

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO. 538 OF 2021**

*(Arising from Land Application No. 366 of 2018 28<sup>th</sup> May, 2020, Hon. M.  
Mgulambwa, Chairperson)*

**ABDALLAH RASHID SAID..... APPLICANT**

**VERSUS**

**AMINA SHAMTE KAHANDO .....1<sup>ST</sup> RESPONDENT**

**ABDALLAH WAZIR SAHIBA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 10.05.2022*

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**A.Z.MGEYEKWA, J**

This ruling is in respect of an application for an extension of time to lodge an appeal out of time against the decision of the District Land Housing Tribunal in Land Application No. 366 of 2018. The application, preferred

under the provisions of section 41 of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deposed by Abdallah Rashid Said, the applicant. The applicant has set out the grounds on which an extension of time is sought. The 1<sup>st</sup> respondent has stoutly opposed the application by filing a counter-affidavit deposed by Amina Shamte Kahando, the 1<sup>st</sup> respondent.

When the matter was called for hearing on 10th May, 2021 when the matter came for hearing, the applicant enlisted the legal service of Mr. Hamisi Katundu, learned counsel and the respondents enjoyed the legal service of Mr. Richard Shilamba, learned assisted by Mr. Burhani Kishenyi, learned counsel.

In his submission, in support of the reference, Mr. Katundu urged this court to fully adopt the affidavit and form part of his submission. He submitted that the District Land and Housing Tribunal decision was delivered on 28<sup>th</sup> May, 2020 and before the expiration of 45 days the applicant on 22<sup>nd</sup> June, 2020 wrote a letter requested for copies of the Judgment. Mr. Katundu went on to submit that he received the copies on 24<sup>th</sup> July, 2020 and found himself out of time to lodge an appeal at the District Land and Housing

Tribunal. The learned counsel for the applicant went on to submit that later, the applicant fall sick and went to the hospital on 3<sup>rd</sup> August, 2020 to Boresa Traditional Medicine Health Center for treatment.

Mr. Katundu continued to submit that thereafter the applicant traveled to Zanzibar for further treatment and after his return, he filed a Misc. Application No. 347 of 2021 was struck out for being incompetent. Mr. Katundu added that on 5<sup>th</sup> October, 2021 the applicant filed the instant application. Insisting, Mr. Katundu submitted that the main reason for the applicant's delay to lodge the application was because he was sick and undergoing traditional treatment, due to technical and there is a ground of illegality. On technical delay, Mr. Katundu submitted that only 5 days elapsed from the date when the first Application was struck out to the date when the applicant lodged this application in court. He added that within 5 days 2 days are weekends and the applicant used 3 days to hire an Advocate.

Regarding the ground of illegality, Mr. Katundu claimed that the District Land and Housing Tribunal proceedings are tainted with illegality. He. He claimed that the respondents sued the buyer without joining the vendor while he was a necessary party to the application. The learned counsel

submitted that illegality is a good ground for extension of time. To buttress his contention, he cited the cases of **CRDB (1996) Limited v George M. Kilindu**, Civil Application No. 162 of 2006, and **Shabir Tayabali Essaji v Farida Seifuddin Tayabali Essaji**, Civil Application No. 206/06 of 2020.

In conclusion, Mr. Kitundu urged this court to grant the applicant's application for an extension of time to allow the applicant to file an appeal out of time with costs.

In reply, Mr. Richard strongly opposed the applicant's contention. While seeking to adopt the contents of the counter-affidavit against the application, Mr. Richard hastened to conclude that the applicant has failed to meet the requirement of the law in the matter related to the extension of the law. Mr. Richard argued that the applicant was required to state the cause of the delay, account for the days of delay and the length of the delay. He submitted that the applicant failed to account for the days of delay from 24<sup>th</sup> July, 2020 when he received the copies of Judgment up to 19<sup>th</sup> July, 2021 the date when he filed the first Application No. 357 of 2021.

Mr. Richard went on to submit that the applicant wrote a letter requesting copies of Judgment and Decree a month later without stating the reasons

for his delay. The learned counsel for the respondents claimed that the applicant has not accounted for the delay of one year. To bolster his submission he cited the cases of **Durra Abeid v Honest Swai**, Misc. Civil Application No. 182 of 2017 and **Motto Matiko Mabanga v Ophir Energy PLC & 2 others**, Civil Application No. 463/01 of 2017.

Mr. Richard contended that the reason for treatment raises doubt because there was no any medical records. He submitted that medical records are good scientific proof of sickness. To fortify his submission, he made reference to the case of **Nowa Shibanda v Mwajuma Makonde**, Misc. Land Appeal No. 34 of 2019. He valiantly claimed that there is no any proof that the applicant traveled to Zanzibar and attended further treatment. To support his submission he cited the case of **Abdul Issa Bano v Mauro Daolio**, Civil Application No. 563/02/2017. Mr. Richard lamented that the applicant's technical delay cannot compared to the delay of one year which he was supposed to file an appeal before filing his previous application was struck out.

