

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

**DODOMA SUB REGISTRY**

**AT DODOMA**

**MISCELLANEOUS LAND APPLICATION NO. 13 OF 2023**

(Arising from Land Case Appeal No. 210 of 2019 before the District Land and Housing Tribunal for Dodoma at Dodoma)

**YOHANA MAOPE SUDAYI.....APPLICANT**

**VERSUS**

**NYEMBELE MKOMOCHI.....RESPONDENT**

**RULING**

Date of Last Order: 14<sup>th</sup> March 2024.

Date of Ruling: 5<sup>th</sup> April 2024.

**MASABO, J.:-**

The present application is for extension of time. It has been filed under section 38(1) of the Land Disputes Courts Act, Cap 216 R.E 2019. Its substantive prayer is that, this court be pleased to extend time within which the applicant can appeal against the decision of the District Land and Housing Tribunal for Dodoma (the DLHT). The application is accompanied by an affidavit sworn by the applicant. From this affidavit, the following background to the application is gathered. The applicant and the respondent were parties to an application before Ipala ward tribunal where they were contending over ownership of a parcel of land. The applicant was complainant and the respondent was also a respondent therein. The application ended unsuccessful as it was dismissed. Aggrieved, the applicant appealed to the DLHT in Land Appeal No. 210 of 2019. The appeal was

equally unsuccessful. It was dismissed on 10<sup>th</sup> September 2020. Still aggrieved, the applicant intended to appeal further to this court but he was not timely furnished with the copies of the judgment and decree. Even after several follow-ups, he was not furnished with the same as a registry clerk, name undisclosed, was reluctant to supply him with the copies. He was only furnished with the copies on 7<sup>th</sup> February 2023 and this was after the Registrar of the Tribunal whose name is also undisclosed in the affidavit, intervened after the applicant orally complained to him. When the copies were furnished to him on 7<sup>th</sup> February 2023, the time within which to appeal to this court had already lapsed. Hence, this application praying for an extension of time. The application was opposed by the respondent.

The hearing of the application proceeded by way of written submission. The applicant was represented by Mr. Charles Peter Simon, learned counsel whereas the respondent enjoyed pro bono legal services from the Tanzania Women Lawyers Association (TAWLA).

Submitting in support of the application, Mr. Simon narrated the background of the application as summarized above and submitted that, the delay is excusable as it was not caused by the applicant's negligence. The applicant could not have timely instituted his appeal as the copies of the judgment had not been availed to him. The court clerk was reluctant to furnish him with the respective copies of the judgment and the proceedings. He amplified that, for all the duration between 10<sup>th</sup> September 2020 and 7<sup>th</sup> February 2023, he was in the DLHT's corridors looking for such copies. After he was furnished with the same on 7<sup>th</sup> February 2023, he went ahead to look for a

lawyer who assisted him and on 17<sup>th</sup> February 2023, he managed to file the present application. Thus, the delay was not occasioned by the applicant's negligence.

He argued further that extension of time is within the discretion of this court and is granted upon a good cause for delay being demonstrated as stated in the case of **Mumelo versus Bank of Tanzania** [2006] E.A 227. Based on this authority he argued that it is in the interest of justice that this application be granted as the delay was not occasioned by the applicant's negligence and as per the requirement of section 38(1) of the Land Disputes Courts Act, Cap 33 R.E. 2019, the applicant he has demonstrated a good cause for delay. It was his further argument that, the intended appeal has overwhelming chances of success because there are illegalities in the proceedings and decisions of the ward tribunal and the DLHT. The specific illegalities are that, as stated under paragraph 6 of the affidavit, the coram of the ward tribunal was not properly constituted; the chairman of the DLHT did not give reason for his decision hence contravened the provision of Order XX rule 4 of the Civil Procedure Code cap 33 R.E. 2019. Also, the opinion of the assessors was not obtained prior to the composition of DLHT's decision. Hence, the DLHT's decision was contrary to section 23(2) of the Land Disputes Courts Act.

Fortifying his submission Mr. Simon cited the decision of the Court of Appeal in the **Lyamuya Construction Company Co Ltd vs Board of Registered of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 [2011] TZCA 4 TanzLII and argued that

according to this decision, for an application for extension of time to succeed the applicant must account for the delay, the delay should not be inordinate, the applicant should show diligence in pursuit of the intended action as opposed to negligence and apathy. It may also succeed if it is demonstrated that there is a sufficient reason such as a point of law of sufficient importance such as the legality of the decision intended to be challenged. Concluding his submissions he prayed that the application be granted as the applicant has demonstrated a good cause for delay.

