

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

MISC. LAND APPLICATION NO. 121 OF 2023

(Arising from the Decision of the District Land and Housing Tribunal for Mwanza at Mwanza (Hon. Mayeye, Chairperson) in Misc. Application No. 63 of 2022, dated 21st July, 2023.)

KIDAHADI ILUNDA APPLICANT

VERSUS

VEREDIANA HERMAN 1ST RESPONDENT

IZIDOMINI HERMAN 2ND RESPONDENT

RULING

20th February & 28th March, 2024

CHUMA, J.

By a chamber summons the applicant is seeking the Court's indulgence to extend the time for him to institute an appeal against the decision of the District Land and Housing Tribunal for Mwanza at Mwanza (the DLHT) in respect of Land Appeal No. 63 of 2022. The decision intended to be challenged was handled on 21.3.2023. The matter was determined in the respondent's favor over a 3 ¼ - acre piece of land whose ownership is the subject of the disputants' tug of war.

The application is supported by the applicant's affidavit along with his advocate Mr. Robert Rhobi Neophitus which sets out grounds on which his quest for extension of time is based. The basic reason for seeking the said

extension is centered on the issue of illegality, as contended in the twin depositions of the supporting affidavit.

On the other side, the respondents strongly opposed the application in their counter affidavit.

The hearing of the application was done by way of written submissions. Mr. Neophitus, a learned advocate, represented the applicant while the respondents had the services of Mr. Mhingo, also a learned advocate.

The applicant's counsel commenced his submission by asserting technical delay as a ground constituting an extension of time. He amplified that the previous appeal was filed within time however due to the unfamiliarity with payment procedure and network problems, the applicant couldn't meet the deadline from 15th to 17th September, 2023. Leaning on such an argument, the learned counsel submitted that neither the applicant nor his advocate should be blamed since the situation was beyond their control. He added that the only option the applicant had was to refile the appeal but time was not a good ally. Upon being instructed on 19th September 2023, the learned counsel filed the instant application on 22nd September 2023.

Mr. Neophitus further submitted that the impugned ruling carries some serious irregularities which warrant the extension of time, as the applicant had no *locus standi* to sue the respondents because he sued in his capacity while the property in dispute does not belong to him but rather to his father. There is no evidence suggesting that the applicant were fully appointed as administrators, and the law is to the effect that where there is such kind of scenario led to the proceeding being illegal and the decree cannot be executed. To support this stance the case of **Ramadhan Mumwi Ng'imba Vs. Ramadhan Jumanne Sinda**, Misc. Land Case No. 8 of 2012 was referred to this court.

It is in view thereof that he urged the court to grant an extension of time to file his appeal and for each party to bear its own cost.

In turn, Mr. Mhingo replied that the issue of *locus standi* is belatedly raised because the respondents had no choice except to defend themselves after the applicant instituted the case before the Ngulla Ward tribunal and later filed applications before the District Land and Housing Tribunal. The learned advocate amplified further that the issue of *locus standi* was not one of the grounds of appeal before the DLHT therefore he invited the Court to consider the holding in **Godfrey Wilson Vs. Republic**, Criminal Appeal No.

168 of 2018 (unreported), where the newly raised grounds by the appellant on appeal were not considered at all.

He stated that an extension of time can be granted where sufficient grounds exist and not otherwise. According to him, this was held in the case of **Bakari Abdallah Masudi Vs. Republic**, Cr. Application No. 123/07 of 2018, CAT-Mtwara. However, in the instant application, the Counsel was of the view that the control number expired after the lapse of 14 days and neither the applicant nor his counsel managed to prove any effort taken to seek help from the billing office or IT of the Judiciary. Therefore, the lapse of those 14 days indicated the applicant's sloppiness since no effort was made since the reason adduced by the applicant is not one of the good reasons, and there is no chance of winning. He prayed that the application be dismissed for lack of merit with cost.

