

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MBEYA SUB-REGISTRY)

AT MBEYA

MISC. LAND APPLICATION NO. 26 OF 2023

NATIONAL BANK OF COMMERCE LTD APPLICANT
VERSUS

OSCAR GREYSON MZAA 1ST RESPONDENT

SAID ENRY JACKSON 2ND RESPONDENT

RULING

Date of Last order: 12/10/2023

Date of Ruling: 06/02/2024

NDUNGURU, J.:

In this application, the Court is being asked to extend time within which the applicant can lodge an appeal from the decision of the DLHT (the trial Tribunal) in Land Application No. 151 of 2019 dated 31st January, 2023. The application is predicated on section 41(2) of the **Land Disputes Courts Act**, Cap. 216 R.E 2019 and the same is supported by the affidavit of the Applicant's learned counsel, namely Mazoea Africa sworn on 17th April, 2023.

The grounds of which appear for extending time to lodge an appeal are set out under paragraphs 6, 7, and 8 of the Applicant's affidavit in support of the application. These grounds are based on failure to notify parties on date of delivery of judgment, illegalities on jurisdiction and time barred. The applicant is praying for the following orders: -

1. That this Honourable Court be pleased to extend time for the Applicant to file an appeal against judgment and decree in Land Application No. 151 of 2019 in DLHT for Mbeya at Mbeya before Hon. Munzerere.

2. Any other order(s) as may be deemed just to grant.

The respondents jointly filed a counter affidavit in opposing the application lodged against them. In this case, the applicant is represented by Mr. Mazoea Africa, a learned advocate, whereas Ms. Scolastica Mapunda, a learned advocate, represented the respondents.

Brief facts of the case culminating this application as can be extracted from the affidavit of the counsel for the applicant that, the Respondents instituted a Land Application No. 159 of 2022 against the Applicant before the DLHT. The respondents were claiming among others;

the order that to be paid back the purchasing price of the landed property in dispute located at Plot No. 606 Block M, Morogoro Road within Mbeya City, which they bought from the applicant in the year 2009.

The hearing of the matter was closed on 08/11/2022 and it was scheduled for reading assessors' opinion on 23/11/2022. On that date the parties were informed that judgment will be delivered upon Tribunal's notice to the parties to appear. Unfortunately, judgment was delivered on 31/01/2023 in absence of the parties. That no notification was initiated to the parties. The judgment was delivered in favour of the respondents. The applicant was aggrieved. The time for lodging an appeal being lapsed led into institution of this application for enlargement of time to appeal to this Court.

The applicant, vide Mr. Mazoea Africa, learned counsel urged this court to grant the application for extension of time to file appeal while in rebuttal, Ms. Scolastica Mapunda, learned counsel for the respondent submitted that there are no reasons advanced to warrant extension of time to lodge the purported appeal. Hearing of this application proceeded by way of written submission.

Submitting in support of the application, Mr. Africa, counsel for the Applicant, contended that the applicant lost a time prescribed by law within which to file an appeal against the impugned decision and decree from the District Land and Housing Tribunal for the reason beyond her control. The assessors' opinion was delivered on 31st January, 2023 and the judgment was fixed upon the parties being notified by the trial Chairman. The parties were informed that the judgment will be delivered upon notice to be served to the parties to appear so as to avoid unnecessary movement from Dar es Salaam to Mbeya.

More effort was made by the counsel for the applicant on when the judgment will be delivered but always the feedback from the Tribunal was that they will be notified the date judgment will be ready. On 29th March, 2023 when the counsel for the applicant entered appearance before the Tribunal for another matter of Tausi vs. Stanbic Bank Tanzania Limited, he was surprised after making follow up that the judgment was delivered on 31st January, 2023 in absence of both parties. In fact, there was neither any notice nor summons informing the parties on the date of the delivery of the said judgment.

The time for appeal was already lapse about twelve (12) days then, he wrote a letter requesting the copies for purpose of appeal. It is settled principle in various decision that the application of extension of time requires a party to show sufficient reason or good cause for a court to warrant extension of time. In **Enock Kalibwani vs. Ayoub Ramadhani and Two Others**, Civil Application No. 491/17 of 2018, CAT at page 11 and 12 it was observed 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."

