

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO.67 OF 2018**

(Arising from the District Land and Housing Tribunal for Kinondoni at Kinondoni  
in Misc. Land Application No. 705 2017)

**JIMMY CORNEL APSON ..... APPELLANT**

**VERSUS**

**MWAJUMA HASSAN KIFUNDO ..... RESPONDENT**

**JUDGMENT**

*Date of Last Order: 17.09.2021*

*Date of Judgment: 23.09.2021*

**A.Z.MGEYEKWA, J**

The appellant, Jimmy Cornel has lodged this appeal against the Ruling of the District Land and Housing of Kinondoni in Misc. Land Application No.705 of 2017 dated 19<sup>th</sup> April, 2018. The material background facts to the dispute are not difficult to comprehend. I find it fitting to narrate them, albeit briefly, in a bid to appreciate the present appeal. They go thus: Mwajuma Kifundo, the

respondent filed suit at Mbezi Juu Ward Tribunal in Land Case No. 147 of 2014 claiming that the respondent has restrained her to proceed with the construction process and the appellant forcefully claimed repossession of land and that the respondent denied to appear before the street leaders. The respondent did not show appearance trial tribunal, therefore, the trial tribunal decided to determine the matter and in the end, it decided in favour of the respondent. Dissatisfied, the appellant preferred to file an appeal before the District Land and Housing Tribunal, however, he found himself out of time therefore he filed an appeal out of time. The matter was determined by the appellate Chairman and he dismissed the applicant's application for extension of time after noting that the applicant had not to state any sufficient reasons for his delay. Therefore the application to file an appeal out of time was dismissed.

Believing the decision of the District Land and Housing Tribunal for Kinondoni was not correct, the appellant lodged an appeal containing two grounds of appeal as follows:-

- 1. That, the trial Chairman of the tribunal erred in law and fact by ruling out that the appellant herein above failed to state sufficient cause for the delay*

*to file an appeal against the judgment of Mbezi Juu Ward Tribunal which was delivered on 26<sup>th</sup> August, 2016.*

- 2. That the trial Chairman erred in law and fact by failure to extend time for the appellant hereinabove to appeal against the judgment of Mbezi Juu Ward Tribunal delivered on 26<sup>th</sup> August, 2016 being on illegalities on the Ward Tribunal Judgment.*

When the matter was called for hearing before this court on 19<sup>th</sup> August, 2021, the appellant was absent and the respondent had the legal service of Mr. Rajabu Mlondoko, learned counsel. Hearing of the appeal took the form of written submissions, preferred consistent with the schedule drawn by the Court whereas, the appellant's Advocate filed his submission in chief on 31<sup>st</sup> August, 2021 and the respondent's Advocate filed his reply on 10<sup>th</sup> September, 2021 and the appellant's Advocate filed a rejoinder on 17<sup>th</sup> September, 2021.

Mr. Matata, learned counsel for the appellant in his written submission, on his first ground, the appellant opted to prefer an appeal before District Land and Housing Tribunal after noting that the trial tribunal had no pecuniary jurisdiction to determine the matter. The learned counsel went on to state that the appellant realized that the period within which to prefer an appeal had already lapsed,

hence filed a Misc. Land Application No. 705 of 2017 be the District Land and Housing Tribunal for Kinondoni at Mwananyamala seeking for extension of time to appeal out of time. The learned counsel for the appellant went on to submit that despite of the visible illegalities in the said decision, the appellant's efforts to determine the appeal on merit proved futile since, on 19<sup>th</sup> of April, 2018 when the District Land and Housing Tribunal for Kinondoni at Mwananyamala delivered its ruling that the appellant failed to show sufficient cause of his delay. Mr. Matata submitted that it has been a long-held principle of law that it is the duty of all officers of the Court to observe, determine and satisfy the Court on the issue of jurisdiction before the determination of any matter. Otherwise, the Court will render to issue a judgment and decree which is null and void ab initio if determined without the jurisdiction.

He went on to submit that granting extension of time is discretionary power, but such powers should be exercised judicially. Insisting, Mr. Matata submitted that there is no doubt that the appellant is challenging the issue of the jurisdiction of the Ward Tribunal which is a pure point of law. He added that where the Court of law determines a matter without jurisdiction the same amounts to illegality. To bolster his position he cited the case of **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 182.