In reply, the applicant submitted that the application lacks merit as the applicant has failed to fully account for the delay of more than two years and for that reason, the delay is inexcusable. He explained that the judgment which the applicant intends to challenge if the present application emerges successful was delivered on 10<sup>th</sup> September 2020 whereas the present application was filed on 23<sup>rd</sup> February 2023 which was more than two years after the date of the judgment.

In rejoinder, Mr. Simon reiterated his submission in chief that the applicant could not have filed his appeal in the absence of a copy of the judgment and proceedings of DLHT. He concluded that the application is with merit and should be allowed. This was the end of the submissions.

On my side, I have carefully considered the submissions alongside the chamber summon, its accompanying affidavit and the counter affidavit filed by the respondent in opposition to the application. As the substantive prayer is for the enlargement of time, the sole question awaiting decision is whether



the application has merit. Since the enlargement of time is sought to enable the applicant to institute an appeal challenging the decision of DLHT in the exercise of its appellate jurisdiction over a decision of a ward tribunal, I will start with the provision of section 38(1) of the Land Disputes Courts Act, Cap 216 R.E. 2019 which regulates such appeals. It states that:-

38.-(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may **within sixty days after the date of the decision or order, appeal to the High Court:**

Provided that, **the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.** [the emphasis is added]

The decision intended to be challenged by the applicant was delivered on 10<sup>th</sup> February 2020. As per the provision above, the appeal had to be filed on or before 12<sup>th</sup> April 2020 but this was not done for the reasons I will revert to in the due cause. The applicant filed the present application two years later on 23<sup>rd</sup> February 2023. Indeed, the provision above clothes this court with the discretion to enlarge the time but as correctly argued by Mr. Simon, such discretion can only be exercised upon a good cause for delay being demonstrated by the applicant. As stated in **Karibu Textile Mills Limited vs Commissioner General, Tanzania Revenue Authority**, Civil Reference No. 21 of 2017 [2021] TZCA 261 TanzLII:-

"It is settled that extension of time is a matter of discretion on the part of the Court and that such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case. Admittedly, it has not been possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion. Nevertheless, the Court has consistently looked at a number of factors such as the reasons for the delay, the length of the delay, whether the applicant was diligent, the degree of prejudice to the respondent if time is extended"

These grounds were expounded further in **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (supra) where it was stated that, the court should take into account such factors as the duration of delay and whether it is inordinate or not; whether the applicant had accounted for each day of delay, whether the delay was not occasioned by the applicant's apathy, negligence or sloppiness in the prosecution of the action that he intends to take and whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged.

In the present case, as already demonstrated above, the delay is for more than two years hence inordinate. The applicant has taken no responsibility for this period. He has placed the blame on the DLHT for its failure to supply him with a copy of the judgment on time. Through paragraph 3 and 4 of the affidavit he deposed that:-

3. That, being dissatisfied by the decision of the District Land and Housing Tribunal I intended to lodge my complaint to the high court by way of appeal. But I failed to obtain the certified copy of the judgment as the registry officers/ tribunal clerks were reluctant to supply me with the said copy so as to see what was within the judgment.

4. That, the applicant lodged oral complaints to the Registrar of the District Land and Housing Tribunal and the said Registrar intervened situation which led the applicant to obtain the certified copy of the judgment on the 7<sup>th</sup> day of February 2023.

Mr. Simon has passionately submitted that the copy of the judgment is an essential document and in its absence the applicant could not draw his memorandum of appeal. I entirely agree with the counsel's reasoning as regards the importance of the judgment in the appeal process. The law is not oblivious to this and has put in place some mechanisms for the protection of litigants who fail to appeal on time owing to the delay in being furnished with a copy of the judgment. Such protection is explicitly stated under section 19(2) of the Law of Limitation Act [Cap 89 R.E 2019], whose gist is to exclude from the computation of time the days which was spent while the applicant was waiting to be furnished with the copy of judgment.

