

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

**MISC. LAND CASE APPLICATION NO. 81 OF 2019**

(Arising from Land Case No. 236 of 2008)

<b>1. SALIM MWBWANA</b> <b>2. ZENA SHABANI</b> <b>3. AQTHUMANI SHABANI</b> <b>4. HALIMA ABDALLAH</b>	}	..... <b>APPLICANTS</b>
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**VERSUS**

**CAROLINE JOHN MCHECHU** [as Administrator of the  
Estate of the Late **JOHN MCHECHU**] ..... **RESPONDENT**

**RULING**

Date of Last Order: 29/04/2021 &  
Date of Ruling: 11/06/2021

**S.M KALUNDE, J:-**

In this application, the applicants are seeking an order for extension of time within which to lodge an application to set aside an *ex-parte* judgment and decree of this Court in **Land Case No. 236 of 2008** delivered on 16<sup>th</sup> July, 2015. The application was preferred under **section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2019 ("the LLA")** and by a joint affidavit of the applicants.

In response, the applicant filed a counter affidavit, vehemently denying the applicants allegations and objecting to

the grant of the application on the ground that, the applicants were negligent in prosecuting their defence leading to the decision sought to be challenged.

The application was disposed by way of written submissions. The applicants' submissions were drawn and filed by **Mr. Stephen Ndila Mboje**, learned advocate and the respondent enjoyed the legal services of learned counsel **Mr. Joseph Y. Mbogela** in drawing and filing her submissions. Submissions in Chief and reply submissions were filed on time. However, the applicants, understandably so, did not file a rejoinder, because it was indeed within their choice.

I have carefully considered the submissions for and against as offered by the parties. My task now is to resolve the merits or otherwise of the present application.

It is apparent on the records that, the impugned decision in was delivered on 16<sup>th</sup> July, 2015. In accordance with the schedule to the LLA, the application to set aside the ex-parte judgment in Land Case No. 236 of 2008 was supposed to be filed at least within thirty (30) days from the 16<sup>th</sup> July, 2015. He did not do so, and being late, he filed the present application on 06<sup>th</sup> February, 2019, almost four years later.

The present application is predicated on section 14 (1) LLA. The section reads:

*"14.-(1) Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an*

*application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

Emphasis added

The wording of the above quoted section is clear that, for extension of time to be granted the applicant must demonstrate that there is reasonable or sufficient cause to extend the period of limitation for the institution of an application to set aside the ex-parte judgment.

In the affidavit filed in support of the application, the applicant's main ground for extension of time is that there is an illegality in the decision sought to be challenged. In his submissions the counsel for the applicant, Mr. Mboje, insisted that the Court must first extend time and subsequently, an illegality would be put to the attention of the Court. As I am aware that is not the position the law on the matter. The position of the law was summarized in **Tanzania Harbours Authority vs. Mohamed R. Mohamed**, Civil Appeal No. 80 of 1999 (unreported) where it held that:

*"Admittedly, this Court has said in a number of decisions that time would be extended if there is an illegality to be rectified. However, this court has not said that time MUST be extended in every situation. Each situation has to be looked at its own merits. In this case the defence has been grossly negligent and surely cannot be heard now to claim that there is a point of law at stake."*

The law is also settled that, for an illegality to be considered it must be an important point of law and must be apparent on the face of records such as the question of jurisdiction; not one that would be discovered by long drawn argument or process. See **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, Court of Appeal (unreported). The position of law is that, when the alleged illegality is not apparent on the face of records, then an order for extension of time would not be granted. In **Elias Masija Nyang'oro & Others vs Mwananchi Insurance Co. Ltd** (Civil Appl. No. 552/16 of 2019) [2021] TZCA 61; (02 March 2021)

*"The reason behind being that the claimed illegality is not apparent on the face of record and therefore does not meet the settled threshold. (See **The Principal Secretary Ministry of Defence and National Service v. Devram Valambia** [1991] TLR 387). Therefore, find that the points of illegality raised by the applicants do not constitute good cause warranting extension of time sought."*

In the present case no apparent illegality was advanced by the counsel for the respondents, the plain allegations of illegality remained unsubstantiated. As was in **Tanzania Harbours Authority** (supra), the defence counsel in this case was grossly negligent in failing to file a defence when they were duly served, a decision was entered against them. Surely claims of illegality are

a mere afterthought, and cannot be entertained. In the circumstances, the applicants cannot be heard now to claim that there is a point of law at stake. Certainly not after an elapse of four years, and without an apparent illegality being stated.

Although not conversed by their advocate, the applicants through paragraphs 5, 6, 7 and 8 of the affidavit, had alleged that the delay in pursuing their case was due to failure to raise fund to file the present case. The position of the law is well settled that financial constraint is not a sufficient ground for extension of time. This view was taken in **Zabitis Kawuka vs Abdul Karim**, (EACA) Civil Appeal No. 18 of 1937 cited with approval in **Yusufu Same & Another vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported).

For the forgoing reasons, I hold that the applicant has not explained away every day of the delay or good reason to warrant the Court to exercise its discretion to grant the enlargement sought. Accordingly, the application is dismissed with costs for lack of merit.

**Order accordingly.**

**DATED at DAR ES SALAAM this 11<sup>th</sup> day of JUNE, 2021.**



  
**S.M. KALUNDE**

**JUDGE**