The learned counsel for the appellant did not end there, he also cited the cases of **Arunaben Chaggan Ministry Versus Naushead Mohamed Hussein and Others**, Civil Application No. 6 of 2016, the Court of Appeal of Tanzania reiterated the position in the case of **VIP Engineering and Marketing Limited v Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2008 (unreported) it was stated as follows: -

*"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes "sufficient reasons, within the meaning of Rule 8 of the Rules for extending time."*

The learned counsel for the appellant also referred this court to the case of **Attorney General v. Consolidated Holding Corporation and Another**, Civil Application No. 26 of 2014, it was stated thus: -

*"With regard to the last point contentions as to illegality or otherwise of the challenged decision have now been accepted as good cause for extension of time"*

He went on to submit that fact the applicant pleaded that the Court entertained the matter in which it had no jurisdiction, that itself should have been sufficient to grant the application and allow the appellant to be

heard. He ended by stating that the applicant's application does not prejudice the Applicant but also the judicial officers of the Court.

In reply, the learned counsel for the applicant started with a brief background of the facts which led to the instant application which I am not going to reproduce in this application. He argued that following the dismissal of the matter, on 11<sup>th</sup> September, 2017, the appellant filed an application for extension of time in the Kinondoni District Land and Housing Tribunal, Misc. Land Application No. 705 of 2017. This application was heard and determined on 19<sup>th</sup> April, 2018 in favour of the Respondent whereas the tribunal dismissed the application for failure by the appellant to state sufficient cause for the delay.

On the first ground of appeal, the learned counsel for the respondent referred this court to paragraphs 9, 10, and 11 of the appellant's affidavit in support of his application for extension of time. He argued that the appellant tried to convince the appellate tribunal that the delay in lodging the appeal was caused by a lack of awareness of the existence of the proceedings in the trial tribunal and the judgment thereof. He added that the appellant said that he became aware of the said proceedings and the judgment on 5<sup>th</sup> September, 2016 when served with respondent's written statement of defense in Land Case No. 220 of 2016.

The learned counsel for the respondent contended that the appellant in his submission in this Court has come with a different story which is not even contained in his affidavit in support of his appeal.

The learned counsel for the respondent strongly opposed this ground on for the reasons that, first the decision of the Ward Tribunal was delivered on 31<sup>st</sup> March, 2015 and not 26<sup>th</sup> August, 2016 as purported by the appellant, second, the learned counsel for the respondent argued that it is not true that appellant becomes aware of the existence of proceedings in the Ward Tribunal and the judgment made thereon on 05<sup>th</sup> September, 2016. Insisting, he claimed that the record of the trial tribunal shows that the appellant was made a party in the Ward Tribunal and he gave his testimony on 21/11/2014. It was his view that thus, he cannot complain that he was not aware of the proceedings in the trial tribunal. He submitted that there is no explanation for the delay except lack of due diligence on the part of the Appellant. To fortify his submission he cited the cases of **Athumani Tashid v Boko Owner** (1997) TLR 146 and **Salum Sururu Nabahani Versus Zahor Abulla Zahor** (1988) TLR 41.

Submitting on the issue of illegality, the learned counsel for the respondent disputed that the appellant alleged in his affidavit that the cause of the delay was the pending suit at the High Court. He stated that the decision of the Ward Tribunal was delivered on 31<sup>st</sup> March 2015, and the statutory period of 45 days

for preferring appeal expired on 14<sup>th</sup> May, 2015. Stressing, he argued that as per the record, the appellant filed at the High Court a Land Case No. 220 of 2016 on 13<sup>th</sup> July, 2016 almost one year, and the days were not accounted for.

He went on to submit that the appellant became aware of the judgment of the Ward Tribunal on 05<sup>th</sup> September, 2016 when served with Respondent's written statement of defence in Land Case No. 220 of 2016, and still the appellant failed to account for one year and six days of delay from 05<sup>th</sup> September, 2016 to 11<sup>th</sup> September, 2017 when the application for extension was filed in the Tribunal. To support his position he referred thus court to the case of **Lyamuya Construction Company Limited v Board Of Turstees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported). In

Arguing for the second ground of appeal, the learned counsel for the respondent argued that he Appellant is not denying that his intended appeal is out of time. He went on to state that it is a rule of law that a party seeking Court to extend time for him to any act that person has a duty to prove that there were sufficient reason which made him unable to take necessary step he ought to take within its statutory period. He submitted that if this application will be allowed on mere ground of illegality then the appellant will be left to benefit from the delay which he has failed to account for. He further submitted that the argument that

trial tribunal entertain the matter without jurisdiction is devoid of merit. To buttress his position he referred this court to the case of **Lyamuya Construction Company Limited (supra)** such illegality must be apparent on the face of the record. He claimed that the issues jurisdiction raised by the appellant is one which would need some long drawn argument to discover them.