Failure by the Tribunal to notify the applicant a date fixed for judgment as it was informed during the last date of hearing is among of the reason leads for the delay. The applicant herein was not aware about the date for the delivered of the decision so as he could take necessary step in case of any aggrievance. This delay constitutes a technical delay as it was held in the case of **Forunatus Masha vs. William Shija and Another** [1997] TLR 154.

The applicant made several efforts so as he can take necessary measure upon the impugned decision however all her effort was in vain for the reason beyond her control. Failure by the Tribunal to notify parties on the date of judgment delivery is a serious issue that offend the provision of Order XX Rule 1 of the Civil Procedure Code, Cap. 33 R.E. 2019. It provides that notice shall be given to the parties or their advocates to appear when the judgment is delivered, failure to do so, made unawareness from the parties about when the judgment was delivered so as he can take necessary step immediately hence, amounting to the delay of the intending appeal.

Another good ground for extension of time is that the judgment is tainted with illegalities which warrant the higher court to interfere by way of appeal. The trial Tribunal does not have jurisdiction to entertain the matter. The jurisdiction confined at that time for determination of the recovery of immovable property was within maximum of fifty million (TZS. 50,000,000/-) while the matter during institution was about one hundred and fifty million (TZS. 150,000,000/-). The applicant herein raised unsuccessfully a preliminary objection and the Tribunal proceeded to entertain the matter without ascertain the value of the matter. In **Yanga**

Mhogeja vs. Buzurizuri Gasssoni and 3 Others, Misc. Land Appeal No. 70 of 2018, HCT at Mwanza (unreported) at page 3 and 4 it was observed that;

"Courts that hear and determine the case must have a jurisdiction base on which it caters upon. Merits of the case cannot be found where that court has no jurisdiction. Absence of such jurisdiction not only automatically affects merits but justice as well."

Hearing of the case therefore while the court had no jurisdiction is an illegality which goes to affect merits of the case and justice as well.

The matter was instituted for the claim based on breach of contract for sale. In that regard the matter before the Tribunal was not a land matter rather a breach of contract for sale. The matter offended the requirement of Item 7 of Part I of the Schedule to the **Law of Limitation Act**, Cap. 89 R.E. 2019 which provides that, the suit which are founded on contract should be filed within six years. On that regard parties entered into a contract on 2008/2009 and the breach occurred but the matter was instituted on 2019 more than six (6) years lapse. The Tribunal had no jurisdiction to entertain the matter due to time barred. See, **NBC Limited and IMMMA Advocate vs. Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019, CAT at Mbeya.

This ground of illegality makes the court to consider it for exercising the power to grant an order for extension of time. In **Victoria Real Estate Development Limited vs. Tanzania Investment Bank and 3 Others**, Civil Application No. 225 of 2014, CAT at Dar (unreported) at page 3 and 4 it was observed that;

"...as I understand it, "sufficient reasons" here does not refer only, and is not confined to the delay, rather it is sufficient reasons for extending time, and for this I have to make into account also the decision intending to be appealed against, the surrounding circumstances and the weight and implications of the issue or issues involved."

Also, in **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia** [1992] TLR 185, it was stated that;

"(i) Where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute "sufficient reason" within the meaning of rule 8 of the Rules for extending time.

(ii) 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 alleging illegality be established, to take appropriate measures to put the matter and the record right."

It is settled law that once the illegality is alleged and it is in issue whether a matter of law or on the face of record, the court has duty bound to grant extension of time. He beseeched this court to grant extension of time to appeal.

