

**UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**HIGH COURT OF TANZANIA**

**BUKOB A SUB REGISTRY**

**AT BUKOB A**

**ORIGINAL JURISDICTION**

**MISC. LAND APPLICATION NO. 71 OF 2024**

*(Arising from the Land Case No. 1 of 2007 of the High Court of Tanzania at Bukoba)*

**1. ALI CHAMANI**  
**2. KINYATA TINDAMANYILE** } ..... **APPLICANTS**  
VERSUS

**1. TANZANIA BUILDING AGENCY** } ..... **RESPONDENTS**  
**2. ATTORNEY GENERAL** }

**RULING OF THE COURT**

Date of last Order: 14/02/2024

Date of Ruling: 02/04/2024

**BEFORE: G.P. MALATA, J**

The applicants herein filed an application seeking extension of time within which to appeal out of time against the decision in Land Case No.1 of 2007. The application is made under section 11 (1) of the Appellate Jurisdiction Act, Cap.141 R.E.2019. The application is supported by affidavit sworn by the applicants, **Ali Chamani** and **Kinyata Tindamanyile**.

In their joint affidavit in support of the application, the applicants stated that, they are applying for extension of time to file notice of appeal and appeal against in land case No 1 of 2007, High Court of Tanzania, Bukoba sub registry delivered on 7<sup>th</sup> December, 2015.

The applicants advanced two reasons for extension of time upon which this court is pleased to act and exercise its discretionary mandate to grant the sought orders. These are; **one**, illegality as stated in paragraph 19 of the applicants' affidavit and **two**, is a technical delay.

This matter came for hearing on 14/02/2024, whereas the applicants appeared unrepresented while the respondents appeared through Mr. Victor J. Mhana learned State Attorney from the Office of the Solicitor General.

The application was argued orally.

Submitting in support of the application, the applicants jointly stated that, the application is grounded on two reasons for delay that is technical delay and illegalities.

In support of technical delay, they referred this court to the position in the case of **Godfrey Ochi Vs. Amos Ndamwesiga Mwijage**, Misc. Civil Application No. 30 of 2022 at page 4 where four conditions need to be established for technical delay to be accommodated. They stated that, Notice of Appeal was timely as stated in paragraph 2 of the Affidavit, however, they failed to file appeal timely as documents were supplied late to the applicants, thence striking it out. That

the applicant applied for leave to appeal to the court of appeal and leave was granted by Hon. Arufani, J. Further, they applied for leave to file notice of appeal out of time which application was granted on 24/10/2018 via Land application No.97 of 2016.

That appeal was filed, however the applicants were told by court clerk that the appeal was invalid as it was filed without record of appeal as such the appeal was strike out for being incompetent on 14/12/2020.

The applicants once again filed notice of motion vide application no.74/04 of 2023 the same was withdrawn by the applicants on 05/12/2023.

Again, the applicant has come to this court seeking extension of time to file notice of appeal relying on technical delay ground in the sense that, all what happened was technical delay thus be considered by this court and find it as good cause for extension of time. They asked the court to base adopt the position in the case of **Godfrey Ochi Vs. Amos Ndamwesiga Mwijage**. They further stated that, what happened was applicants' mistakes emanating from technical delays and not negligence.

As to the ground for illegalities, they submitted by making reference to the case of **Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambhia** (1992) TLR 185 at page 189 where the court of appeal upheld that, illegality is good ground for extension of time. They submitted that,

paragraph 19 of the Affidavit registered illegalities as contained in the impugned judgment. In that regard, they asked the court to find that, the applicants have discharged their legal obligations of showing good cause for extension of time, thus asked the application to be granted.

In reply thereof, Mr. Victoria J. Mhara learned State Attorney resisted the application. He commenced his submission by making reference to the legal position established in the case of **Hamza Sungura Vs. The Registered Trustees of Joy in the Harvest**, Civil Application No. 90 /11 of 2022. The court of appeal discussed on illegalities and principled that illegality must be apparent on face of the record but not by long establishment through long drawing from judgement.

He submitted that, the applicant has duty to demonstrate where those illegalities are found in the impugned decision not stating evasively in the affidavit. The applicants did not point out where those illegality are found in the impugned judgment. What is stated in paragraph 19 of the applicants' affidavit are not linked with the impugned judgement. The issue of Government Notice was not party of the trial proceedings and it do not touch issues of point of law warranting extension of time.

