

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

AT DAR ES SALAAM

LAND APPEAL No.385 OF 2023

*(Arising from the decision of the District Land and Housing Tribunal for Bagamoyo in
Misc. Land Application No.146 of 2022, delivered on 25th August 2023)*

RAPHAEL A. MLAY.....APPELLANT

VERSUS

MUHARAMI S. MTWIKU.....RESPONDENT

JUDGMENT

19th February, 2024 & 20th March, 2024

L. HEMED, J.

In this appeal, **RAPHAEL A. MLAY**, the Appellant is beseeching this Court to set aside the Ruling of the District Land and Housing Tribunal for Bagamoyo, refusing to grant extension of time for him to set aside the dismissal order against Appeal No 58 of 2016 dated 15th September 2016.

Initially, the Appellant lost in *SHAURI* No.13/2016 at Vigwaza Ward Tribunal against **MUHARAMI S. MTWIKU**, the Respondent herein who was found to be owner of the suit landed property. Aggrieved by the said trial Ward Tribunal's decision, he appealed to the District Land and Housing



Tribunal for Coast Region, at Kibaha (by then covering Bagamoyo area as well). His appeal was registered as Land Appeal No.58 of 2016.

On 13th July 2016, the Appellate Tribunal ordered the appeal before it to be argued by way of written submissions. According to the filing schedule, the Appellant was to file his Submissions in chief by 27th July 2016; Reply submission ought to have been filed on or before 18th August 2016; and Rejoinder if any was expected to be lodged by 4th August 2016.

The Appellant failed to file his submission as ordered even after being granted extension of time. On 15th September 2016, the Appellate Tribunal opted to dismiss the said Appeal for want of prosecution.

On 27th December 2022, after at least five (5) years from the date of dismissal, the Appellant herein registered Misc. Application No.146 of 2022 at the District Land and Housing Tribunal for Bagamoyo (DLHT), seeking for extension of time to file Application to set aside the dismissal order of Land Appeal No.58 of 2016. After scrutiny of the application before it, the DLHT found no good cause for the delay to have been demonstrated and proceeded to dismiss it. Aggrieved by the said ruling, the Appellant is here before this Court challenging the same on the following grounds:-



"1. **THAT**, trial appellate tribunal erred both in law and fact by dismissing the application while the applicant had advanced sufficient reason for the application to be granted.

2. **THAT**, the appellate tribunal erred in both law and fact basing on the reason that the appellant failed to proof the issue of frustration and stressed by mere words without considering that the appellant to his submission attached medical shit from Mhimbili National Hospital and it is revealed in the tribunal file records.

3. **THAT**, the trial chairperson erred in both law and fact in deciding the matter in favour of the respondent without addressing the issues of illegalities of the decision to be challenged upon the grant of the application which was addressed by the appellant to large extent.

4. **THAT**, the appellate tribunal erred in both law and fact in by dismissing the application without knowing in doing so will allow the decision that would be required to stand as it to stand. (sic)

5. **THAT**, the appellate tribunal erred in both law and fact in deciding the matter in favour of the



respondent for failure to address the arguments raised and submitted by the parties.

*6. **THAT**, the appellate tribunal erred in both law and fact in dismissing the application for total failure to address the arguments submitted by the appellant."*

From the above grounds, the Appellant prays for judgment and Decree thus:-

- i. This honourable Court may be pleased to allow the appeal by setting aside decision of Bagamoyo District Land and Housing Tribunal.
- ii. This Honourable Court be pleased to allow the extension of time to be filed to the appellate tribunal.
- iii. Costs of the appeal to be borne by the respondent.

By the orders of this Court, the matter was argued by way of written submissions. **Mr. Frank Ntuta**, learned advocate represented the Appellant while the Respondent enjoyed the service of **Ms. Maureen Ndunguru**, learned counsel.



By the time the file was placed before me for purposes of composing this judgment, there was only the submissions in chief. The efforts to trace if the respondent filed his reply submissions proved futile. This ruling is thus based on the submission in chief which was presented for filing by the Appellant.

As aforesaid, this Appeal challenges the ruling of the trial Tribunal to dismiss the application for extension of time to lodge an application to set aside the dismissal order of Land Appeal No.58 of 2016. According to the record of the trial Tribunal, Misc. Application No.108 of 22 was presented under section 14(1) of the Law of Limitation Act,[Cap.89 R.E 2019] which provides thus:-

*"... 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..." (Emphasis added).*

The above provision requires the applicant seeking for extension of time to demonstrate reasonable and sufficient cause for the delay. The words 'reasonable or sufficient cause' do not have the statutory definition.