On her part, Ms. Scolastica Mapunda, vehemently opposed the application for extension of time for the main reason that, no good cause has been established by the applicant for delay. It is settled law that in order the court to grant extension of time, the applicants must show a good cause or sufficient reasons for delay. The delay was attributed by the Applicant's advocate usual behavior in this matter for non-appearance. In the case of **Morris Shapea vs. Rafael Lenassira**, Misc. Land Application No. 45 of 2021 (unreported) where it approved the decision of **Kambona Charles (as Administrator of the estate of the Late Charles Pangani) vs. Elizabeth Charles**, Civil Appeal No. 529/17 of 2019 (unreported), it was observed that;

"Some considerations that have consistently been taken into account by the court in determining if god cause has been disclosed include the cause of the delay involved; the length of 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; the need to balance the interest of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; whether there is point of law sufficient importance such as the illegality of the decision sought to be challenged."

Also, in **Reuben Lubanga vs. Moza Gilbert Mushi, Bach John Mkeu and Loyce John Mkeu (suing through Power of Attorney by Billionaire John Mkeu)**, Civil Application No. 533/01 of 2021 (unreported) which approved the decision of **R vs. Yona Kaponda & Others** [1985] TLR 84 where it was observed that;

"...as I understand it, "sufficient reasons" here does not refer only, and is not confined to delay. Rather, it is sufficient reasons for extending time, and for this I have to take account also the decision intended to be appealed against, the surrounding circumstances, and the weight and implications of the issue or issues involved."

The raised issue of illegality has been already determined by the Tribunal through the preliminary objection raised by the applicant and this Court can not be asked to entertain the same. In **Ally Salum Said vs. Iddi Athuman Ndaki**, Misc. Land Application No. 718 of 2020, (unreported) it was observed that;

"I can insist here that this is an afterthought and a delay tactic by the Applicant since it cannot be used as ground for illegality while the right to appeal was clearly stated and the Applicant failed at his own accord to act within the prescribed time."

It was submitted that, this court should jealously invoke its discretionary power to grant extension of time by not entertaining a mere abuse of the court process to delay justice as was in the case of **Reuben Lubanga** (supra). All the grounds for extension of time reveal nothing but negligence and laxity on the part of the Applicant and her advocate.

The applicant failed to account the days delayed and the requested documents were ready for collection but the Applicant did not take any effort to collect the same from the Tribunal. The applicant has failed to advance good cause for the court to exercise its discretion as it was the position in the case of **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). Also, in **Bushiri Hassan vs. Latifa Lukio Mashego**, Civil Application No. 3 of 2007, (unreported) it was observed that;

"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

The applicant employed a technicality to delay justice to detriment of the respondents bearing in mind that the respondents have not enjoyed the purchased property since 2008. For the reasons herein above and for the interest of justice as well as the grounds adduced in the counter affidavit, they pray this application be dismissed with costs.

In his brief rejoinder written submission, Mr. Africa reiterated what he has submitted in-chief. He insisted that the matter was scheduled for judgment upon notice to the parties. The said judgment was delivered on 31st January, 2023 in absence of all parties without notice. However, several efforts were made including to go to the Tribunal several time asking when the judgment will be ready and always, they were told that they will be notified once the judgment will be ready.

It is settled law that when the court exercising the discretion has to take into account the cause of delay involved. This principle has been discussed in the case of **Kambona Charles** (supra). the cause of delay at the instant matter was attributed by failure of the tribunal to notify the

parties the date the judgment would be delivered. It was difficult to take necessary step immediately upon judgment being delivered hence, the right to appeal was underpinned. The applicant maintained that this application be allowed to extend time to lodge an appeal.

After careful consideration of the facts deposed in the filed Affidavits of the parties respectively, coupled with the detailed arguments made by the learned counsels for the parties together with the picture which comes out I find that the only issue for determination is whether there are sufficient grounds laid for granting this application.

It clear that the appeal from a District Land and Housing Tribunal exercising of its original jurisdiction shall be heard by the High Court. The prescribed time to lodge an appeal before the High Court is within forty-five (45) days after the date of the decision or order. The applicant is applying to this court for enlargement of time to file an appeal against the DLHT decision which was render in favour of the respondents.