He finally submitted that, the applicants have failed to demonstrate apparently the available illegality, if any, to satisfy that it really exists.

Submitting in support of the technical delay, he stated that, there was no technical delay but negligence of the highest order. That the applicants have failed to account for each day of delay from 11/12/2015 on delivery of judgment to the date of filing the present application 18/12/2023. The applicants have a delay of about eight (8) years which is unaccounted for. This is inordinate delay of the highest order. Mr. Mhana referred this court to the case of **Vodacom Foundation Vs. Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 at page 9 where the court of appeal principled that, it is a duty of the applicant to account for each day of delay.

Further, there is lack of diligence on the party of the applicants in pursuing the appeal. Reference was made to facts pleaded in paragraphs 5, 14 and 16 of Applicant's affidavit they demonstrated nothing but lack of diligence in prosecuting the matter before the court. What lead to striking out of the applicants' cases several times is mistakes or ignorance which demonstrates nothing but negligence and lack of diligence in handling the matter. He cemented the submission by making reference to the case of **Yosia Mankala and Another Vs. The Registered Trustees of ELCT – Northern Diocese**, Misc. Land Application No. 122 of 2022 and in **Mussa S. Msangi and Another Vs Anna Peter Mkomea**, Civil application No.188/17 of 2019 CAT where the court stressed that,

*"Neither ignorance of the law nor counsel's mistake constitute good cause. The Court further held that, lack of diligence on the part of the counsel is not a sufficient ground for extension of time."*

Further, in paragraphs 9 and 10 of the Affidavit by the applicants, mention another person to be the source of information. The Applicants' affidavit is alleging that the delay was caused by court officers who were neither mentioned nor did swear affidavit, thus the application contained hearsay evidence.

It is a well settled principle of law that, an affidavit which mention another person, that person must swear an affidavit to the contrary the affidavit will be hearsay. Refer the case of **Jamillah Hassan Muyonga Vs. Almas Charles Mvungi**, Civil Application No. 199/17 of 2022 at page 4

*"An affidavit which mentions another person is hearsay unless that other person swears as well".*

Finally, he submitted that, the application is devoid of merits, thus need to be dismissed with costs.

By way of rejoinder, the applicants submitted that, throughout they encountered technical delay, thus it was not negligence as submitted by the respondents.

The ground of illegality is not subjected to accounting of days of delay, the party is just required to point out the illegalities. The applicants have vividly pointed and demonstrated illegalities as per paragraph 19 of the affidavit.

Having caught the parties' submissions for and against the application for extension of time, this court has assembled two reasons for extension. These are; **one**, illegality and **two**, technical delays

To start with, in determining an application for extension of time focus for consideration by the court are well settled by overabundance list of authorities by court of appeal, just few shall be cited and referred to. These are; **first**, the case of **Lyamuya Construction Co. Ltd Vs. The Registered Trustees of Young Women Christian Association of Tanzania** Civil Application no. 2 of 2010 CAT (unreported), **Addija Ramadhani (binti Pazi) vs. Sylvester W. Mkama**, Civil Application no. 13 of 2018, where the court principled that;

*(a) The applicant must account for all the 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 the existence of a **point of law** of sufficient importance; such as the **Illegality** of the decision sought to be challenged.*

*(e) the degree of prejudice the respondent stands to suffer if time is extended;*

**Second**, the case of **Elius Mwakalinga vs. Domina Kagaruki and 5 others**, Civil Application no. 120/12 of 2018 (unreported) and added that;

*"A delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing period within which certain steps have been taken."*

**Third**, the case of ***Hamisi Ismail @ Zulu Vs. Republic***, Criminal Appeal no. 205 of 2015 (unreported) the court of appeal held that

*"It is settled that in an application for extension of time, the applicant is duty bound to demonstrate good or sufficient cause for delay. Further, every delay, even if for one day has to be accounted for."*

**Forth**, the case of ***Osward Masatu Mwizarubi vs. Tanzania Fish Processing Ltd***, Civil Application No. 13 of 2010 where 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 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."*