In a short rejoinder, Mr. Neophitus argued that whenever illegality is cited then it can be raised at any stage, and the appeal before DLHT was not determined on merit, the applicant was at liberty to reduce or add some ground of appeal. In view thereof, he had the view that **Godfrey Wilson's case** (supra), is distinguishable as the appellate court did not determine the matter on merit, it was dismissed for want of prosecution. Also, the applicant's counsel distinguished the case of **Ramadhan Mumwi**

Ng'imba's case (supra) the same as according to the Electronic Filing Rules of 2018, the person who is responsible for any issue regarding electronic filing is a Deputy Registrar and not a billing officer or IT, and because it was a weekend that why they failed to report the same to the register.

He also opposed the suggestion of sloppiness as amplified by the counsel of the respondents since the applicant acted diligently provided good reason, and also managed to calculate each day of the delay. He prayed that the application be granted.

Having given thought to the chamber summons, affidavits evidence as well as parties' rival submissions, the law is settled that extension of time may only be granted where it has been sufficiently established by the applicant that the delay was with good cause. It also needs to cite no authority that to grant or refuse an extension of time is entirely in the discretion of the Court, however, such powers must be exercised according to the rules of reason and justice as opposed to personal opinions. Factors to be taken into account in applications of the present nature were lucidly expressed by the Court of Appeal in the case of **Lyamuya Construction Co. Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) including; (a) The applicant must account for all period of

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 (d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

I prefer to start my deliberation with the ground of illegality. The question is whether the lack of the applicant's locus standi is an illegality constituting good cause for this Court to exercise its discretion to grant an extension of time. As held in many court decisions, the law is well settled that illegality constitutes a sufficient ground for the grant of an extension of time to appeal. The same stance was held in the case of **The Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambhia** (1992) TLR 182; the Court of Appeal expressed the following:

"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 right"

Of importance too, the ground of illegality is not like an open cheque that whenever it is raised suffices an extension of time. In **Lyamuya**

Construction Co. (supra) , the Court emphasized that such a point of law must be of sufficient importance and apparent on the face of the record which cannot be discovered by long drawn argument or process. Bound by the foregoing decisions and taking into account the affidavit's evidence as well as the applicant's advocate submissions, it seems clear that the question of whether or not the applicant had *locus standi* before the Ward Tribunal and DLHT is not apparent on the record. It attracts reevaluation of evidence to determine whether the suit land truly belonged to the applicant's deceased father hence it was subject to probate and administration of estate laws. I am alive, as submitted by the applicant's advocate, that the issue of illegality of the proceedings before the lower court can be raised at any stage but that may not be the case in the present prevailing circumstances. The point is belatedly raised because the applicant knew very well at the earliest possible but he chose to enforce his right of action against the respondents. In the premises, the ground of illegality must fail.

The remaining part is whether the applicant succeeded in accounting for the period of delay. According to the applicant's counsel, failure to file the appeal promptly was attributed to network problems and the fact that the applicant was unfamiliar with paying the court fee through the control number issued by the bailing officer. I had the opportunity of examining the

affidavit in support of the application but I couldn't find averments supporting the counsel's line of arguments. The assertions made were therefore unsupported as they were words from the bar.

Be that as it may, assuming that the contention of failure to pay the fees due to network problems was properly raised and specifically pleaded in the supporting affidavit, I take the view that the same would not save the day for the applicant as first failed to count on each day of delay from 3.9.2023 to 15.9.2023 and he based on 15.9.2023 to 17.9.2023 whereby it was on a weekend. In the absence of any such evidence, the contention would be lacking in veracity as there were 14 days for the applicant to pay but failed to do so. The applicant has just made a casual argument that he tried to make payment on 15-17.9.2023 but failed and because it was the weekend, he could not be able to meet up with the Registrar. I consider this to be an afterthought which cannot save any legal purpose in this application.

From the above observation, I find the issue raised is answered negatively since the advanced reasons by the applicant are not sufficient grounds to warrant the sought extension. Consequently, the instant application is hereby dismissed with costs.

It is so ordered.

DATED at **MWANZA** this 28th day of March 2024.




W.M. CHUMA
JUDGE

Ruling delivered in court before the applicant and respondents who appeared in person and in the absence of their counsels this 28th day of March 2024.


W.M. CHUMA
JUDGE