It is trite law that a party who seeks to extend time within which to file an appeal has a duty to furnish the Court with any good cause for extension of time in Court. This was the holding of the Court in the case of

Bank M (Tanzania) Limited (supra), the Court of Appeal of Tanzania relied on case of **Zanzibar Telecom Limited vs. Joseph Paschal Sakaya**, Civil Application No. 488/17 of 2016 to observe that the wide and unfettered discretion should be exercised judiciously. The court will exercise its discretion in favour of applicant only upon showing good cause to extend period of limitation for the institution of an appeal as provided under the proviso of section 41 (2) of the **Land Disputes Courts Act**, [Cap. 216 R.E 2019].

In the instant application, the applicant's first reason advanced is that the Tribunal was never notified them on the date of delivery of judgment. That was the circumstances that surrounded the delay of lodging an appeal before the court on time. The applicant's learned counsel urged that failure by the tribunal to notify the applicant on the judgment date is among of the technical issue of delay and serious offending Order XX Rule 1 of the CPC, Cap. 33. The cited provision requires to notify parties or their advocate to appear for judgment when it is delivered.

It is evident that, on 06/12/2022 the tribunal scheduled the delivery of judgement to be on 24/01/2023. Unfortunately, the proceeding of the trial tribunal is silent on that date of delivery of judgment. But the

judgment was delivered on 31/01/2023 without notice to the parties. It is clear that the trial Tribunal lost the control of the proceedings by skipping the scheduled date 24/01/2023. This matter of delivery of judgment without notifying the parties has been discussed in the case of **Awadhi Idd vs. Mayfair Investment limited** [2020] 1 TLR 158 where CAT was held that: -

*"...delivery judgment in the absence of the parties who have no notice of the date of its delivery, renders the judgment inoperative, invalid and ineffective. Also, in **Gillani's Modern Bakery vs. F. J. Kunter** (1954) 21 EACA 123 on the effect of a judgment not delivered in accordance with the law, that is to say; no judgment came into existence which could be appealed against."*

From the decided cases the position is clear that the judgment delivered without notification to the parties is considered as no valid judgment at all has come into existence. Hence, any aggrieved party cannot appeal against a judgment which is delivered in contravention of the law. The matter at hand is clear on record that the judgment was delivered on 31/01/2023 in contravention of the law by failure to notify parties concerning its delivery. It is evident from court records that the

Tribunal lost control of the proceeding after failure to write what transpired on 24/01/2023 when the matter was scheduled for delivery of judgment.

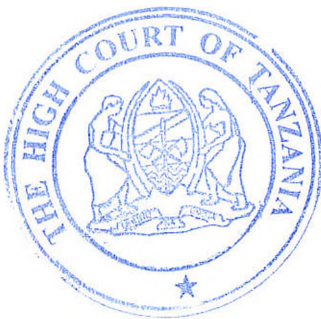
Also, the record is silent on how the matter was scheduled for the date of delivery of judgment on 31/01/2023 while the coram was incomplete at the material date. Apparently, the impugned judgment in the instant application for extension of time to appeal appears to have been delivered by the trial Tribunal without notice to the parties. Be as it may, the record does not indicate what transpired on the date fixed for judgment or any date subsequently scheduled. However, no such notice was made to the parties on the date of delivery of judgment. The applicant has advanced a good ground that can vitiate the validity of the entire proceedings from 06/12/2022 up to subsequent dates of delivery of judgment in term of Order XX Rule 1 of the CPC.

The position of the instant application for extension of time is not maintainable in law because there is no valid judgment to be appealed against at all. The reason is that there is no valid, operative, and effective judgment to be appealed from. This court stands with the wisdom of the Court of Appeal in the case of **Mashishanga Salum Mashishanga vs. CRDB Bank Plc, & 2 Others**, Civil Appeal No. 335 of 2019, CAT at Mbeya

(unreported) which approved the decision of **Gillani's Modern Bakery vs. F. J Kuntner** (1954) 21 EACA 123 on the effect of a judgment not delivered in accordance with the law, that is to say; no judgment comes into existence capable of being appealed against.

On the basis of the position settled above, this application for extension of time to appeal consequently is found to be incompetent and is hereby struck out. In the circumstances each party shall bear its own costs.

It is so, ordered.




D. B. NDUNGURU

JUDGE

10.01.2024