**Sixth**, the case of ***Sebastian Ndaula vs. Grace Rwamafa***, Civil Application No. 4 of 2014 (unreported) where the Court stated 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"*

**Seventh**, if illegality has been pleaded as ground for extension of time, it shall be equally, in additionally be considered in line with; **one**, the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] T.L.R. 387 where the court stated that;

*The Court... emphasized that such point of law, must be that 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.*

**Two**, the case of **Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Reference no. 13 of 2019, where the court of appeal after defining the word "illegality" came to the conclusion that; I quote;

*"From the above decisions, it is our conclusion that for a decision to be attacked on ground of illegality, one has to successfully argue that the court **acted illegally for want of jurisdiction, or for denial of right to be heard or that the matter was time barred**"*

**Three**, illegality must feature to the principles articulated in the case of **Mtengeti Mohamed vs Blantina Macha**, Civil Application No. 344/17/2022 where the court of appeal voiced that;

*It is a principle of equity that, **vigilantibus, non dormientibus, jura subvenient**, that is to say, equity aids the vigilant and not the indolent. By way of explanation, suffice it to say that, as a general rule, the law favours those who exercise vigilance in pursuing their rights and disfavours those who rest on their legal rights by failing to act to protect their rights in a reasonable period of time.*

Also, the principle in the case of **William Kasian Nchimbi and three others v. Abas Mfaume Sekapala and Two Others**, Civil Reference No. 2 of 2015 where the court of appeal held that;

*"...illegality cannot be used as a shield to hide against in action on the part of the applicants. And if I may add, the position set by our previous decisions is that, irrespective of the nature of the grounds advanced by the applicant in support of an application for extension of time, he must as well show diligence, and not apathy, negligence or ineptness in the prosecution of the action that he intends to take. (See **Lyamuya Construction Company Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 of 2000 (unreported))."*

With such a very few referred plethora of authorities, it is clear that, for illegality to be accommodated, it must apparent and touching; **one**, jurisdiction, **two**, time limit, **three**, res judicata, **four**, locus standi **five**, denial of right to be heard and

**six**, other point of law with effect of making the subordinate proceedings and judgement a nullity ab initio, **seven**, raised timely that there must be diligence, and not apathy, negligence or ineptness in the prosecution of the action that he intends to take and **eight**, accounting for delay.

Having tabled the governing principles, I am now in position to discuss on the advanced ground for extension. It is evident that, the applicants have been pushed out from court four times due to filing incompetent proceedings. **First**, on 15/10/2018, the applicants' application was found to be defective however this court granted them with leave to amend affidavit by filing the proper and 24/10/2018 extension of time was granted for the applicants to file notice of appeal out of time, **second**, the applicants managed to appeal however, the court of appeal on 14/12/2020 the court of appeal stuck out the appeal for being time barred, Civil appeal no.47 of 2019, **third**, the applicants made another attempt to the court of appeal via Civil Application no.74/04/2021, on 05/12/2023 they withdrew the application.

In all the four attempts by the applicants, the matter was taken out due to incompetence of the proceeding filed by the applicants. The applicants have once again come to this court seeking extension to file appeal out time for the decision delivered on 07/12/2015 in land case no.1 of 2007. To date, it is almost eight (8) years passed.

The reasons extension of time are illegality and technical delay.

To start with, the ground of illegality. It is evident that, **first**, the alleged illegality in paragraph 19 (i)-(viii) of the applicants' affidavit do not qualify and fall within the principles stated in the case of;

- a. **Charles Richard Kombe vs. Kinondoni Municipal Council**
- b. **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia**
- c. **Lyamuya Construction Co. Ltd Vs. The Registered Trustees of Young Women Christian Association of Tanzania**

The reason for illegality does not touching; **one**, issue of jurisdiction, **two**, time limit, **three**, res judicata, **four**, locus standi **five**, denial of right to be heard and **six**, other point of law with effect of making the subordinate proceedings and judgement a nullity ab initio.

**Second**, the alleged point of law is not apparent and not visible on the face of the record or it is not shown where it exists in the judgement,

**Third**, the allegations were not raised and dealt by during trial court save for stated in item referred to as **First** herein above which can be raised at stage, however, there is none.

