

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**MISC. LAND APPLICATION NO. 38 OF 2023**

*(Appeal from the decision in Land Application No. 34 of 2019 before District Land and  
Housing Tribunal for Singida)*

**MARIAM MAUNGU MUKUKURI.....APPLICANT**

**VERSUS**

**DAUDI AMOS** (as administrator of the estate of the late

**AMOS OMARY KIULA .....RESPONDENT**

**RULING**

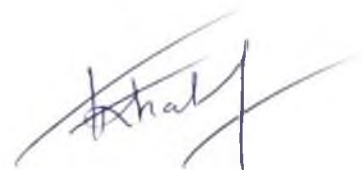
*Date of last order: 26/10/2023*

*Date of Ruling: 5/12/2023*

**KHALFAN, J.**

The applicant filed an application in this court by way of chamber summons, under section 14 (1) of the Law of Limitation Act CAP 89 RE 2019], (hereinafter referred to as the LLA) seeking for the following reliefs namely:

- i) That, this honourable court be pleased to extend time to appeal.*
- ii) Costs of this application be provided for.*



*iii) Any other relief(s) this Honourable Court deems fit and just to grant*

The application is being supported by an affidavit sworn by the applicant herself. On the other hand, the respondent lodged a counter affidavit to contest the application.

By the parties' consensus, the application was disposed of by way of written submissions in which Mr. Lucas Kombe learned advocate represented the applicant while Mr. Jackson Mayeka learned advocate represented the respondent.

Briefly, Mr. Kombe urged the court to grant the prayers sought in the instant application. He argued that in order for the court to exercise its discretion for extension of time there must be sufficient cause as it was pointed out in the case of **Royal Insurance Ltd. v. Kiwengwa Strand Hotel Ltd** Civil Application No. 11 of 2009 as well as in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010 Court of Appeal of Tanzania (both unreported).

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The learned advocate submitted that; the applicant failed to lodge the appeal in time because she is too old hence she was depending on her son but the said son was attending his father (the applicant's husband) who later on passed away.

He submitted that, after the burial ceremony of the applicant's husband, the applicant managed to file Misc. Land Application No. 19 of 2023 seeking for an extension of time but the same was struck out hence she filed the instant application.

Mr. Kombe argued that there are several illegalities on the decision sought to be challenged since there was non joinder of the Singida District Authority as a necessary party. He submitted further that there was no opinion of the assessors recorded as required by section 23(1) of the Land Disputes Courts Act [CAP 216 RE 2019].

The learned advocate insisted on the position of law for allowing extension of time basing on illegality which was expounded in the case of **Ngao Godwin Losero v. Julius Mwarabu** Civil Application No. 10 of 2015 Court of Appeal of Tanzania (unreported) as well as the **Principal**

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**Secretary Ministry of Defence & another v. Devram Valambia** [1991]

TLR 387.

He therefore urged the court to grant the prayers sought.

In reply, Mr. Mayeka argued that in order for the court to grant an extension of time, there must be sufficient reason for the delay as it was pointed out in the case of **Yusufu Same & another v. Hadija Yusufu** Civil Appeal No. 1 of 2002 (unreported). He argued that the applicant has failed to account for each day of the delay since the judgment was delivered on 27/9/2022.

As to the issue of illegality raised by the applicant, he contended that the learned trial chairman invited the assessors to read their opinion and such opinion was taken into consideration in the judgment. He therefore maintained that the allegation that the assessors did not read their opinion is unfounded.

Regarding the issue of non-joinder of Singida District Authority, Mr. Mayeka maintained that it is settled law in terms of Order 1 rule 9 of the Civil Procedure Code [CAP 33 R.E 2022], that non joinder of a party to the suit is not fatal.



He therefore urged the court to dismiss the application for lack of merits.

The applicant did not file any rejoinder.

Having gone through the parties' rival submissions, the sole issue for my determination is whether the applicant has advanced sufficient reason for the court to exercise its discretion for the extension of time.

This application has been preferred under section 14 (1) of the LLA. The said provision provides that:

*Notwithstanding the provisions of this Act, the court may, **for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.*

[Emphasis added].

From the foregoing provision, before the court can exercise its discretion for extension of time, it is imperative for the applicant to show

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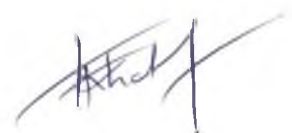
reasonable and sufficient cause. But the provision of the law quoted above does not state what amounts to good cause.

In **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal stated that:

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."*

It follows therefore that what constitutes good cause depends on the circumstance of each case. However, from decided cases, certain factors provide guidance on whether or not the applicant has shown good cause. Amongst the factors to be taken into account were succinctly stated in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, (supra) as follows:


*"(a) The applicant must account for all the period for delay;*



*(b) The delay should not be Inordinate;  
(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and  
(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."*

In the instant matter, going by the affidavit in support of the application the impugned decision was delivered on 27/9/2022. The applicant averred that she is too old and she depends on her son to make follow up of the case. She argued that her son was taking care of his father who however passed away on 8.11.2022. Therefore, after the burial ceremony, time for appealing had already lapsed.

It is without doubt that the applicant being an old woman had to depend on her son. Unfortunately, the said son was taking care of his sick father who passed away sometime later. This to me was a circumstance which was above the applicant's control. Recovering from the loss of her husband, she managed to lodge Misc. Land Application No. 19 of 2023 but the same was struck out for being incompetent.



The said application was struck out on 25/4/2023 and the present application was lodged on 19/5/2023 hardly less than a month after her early application had been struck out. The period which the applicant spent in prosecuting an incompetent application (application No. 19 of 2023) can be termed as technical delay. In the case of **Denis T. Mkasa v. Farida Hamza & another** Civil Application No. 407 of 2020 Court of Appeal of Tanzania at Mtwara (unreported) the Court of Appeal held that:

*"The law is settled that, technical delay constitutes sufficient cause for extension of time, if it is pleaded in the supporting affidavit and sufficient demonstrated by the applicant."*

In another case of **Hamis Mohamed (as the Administrator of the Estate of the late Risasi Ngwale) v. Mtumwa Moshi (as the Administered of the Estate of the late Moshi Abdallah)**, Civil Application No. 407/17 of 2019 (unreported), the Court of Appeal considered a period less than 30 days to be reasonable time as:

*"After the latter application was struck out; the applicant took hardly a month to file the present application seeking for extension of time to file an appeal. In other words, the applicant was diligent all along to file an appeal."* [Emphasis added]





As to the illegality complained of by the applicant, in the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) the court of appeal observed that:

*"In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record straight."*

In the case of **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported) the Court of Appeal reaffirmed the above position wherein it was clearly stated:

*"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."*

Hence going by the above reasons, I find that the applicant has advanced good cause for the court to grant her extension of time. The appeal



should be filed within 30 days from the date of this ruling. In the circumstance, I make no order as to costs as each party shall bear its own costs.

It is so ordered.

**Dated at Dodoma** this 5<sup>th</sup> day of December 2023



  
**F. R. KHALFAN**

**JUDGE**

**5/12/2023**