In **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No.13 of 2010, the Court of Appeal stated thus:-

"What constitutes good cause cannot be laid down by any hard and fast rule. 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."

The question is therefore, whether or not the Appellant had demonstrated good cause that the District Land and Housing Tribunal failed to consider.

In respect of the 1st, 3rd, 4th, 5th and 6th grounds of Appeal which have been argued collectively, the learned counsel for the Appellant asserted that the ground of illegality of the judgment of the trial Tribunal was raised in the application but could not be considered by the trial chairman. In his view, the judgment of the Ward Tribunal was tainted with illegality, as the same had no jurisdiction of the matter which was before it, with the pecuniary value of Tshs. 50,000,000/=. He put reliance on the



decision of the Court of Appeal of Tanzania in **Ajene Donatila Ruambo v. Evans Benson and Another**, Misc. Civil Application No.970 of 2018, where it was held that alleged illegality constitutes sufficient reason for extension of time.

I am at one with the learned counsel for the Appellant that illegality has become one of the grounds which if properly demonstrated it may be used to extend time. However, for illegality to stand as sufficient cause, it should be apparent on the face of record/impugned decision. This is because every party who intends to appeal against any decision or order, will base his appeal on either point of law or fact. If it is generalized that every allegation of illegality, no matter how sweepingly it is, should be considered as ground for extension of time, then, by implication every appeal or application on point of law will automatically be granted extension as a matter of right. In my view, the ground of illegality as pointed out in various decisions, was not intended to create a hiding bush for sloppy and negligent persons. The Court of Appeal in **Tumsifu Kimaro (the Administrator of the Estate of the late Eliamini Kimaro) v. Mohamed Mshindo**, Civil Application No.28/17 of 2017, emphatically stated thus:-



*"...such point of law must be that of sufficient importance and, **I would add that it must be apparent on the face of the record,...not one that would be discovered by long drawn argument or process.**" (Emphasis added)*

In respect to the instant matter, I managed to go through the records, read the judgment of the ward Tribunal for Vigwaza and the affidavit of the appellant that was deponed to support the application before the DLHT. In fact the allegation of the ward Tribunal to have no pecuniary jurisdiction could not apparently be seen on the face of the judgment. It requires long drawn argument or process. In that regard, the point of illegality could not in anyway be a sufficient ground for extension of time. The 1st, 3rd, 4th, 5th and 6th grounds of appeal are short of merits. They deserve to fail.

In the 2nd ground of appeal, the Appellant has raised the ground of sickness. It was argued that the applicant did not take action within time to set aside the said dismissal order because he was faced with mental frustration leading to blood pressure. According to the counsel for the



Appellant, medical report from National Muhimbili Hospital was attached and revealed before the DLHT. This assertion prompted me to peruse the affidavit that was deponed by the Appellant to support Misc. Application No.146 of 2022. The said affidavit had 19 paragraphs; none of them had an averment of sickness. In the said affidavit there were five (5) Annexure, RM-1 up to RM-5 and among the five annexures, there is no any medical report from any court, let alone the Muhimbili National Hospital.

I am aware that sickness is a good ground for extension of time however, it has to be proved by evidence establishing not only that the Applicant was sick but also that his sickness happened at a time when the Applicant was supposed to take action in respect of the matter which he seeks extension of time for. Before the trial Tribunal there was neither fact averred in the affidavit supporting the application nor evidence annexed to the affidavit to substantiate the allegations. From the foregoing, I find no merits in the 2nd ground of appeal.

When I was going through the records of the DLHT I realized that the Land Appeal No.58 of 2016 was dismissed for want of prosecution on



15th September 2016, the Application for extension of time for its restoration was presented on 27th December 2022, almost after six (6) years. In the affidavit and the submissions that were presented before the DLHT, the Appellant never accounted for each day of the delay. In other words, nothing was said as to what the appellant was doing for the entire period of six(6) years. In **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, the Court of Appeal of Tanzania laid down the following guidelines in deciding whether or not to grant extension of time, to wit:-

" (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 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."*



In the present matter, the delay for six(6) years without taking any action against the impugned dismissal order was unequivocally inordinate. The applicant never accounted for each day, week, month and year of the delay. This implies that the Appellant was sloppy and negligent in taking against the dismissal order.

In the final analysis, I find no merits in the appeal. The trial Chairman was justified to dismiss the application for extension of time to file application to set aside the dismissal order against Land Appeal No.58 of 2016. The entire appeal is hereby dismissed with costs. Order accordingly.

DATED at DAR ES SALAAM this 20th March 2024.




L. HEMED

JUDGE