On the strength of the above submission, he urged this court to dismiss the appeal with costs.

In his rejoinder, the learned counsel for the appellant reiterated his submission in chief.

After a careful perusal of the submission made for the appeal by the appellant and the respondent and after having gone through the court records, I have come to the following firm conclusions. In determining this appeal the main issue calling for determination is ***whether the appeal is meritorious.***

I have opted to address the first and second grounds together since they are intertwined. The appellant complained that the trial Chairman erred in law and fact by ruling out that the appellant failed to state sufficient reasons for the delay and failed to consider the issue of illegality as a ground for extension of time. The position of the law is settled and clear that an application for

extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter affidavit, the learned counsel for the appellant has shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decision of the trial tribunal. The applicant's Advocate in his submission before the appellate tribunal raised two main limbs for his delay, ordinary delay, and illegality. I have opted to address the second limb. The applicant alleges that the decision of the trial tribunal is tainted with illegality.

The illegality is alleged to reside in the decision of the trial tribunal, on paragraph 12 the applicant stated that he had overwhelming chances of success since the trial tribunal had no jurisdiction to determine the matter. The learned counsel for the applicant also in his submission before the appellate tribunal urged the appellate tribunal to consider that the applicant has a strongly arguable case on the appeal since the Ward Tribunal had no jurisdiction to entertain and award the claim which the value exceed Tshs.

3,000,000,000/= since the trial tribunal ordered the respondent to pay a total sum of Tshs. 26,250,000,000/= as the outstanding purchasing price of the suit premises and the price of the suit premises was Tshs. 50,000,000.00. He added that the Ward Tribunal is limited to disputes related to the landed property with a pecuniary jurisdiction of Tanzania Shillings Three Million only.

The legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same may constitute the basis for extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** (supra) 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 is established, to take appropriate measures to put the matter and the record straight." [Emphasis added].*

Similarly, in the cases of **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, CAT-Civil Application No. 6 of 2016

(unreported) and **Lyamuya Construction** (supra), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-

*"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 Vaiambia'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 extension of time if he applies for one.*

***The Court there 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."***

*[Emphasis added].*

Applying the above authorities, it is clear that the ground of illegality that has been cited by the appellant touches on jurisdiction. The first appellate tribunal addressed and analysed the ground of illegality and ended by saying that that the issue of jurisdiction was a ground of appeal. I am not in accord with the Chairman of District Land and Housing Tribunal that jurisdiction is a ground of appeal in exclusion of ground for extension of time and the learned counsel for the respondent that the issue of illegality needs a long time to

discover. In my view, the raised illegality bears sufficient importance, and its discovery does not require any long-drawn argument or process, it is on the face of the record. Jurisdiction is a point of law, it can be raised at any stage and the same constitute a good ground for extension of time.

In my considered view, this point of illegality meets the requisite threshold for consideration as the basis for enlargement of time and that this alone, weighty enough to constitute sufficient cause for extension of time. Based on the foregoing analysis I am satisfied that the above-ground of illegality is evident that the application for extension of time before the appellate tribunal had merit. I find no need to determine the first ground since the second ground suffice to determine the appeal. Therefore, I proceed to allow the appeal and order the appellant to institute his appeal before the District Land and Housing Tribunal for Kinondoni. No orders as to costs.

Order accordingly.

Dated at Dar es Salaam this date 23<sup>rd</sup> September, 2021.



  
A.Z.MGEYEKWA

**JUDGE**

23.09.2021

Judgment delivered on 23<sup>rd</sup> September, 2021 in the prences of Ms. Rahel Savumbo, learned counsel holding brief for Mr. Rjabu, learned counsel for the respondent in the absence of the appellant.



A.Z.MGEYEKWA

**JUDGE**

23.09.2021