**Forth**, the alleged illegality, if any, of which does not exist herein, is also subjected to principles stated in the case of **Lyamuya Construction Co. Ltd Vs. The**

**Registered Trustees of Young Women Christian Association of Tanzania,** as such they failed to discharge the conditions enshrined therein, including raising it timely as stated in the case of Mtengeti **Mohamed vs Blantina Macha.**

*Fifth,* the applicants have failed to account for delay for the entire period of almost eight (8) years as principled by the court of appeal in the case of **Sebastian Ndaula vs. Grace Rwamafa.** even where there is point of law must be raised timely.

The ground for illegality therefore fails based on the afore stated reasons.

As to the ground of technical delay due to the applicants' mistakes in handling the matter, the court of appeal has already propounded the governing principles on the same including the afore cited cases of;

a. **Yosia Mankala and Another Vs. The Registered Trustees of ELCT – Northern Diocese,**

b. **Mussa S. Msangi and Another Vs Anna Peter Mkomea,**

In the said decisions, the court of appeal stated with precision that, the neither ignorance of the law nor counsel's mistake constitute good cause. The Court further held that, lack of diligence on the part of the counsel is not a sufficient ground for extension of time.

The ground for technical delay also lacks stand to survive and qualify as good ground for extension of time in the present case.

To be precise, this court is of the settled opinion that, **first**, for a ground of illegality to be upheld must fall within the issues touching; **one**, issue of jurisdiction, **two**, time limit, **three**, res judicata, **four**, locus standi **five**, denial of right to be heard and **six**, other point of law with effect of making the subordinate proceedings and judgement a nullity ab initio.

**Second**, it must have been raised without undue delay by the applicant, thus fully comply with principles stated in the case of **Lyamuya**, supra. The rationale behind this is that, the applicant cannot just remain silent for the period he so wishes and later come to court to apply for extension of time on the ground of illegality. Everything must be timely raised.

Courts are enjoined not to accord weight to applicant who slumbers over his rights for song long. Sometimes the issue at hand might even have changed its status due to time lapses allowing such litigation will be encouraging old style of doing things which tends to obstruct development in a given nation.

Courts are enjoined not to accord weight to applicant who slumbers over his rights for song long. Sometimes the issue at hand might even have changed its status due to time lapses allowing such litigation will be encouraging old style of doing things which tends to obstruct development in a given nation. This necessitates the court to apply the maxim that; *Interest republicae ut sit finis litium* arises,

meaning that; it is in the interest of the republic that, there should be an end of law suit. The legal principal Interest *republicae ut sit finis litium* enshrines that, It is advantageous to the public that there be an end to litigation. The court cannot open-endedly continue to accommodate and entertain a person who sleeps over his rights. The applicant failed to do so. See also the case of **Mtengeti Mohamed vs Blantina Macha**, supra.

**Third**, there is no apparent illegality on the face of record warranting this court grant what is asked for. See the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia**, supra

**Forth**, the applicants have failed to account for each day of delay for the entire eight (8) years as required by law as echoed in the case of **Sebastian Ndaula vs. Grace Rwamafa**.

**Fifth**, the advanced reason of technical delay is not a good ground for extension of time as stated herein above.

Having said all what I wanted to say, I hereby hold that, the applicants have failed to demonstrate sufficient cause and account for number of days they delayed, rather they successfully demonstrated lack of **diligence** and **apathy** as well as **negligence** or **sloppiness** in the prosecution the case. The pleaded technical delay or mistakes and whatever palatable word one

may baptize do not qualify to be a good ground for delay. See the position in the cases of;

1. **Yosia Mankala and Another Vs. The Registered Trustees of ELCT – Northern Diocese** and
2. **Mussa S. Msangi and Another Vs Anna Peter Mkomea**, (supra)

In the event therefore, this court has nowhere to rely upon in exercising its discretionary supremacies and grant extension of time sought by the applicants.

Consequently, **MISC. LAND APPLICATION NO. 71 OF 2024** for extension of time stands dismissed with cost.

**IT IS SO ORDERED.**

**DATED** at **BUKOBA** this 2<sup>nd</sup> April, 2024.

  
G.P. MALATA

**JUDGE**

02/04/2024

**RULING** delivered at **BUKOBA** this 2<sup>nd</sup> April, 2024.



  
G.P. MALATA

**JUDGE**

02/04/2024