

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO 331 OF 2017
WILBARD KIMARIO.....APPLICANT
VERSUS
JOHN MICHAEL MTUI.....RESPONDENT

RULING

Date of last order: 11/06/2018

Date of Ruling: 03/07/2018

Makuru, J.:

The Applicant Wilbard Kimario has moved this court under **section 38(1) of the Land Disputes Courts Act, Cap 216 RE 2002** seeking for extension of time within which to file an appeal against the decision of the District Land and Housing Tribunal of Kinondoni (DLHT). The application is supported by an affidavit deposed by the Applicant.

Mr. Tibanyendera learned counsel appeared for the Applicant and Mr. Ngudungi represented the respondent. The application was argued by written submissions.

Submitting in support of the application Mr. Tibanyendera stated that, the time to appeal elapsed while the Applicant was awaiting to be supplied with copies of judgment and decree against which he intends to appeal. In his further submission the learned counsel contended that, there are material errors in the judgment of DLHT which renders the decision of DHLT and that of the Ward Tribunal void.

It is Mr. Tibanyendera's contention that this court is vested with full mandate and powers to grant an extension of time upon being satisfied with the reasons for delay in lodging the appeal in time. He also argued that the court may grant an extension of time where there are material irregularities or illegalities on the face of record which renders it necessary for an appeal. He cited the case of **Principal Secretary Ministry of Defence and National Services Vs Devram Valambia** (1992) TLR 185 to support his contention. The learned counsel also cited the cases of **VIP Engineering and Marketing Limited & Others vs Citibank Limited**, CAT Consolidated Civil References No 6, 7 and 8 of 2006 (Dar es Salaam Registry, unreported) and **Omary Shabani Nyambu Vs Dodoma Water and Sewerage Authority**, CAT Civil Application No. 146 of 2016 (Dar es Salaam Registry, unreported)

In reply thereto Mr. Ngudungi cited the provisions of section 38 (1) of the Land Disputes Courts Act, Cap 216 RE 2002 and argued that, in appeals originating from the Ward Tribunal there is no need to attach copies of judgment, decree and proceedings. It is the learned counsel's further contention that, the issue of illegality is an afterthought as the question of jurisdiction has never been raised in the course of proceedings. In support of his argument Mr. Ngudungi cited the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, CAT Civil Application No 2 of 2010 (Arusha Registry, unreported) in which the Court reiterated the following guidelines for the grant of extension of time:-

"(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.

Mr. Ngudungi concluded that, the Applicant is represented by an advocate who is conversant with the requirements of the law and procedures, thus his negligence cannot be a ground for extension. The case **Textile Industries Limited (1983) Vs Pyraliesmail Premji** (1983) TLR 28 was cited in support thereof. In rejoinder Mr. Tibanyendera reiterated his submission in chief.

In determining this application, I will be guided by the Court of Appeal decision in the case of **Ngao Godwin Losero Vs Julius Mwarabu**, CAT Civil Application No. 10 of 2015 (Arusha Registry, Unreported) whereby Mussa J.A had this to say:

"As a matter of general principle that whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice."

The learned Justice of Appeal went further to cite the case of **Mbogo Vs. Shah** [1968] EA where the defunct Court of Appeal for Eastern Africa held thus:-

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the

length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended”

In the instant case, the reasons for the delay are that copies of judgment, decree and proceedings were not supplied on time and there are illegalities in the decisions and proceedings of the lower Tribunals.

The decision of the DLHT was delivered on 27th July, 2016 and this application was filed on 2nd May 2017 more than 300 days. The law under section 38(1) of Cap 216 (supra) provides the time limitation for appeals originating from the Ward Tribunal to be 60 days. Subsection 2 of the same section requires the application to be made by way of petition. For the purpose of clarity I will reproduce the same as hereunder:

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 (Land Division).

Provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.

(2) Every appeal to the 'High Court (Land Division) shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision, or order of which the appeal is brought.

Reading between the lines of subsection 2, it does not stipulate the requirement of attaching copies of judgment, decree and proceedings. Therefore, the Applicant's contention that the delay was caused by failure to obtain the necessary documents in time is untenable.

As for the issue of illegality, I agree with Mr. Ngudungi that it is an afterthought. I say so because the issue was never raised in the DLHT, the first appellate Tribunal. Hence, I cannot take the same as an apparent illegality on the decision which is intended to be appealed against.

To this end, I am satisfied that, the Applicant has failed to advance sufficient reasons to be granted an extension of time. I hereby dismiss this application with costs.



C.W. Makuru

JUDGE

03/07/2018

Court: Ruling delivered in Court this 03rd day of July, 2018 in the presence of the Applicant in person and Ms. Jacqueline Kulwa, learned counsel for the Respondent.



C.W. Makuru

JUDGE

03/07/2018