

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA**

AT MWANZA

MISC. LAND APPLICATION NO. 117 OF 2021

(Arising from District Land and Housing Tribunal Land Case No. 01 of 2017 at Chato)

MAKOYE MAHUGI MASUNGA.....APPLICANT
(Administrator of estate of the late Makeja Muhoja)

VERSUS

PAULO MAGUTANGI.....1ST RESPONDENT
MISOJI KAJI.....2ND RESPONDENT

RULING

15th & 15th June, 2023

Kilekamajenga, J.

Sometimes in 2002, the second respondent sold a piece of land to the first respondent. The land was owned by the second respondent's husband who died before 2002. The second respondent who desired a new place of living, after the death of her husband, approached the first respondent for the land deal. The first respondent purchased the land at the price of five cows. To seal the agreement, the first respondent paid an up-front of one cow promising to pay the remaining four cows later. However, the applicant's version of the story claims non-payment of the four cows whereas the second respondent alleged to have paid the four cows after quantifying the same in hard cash. Later, the applicant, who calls the second respondent's husband uncle (Baba Mdogo), approached the Primary Court seeking appointment to administer the estates of

the second respondent's husband called Makeja Muhoja. The applicant was granted and immediately filed a suit against the purchaser (1st respondent) and seller (2nd respondent) of the land. This time, the applicant did not want to enforce the agreement between the first and second respondent but prayed to claim back the land in dispute. Precisely, the applicant sought a declaration that the sale agreement between the first and second respondent were illegal and contrary to the law; he also alleged that, the first respondent trespassed into the deceased's land and therefore prayed for vacant possession against the first respondent. The main suit was filed in the District Land and Housing Tribunal for Chato vide Land Application No. 1 of 2017. The trial tribunal explored the records and evidence and found the dispute to be time-barred. The decision of the trial tribunal was delivered on 25/11/2020. Thereafter, there was a span of one year of quietude before the applicant resurfaced with an application seeking extension of time to file an appeal out of time. The applicant amplified the reasons for the delay in his oral submission. He alleged illegality as the trial tribunal was *functus officio* as the case was declared to have come within time by the erstwhile Chairman of the tribunal (Kitunguru) on 31st July, 2017 when determining a point of preliminary objection. In his opinion, it was improper for the later chairman to declare the suit time barred. He further alleged to have fallen sick immediately after the decision of the trial tribunal. He was admitted at Chato Hospital and later visited a witchdoctor for further medical treatment.

The counsel for the first respondent, Mr. Justine Kadaraja rebutted the application due the applicant's failure to account for the delay from the date of decision that is on 25/11/2020 to the date of filing the application that is on 26/11/2021. The expiry of one year has not been accounted by the applicant. Even after leaving the witch-doctor's treatment facility, there is a lapse of one month which has not been accounted for.

When called for a response, the second respondent who was unrepresented and a lay woman had nothing to address the court in connection with the instant application. When solicited for a rejoinder, the applicant insisted that the account for his delay is true and unfeigned.

This court being called upon to enlarge time based on two important issues, illegality and sickness, has to certify whether the same warrant the extension of time. On the issue of illegality, as already hinted, the suit was opposed on the ground of being time barred. The chairman of the tribunal (Kitunguru) declared the suit to have been brought within time and ordered the matter to proceed for trial. In the final verdict of the trial tribunal the later chairman (Mr. Colex) found the applicant's case time barred. I am fully aware, an allegation for illegality may be a ground for extension of time. However, such an illegality must be apparent. In the instant case, the alleged illegality, does not in my view, suffice to warrant

extension of time. Furthermore, the jurisprudence on the doctrine of illegality has further advanced. To constitute illegality, it must touch matters of jurisdiction, denial of the fundamental right to be heard or where the matter was time barred. See the case of **Charles Richard Kombe v Kinondoni Municipal Council**, Civil Reference No.13 of 2019, CAT at Dar es salaam (unreported) I am convinced that the alleged illegality does not befit the ground for extension of time.

Second, the applicant alleged sickness as a reason for the delay. He claimed to have been admitted in hospital after the decision of the trial tribunal. He later sought treatment at a witchdoctor until on 25/10/2021. To boost his argument, he attached a Medical Notification from Chato District Hospital dated 28/02/2021. The same letter declared the applicant to be of good health on that date despite attending Medical treatment since 28/11/2020. In my view, the letter does not justify nor account for the delay from 25/11/2020 until on 26/11/2021. Again, the applicant alleged to have suffered paralysis and attended informal treatment from a witchdoctor called Gamalu Maduka. His argument is supported with an affidavit from Gamalu Maduka and a letter from the Chairman of Nyalwambu hamlet. The affidavit of Gamalu Maduka was sworn on 25/10/2021 and the hamlet chairman also wrote the letter on the same date. It appears as if the applicant garnered evidence to support his delay. I sincerely award little

consideration to the allegation of illness and evidence of attending treatment to a witch-doctor. Under any circumstances, the applicant failed to account the delay of almost a month from the date when he retired from the witch-doctor's authority. The applicant failed to satisfy the legal requirement of accounting for each day of delay see the cases of **Hemedi Ramadhani and 15 Others v. Tanzania Harbours Authority**, Civil Appeal No. 63 of 2001, **AMI(Tanzania) Limited v. OTTU on Behalf of P.L Assenga & 106 Others**, Civil Appeal No. 54 of 2008 and **The Registered Trustees of Bakwata v. The Registrered Trustees of Dodoma General Muslim Association**, Civil Application No. 512/03 of 2019.

I find the application devoid of merit and hereby dismiss it with costs. Order accordingly.

DATED at **Mwanza** this 15th day of June, 2023.



Ntemi N. Kilekamajenga.
JUDGE
15/06/2023



Court:

Ruling delivered this 15th June 2023 in the presence of the applicant, the first respondent and second respondent; also, in the presence of the counsel for the first respondent, Mr. Justine Kadaraja.

Ntemi N. Kilekamajenga.
JUDGE
15/06/2023