The learned counsel for the respondents contended that there is no any illegality involved in the District Land and Housing Tribunal decision. He

claimed that illegality is not a good cause for an extension of time. To buttress his contention, Mr. Richard cited the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010. Mr. Richard prays for this court to dismiss the application with costs.

In his submission, Mr. Kishenyi contended that the applicant was required to state the ground of illegality in the affidavit and the illegality must be related to jurisdiction and the law of limitation. He argued that not every illegality is a point of law. He claimed that the vendor and buyer were parties to the case and the respondent was a trespasser. He added that the applicant's vendor was called to testify in court. He strenuously contended that the raised illegality does not fit as a ground of illegality. Stressing on the ground of technical delay, Mr. Kishenyi submitted that this ground of delay cannot stand since the applicant has failed to account for the days of delay of one year.

In rejoinder, Mr. Hamisi maintained his contention that the vendor was a necessary party to join the matter. He added that the applicant vendor claimed that he is the lawful owner of the suit land. He distinguished the

cited case of **Noah** (supra) by stating that in the cited case there was no any medical record while in the instant application there is a medical record.

Having carefully considered the submissions made by the learned counsels in their oral submission and examined the affidavit and counter affidavit, the issue for our determination is ***whether the application is meritorious.***

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.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga & another**, Civil Application No. 6 of 2001,

**Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter affidavit, Mr. Khamis has shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decision of this court. The applicant's Advocate has raised three main limbs for the applicant's delay, accounting for days of delay, technical delay, and illegality. In regard to accounting for days of delay and technical delay, I have to state from the outset that the applicant has not accounted for the days of delay.

As rightly pointed out by the learned counsels for the respondents the applicant has not accounted for the days of delay from the date when he received the copies of Judgment and Decree to the date when the applicant filed the first Application in Misc. Land Application No. 357 of 2021. Also, the ground of medical records or sickness was not supported by any documentary evidence. In my view, the applicant's illness was supposed to be scientifically proven by a medical record as stated in the case of **Nowa**



**Shibanda** (supra), otherwise, the mere averment by the applicant that he was sick is insufficient reason to justify his lateness in filing the appeal.

Concerning the ground of technical delay, a technical delay is explicable and excusable in the cases of **Salvand K.A Rwegasira v China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006, **Bank of Tanzania Ltd v Enock Mwakyusa** Civil Application No. 520/18 of 2017 (unreported), **Zahara Kitindi & Another v Juma Swalehe & 9 others**, Civil Application No. 4/05 of 2017, **Samwel Kobelo Muhulo v National Housing Corporation**, Civil Application No. 302/17 of 2017 (all unreported) and the landmark case of **Fortunatus Masha v William Shija & Another** (supra) in which the Court of Appeal of Tanzania held that:-

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which only involved **technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted**. In the present application, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances, an extension of time ought to be granted." [Emphasis added].*

Applying the above position of the law and the submissions of the learned counsels for the respondents, it is crystal clear that the ground of technical delay cannot hold water for the main reason that, there was a delay of approximately one year before the applicant lodged the Misc. Land Application No.357 of 2021. Therefore this ground cannot hold water. Subsequently, the applicant's ground on technical ground and accounting for each day of delay are disregarded.

The other limb for the delay, the applicant's counsel alleges at the decision of the District Land and Housing Tribunal is tainted with illegality. On his side, the learned counsels for the respondents claimed that the tribunal decision is not tainted with illegality and the raised illegality is not a fit ground for illegality.

On their side, the learned counsels for the respondent opposed the application, they argued that there is no any illegality in the alleged impugned Judgment. In his submission, Mr. Kishenyi stated that the alleged illegality is not a fit point of law.

It has been held in times without number that where illegality exists and is pleaded as a ground the same as well constitute a good cause for an

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) and **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** (supra) the Court of Appeal of Tanzania page 89 held that:-

*"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].*

Applying the above authorities, it is clear that the ground of illegality that has been cited by the applicant resides in the powers exercised by the District Land and Housing Tribunal in hearing the application whereas the vendor of the respondent was required to join the matter as a necessary

party. 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, is weighty enough to constitute sufficient cause for extension of time.

In sum, based on the foregoing analysis I am satisfied that the above ground of illegality is evident that the present application has merit. Therefore, I proceed to grant the applicant's application to lodge an appeal within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 10<sup>th</sup> May, 2022.

  
A.Z. MGEYEKWA  
**JUDGE**  
10.05.2022

Ruling delivered on 10<sup>th</sup> May, 2022 in the presence of Mr. Hamisi Katundu, learned counsel for the applicant, Mr. Richard Shilamba and Mr. Buruhani Kishenyi, learned counsels for the respondents.

  
A.Z. MGEYEKWA  
**JUDGE**  
10.05.2022