Mr. Simon's submission, implicitly suggests that the applicant herein should benefit from this protection. For the following reason, I am hesitant to extend such protection to the applicant. As stated above, the delay is inordinate. Thus, it was expected that the applicant would bring strong proof



that indeed, for the entire period of more than two years, he was waiting to be furnished with the copy of the ruling but he has failed. His averment that the registry officers/tribunal was reluctant to furnish him with a copy of the judgment and that, he obtained the same after the intervention of the tribunal's registrar attract no weight because not only are the names of such tribunal clerk and the registrar are undisclosed and it is inconsistent with the well-established principle that when an affidavit mentions another person, such other person should swear an affidavit. Dealing with a similar issue in **Mzee Mohammed Akida & Others vs Low Shek Kon & Others** (Civil Application No. 481 of 2017) [2023] TZCA 36 TanzLII, the Court of Appeal stated that:-

It is trite law that where an affidavit in support of a certain material fact mentions another person on that point, that other person should also take an affidavit in support of that fact. See- **Franconia Investments Limited v. TIB Development Bank Limited**, Civil Application No. 270/01 of 2020, **Dianarose Spareparts Limited v. Commissioner General Tanzania Revenue Authority**, Civil Application No. 245/20 of 2021 and **Phares Wambura and 15 Others v. Tanzania Electric Supply Company Limited**, Civil Application No. 186 of 2016 (all unreported). In **Phares Wambura and 15 Others** (supra), the applicants whose application had been struck out for non-appearance, sought for the restoration of the application and one of their grounds was that they were misled by a court clerk and went to the wrong chamber of Justice of the Court before whom they were supposed to appear. In emphasising the need of an affidavit of the court clerk to substantiate the applicants' assertion that they came to Court and that they were so misled, the Court stated that:

*"The applicants' averments therefore remain to be a bare claim with no proof. In the circumstances I agree*



*with the counsel for the respondent that there was a need for the said Court Clerk to swear affidavit to prove what the applicants and their counsel had alleged in their supporting affidavits. ...the Court Clerk could have been useful to substantiate the applicants' assertions of her/his involvement in the matter"*

Therefore, in the present application, for the averments in paragraphs 3 and 4 of the affidavit to attract weight, it was incumbent for the court clerk and the tribunal's registrar to swear affidavits in substantiation of the applicant's assertions. In the absence of such affidavits, the assertions in these two paragraphs have been rendered as mere hearsay and devoid of value.

Turning to the point of illegality which is the second ground, it is a settled law that a claim of illegality of the challenged decision constitutes good cause for the extension of time regardless of whether or not a reasonable explanation has been given by the applicant and regardless of whether the applicant has fully accounted for the delay (see **The Principal Secretary Ministry of Defence and Notional Service Vs. Devram Valambia** [1991] TLR 387 and **VIP Engineering and Marketing Limited and Three Others Vs Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 CA (unreported). Cementing this principle in **Ngao Godwin Losero vs Julius Mwarabu** (Civil Application No.10 of 2015) [2016] TZCA 2099 TanzLII, The Court of Appeal held that:-

"....in the case of **The Principal Secretary Ministry of Defence and Notional Service Vs. Devram Valambia** [1991] TLR 387, it was held thus:-

*"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."*

But, it is noteworthy that in **Valambia** case (supra), the illegality of the impugned decision was clearly visible on the face of the record in that the High Court had issued a garnishee order against the Government without affording it a hearing which was contrary to the rules of natural justice. Incidentally, the Court in the case of Lyamuya (supra) made the following observations:-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted an extension of time if he applies for one. The Court there emphasised that such point of law must be of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process."*

Under the guidance of this principle, I have asked myself whether the purported illegality as deponed under paragraph 6 of the applicant's affidavit has the qualities above stated. In my considered view, it does not because much as the coram of the tribunal is a point of sufficient legal importance, the coram asserted in that paragraph is not of the DLHT whose decision is intended to be challenged if the leave for extension of time is granted. Rather, it is the illegality of the decision of the ward tribunal. Accordingly, in

terms of the principles above, the illegality asserted in paragraph 6 of the affidavit does not and cannot stand as a good cause for an extension of time by this court.

That said, the application fails and is dismissed with costs.

**DATED** and **DELIVERED** at **DODOMA** this 5<sup>th</sup> day of April 2024.



**J. L. MASABO**

**JUDGE**