same to be true. I am inspired by the spirit in the case of **Augustine Lyatonga Mrema & Others vs Attorney General and Others** [1996] TLR 273 cited by the counsel for the Applicant. I therefore, find the complaint unfounded hence dismiss it.

Regarding the merit of the application, it is settled principle in our jurisdiction that extension of time is discretionary power of the court to

be exercised judiciously. The main issue for consideration is whether the applicant has advanced good cause for the delay to warrant grant of this application. The phrase "good cause" has not been defined, but the Court of Appeal in the case of **Kalunga & Company Advocates** Ltd (supra) illustrated factors for consideration like; the length of delay involved, the reasons for the delay, the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion, the conduct of the parties and the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has constitutionally underpinned right of appeal - see also **Ibrahim Twahil Kusundwa & Another** (supra).

In going through the affidavit of the applicant as expounded by his counsel in paras 3, 4, 5 and 6, he did not state reasons for the delay but relied on the reasons of illegalities of the decision, that the assessors in the DLHT were not invited to give their opinion. Another reason is that one of assessors did not participate fully in the hearing of the case but he gave his opinion. Counsel for the Respondent expounded that this is not a pure point of law which can be seen on the face of the record, and that the applicant did not account for each day of the delay.

Undoubtedly, as submitted by both counsel for the parties, the Court of Appeal of Tanzania has underscored that where a point at issue is illegality, the same constitutes sufficient reason for extending time so that the said illegality can be cured. In the same vein, the Court of Appeal has also laid a principle that not every allegation of illegality will constitute a sufficient reason for extending time. The point here being that for an allegation of illegality to constitute a sufficient reason it will depend much on the circumstances of each case. See the guidance in the case of **Tanzania Harbours Authority vs Mohamed R. Mohamed** [2003] TLR 76. Also, in **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

In my concerted view the alleged illegality/illegalities raised by the Applicant's counsel do not constitute a pure point of law on the face of the record to warrant this court to grant the application. In my further view, the delay of about two years without any appealing explanation as to the reason(s) of the delay cannot easily be revived by a mere allegation that the assessors in the trial Tribunal were not invited to give their opinion. The circumstances of this case are akin to those in the

case of **Rehema Yacuub and Others** (supra) in which I observed that:

"In this case, even if I was to consider the issue of illegality or the irregularity of the proceedings for the chairman not reading the assessors' opinion it is not a point of law on the face of the record. The issue would require further arguments and analysis of proceedings on record to establish the position which as stated by the counsel for the respondent cannot be good reason to revive an old case....."

My further consideration has based on the fact that the Applicant is seeking an extension of time to lodge a notice of appeal to the Court of Appeal of Tanzania, and apply for a leave to appeal to the Court of Appeal. It is unwarranted by the Applicant how the alleged illegality can be cured by lodging a notice of appeal or by applying for leave to appeal. I find myself constrained to concur with counsel for the Respondent and follow the holding made in the case of **Ibrahim Twahil Kusundwa & Another** (supra) where the Court of Appeal of Tanzania held that:


*"...an illegality of the impugned decision will not be used to extend time in the circumstance of this case, for, no room will be available to rectify it in the application for stay of execution intended to be filed. **Illegality of the impugned decision is not a panacea for all applications for extension of time. it is only one in situations where, if the extension sought is granted, that illegality will be addressed.**"*

Under these circumstances, I have not been persuaded by the alleged illegalities to lead me to state that they are apparent on the face of the record and thus can be discerned as a good cause for this court to grant the prayers sought in this application.

From the above reasons, the applicant has not demonstrated sufficient reasons for this court to grant the prayed extension of time. Consequently, I dismiss the application with costs.

Ordered accordingly.




R.A. Ebrahim
JUDGE

Mbeya

28.11.2022