

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 1939 OF 2024

(Arising from Land Application No. 33 of 2006 of 2021 at the District Land and Housing Tribunal of Temeke at Temeke)

MOHAMED MWALIMU (Administrator of the estates of

the late YUSUFU KILAMBO SAID APPLICANT

VERSUS

KULWA SALUM KANJOVU.....1ST RESPONDENT


YUSUF SHABANI MATIMBWA.....2ND RESPONDENT

Date of last order: 17/4/2024

Date of ruling: 29/4/2024

RULING

A. MSAFIRI, J.

The applicant have lodged the present application by way of chamber summons under Section 14(1) of the Laws of Limitation Act, Cap 89 R.E 2019, and Section 41(2) of the Land Disputes Courts Act, Cap 216 and Section 95 of the Civil Procedure Code, Cap 33 R.E.2019. He prays for an order of the Court for extension of time within which he can file an appeal against the decision of the District Land and Housing Tribunal of Temeke at Temeke (herein trial Tribunal) in Application No. 33 of 2006 dated 09/10/2008. 

The application was supported by an affidavit deposed by the applicant himself. The same was contested by the 2nd respondent who filed the counter affidavit deposed also by himself. The applicant also filed a reply to counter affidavit. The 1st respondent did not contest the application and he informed the court in writing that he does not object the application.

By leave of the Court, the application was heard by way of written submissions whereby the applicant's submissions in support of the application was drawn and filed by Mr. Mashaka Ngole, learned advocate and the 2nd respondent's submission contesting the application was drawn and filed by Mr. Mutakyamirwa Philemon, learned advocate.

In his written submission in chief, Mr Ngole stated that the grounds for making this application are stated in the affidavit in support of the application and prayed that the contents of the said affidavit be adopted to form part of his submissions. He said that according to Section 14(1) of the Laws of Limitation Act, and Section 41(2) of the Land Disputes Courts Act, the court may grant the extension of time for lodging the intended appeal where there is a sufficient cause.

Mr Ngole cited numerous case authorities to cement his submission.

Among the cited cases is the case of **Victoria Real Estate Limited vs.**

Tanzania Investment Bank and 3 others, Civil Application No. 25 of

2014 where it was held that:-



"What constitute good cause cannot be laid down by any hard and fast rules. The term good cause is a 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".

Mr Ngole submitted further that in the cited case of **Victoria Real Estate Limited (supra)**, the Court of Appeal observed further that:-

".....sufficient reasons here does not refer only and is not confined to the delay. Rather it is sufficient reasons for extending time, and for this; I have to take into account also the decision intended to be appealed against, the surrounding circumstances and the weight and implications of the issues or issue involved"

The counsel for the applicant submitted that the applicant has adduced and pleaded three grounds of illegality as the sole ground for consideration by the court. The first ground is that the trial Chairperson committed a serious illegality when he closed a defence case upon default in appearance of the then respondents Kulwa Kanjovu and Mohamed Mwalimu on 14 May 2008.

The second illegality is that the sitting assessors did not give out their opinion before the Chairman reached the judgment while the assessors has actively participated in the proceedings and hearing of the application. The third illegality, the counsel claimed that the opinion of

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the assessors are not reflected in the record. That since the assessors never gave their opinion before the judgment was composed, then their opinions are not reflected in Land Application No. 36 of 2006. That this has rendered the entire proceedings a nullity. These three illegalities are also reflected in the affidavit of the applicant at paragraph 13 of the same. He prayed that the application be granted.

In reply, Mr. Mutakyamirwa, counsel for the 2nd respondent submitted that all what the applicant has submitted in her affidavit are lies. He said that in the 2nd respondent's counter affidavit he has stated that the applicant and the 1st respondent has instituted several proceedings in the High Court and the Court of Appeal upon termination of Land Application No. 33 of 2006. That all the applications were terminated. He added that in reply to the counter affidavit, surprisingly, the applicant has simply averred that he did not take part in the said proceedings.

Mr Mutakyamirwa submitted further that the affidavit of the applicant is tainted with lies and the effect of that is that it cannot be relied upon. To cement this point, the counsel cited the case of **Bashir Ally vs. Anyegile Andendekisye Mwamaluka & 2 others**, Civil Appeal No. 49 of 2021. He invited the court to expunge the applicant's affidavit.

On the issue of illegality, the counsel for the 2nd respondent submitted that the Court of Appeal has expounded that the illegality should be

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apparent on the face of record and it should be ascertained without a long drawn argument. He referred the court to the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women Christian Associations**, Civil Application No. 2 of 2010 (unreported) where it was held that the illegality should be apparent on the face of record.

He argued that the application lacks legal basis and it should be dismissed with costs.

The counsel for the applicant rejoined and contended that the affidavit and reply to the counter affidavit by the applicant does not contains lies as claimed by the counsel for 2nd respondent. That the applicant was never a party to the Land Appeal No 75 of 2009. The counsel stated that the attached documents referring to Land Appeal No. 141 of 2008 and Petition of Appeal on Land Appeal No 75 of 2009 does not qualify to be court records unless certified by the court where it was lodged and should be accompanied by a letter from the court indicating that it was supplied to the 2nd respondent.

On grounds of illegality, the counsel submitted that it is clear in the affidavit of the applicant that the source of the alleged illegality were directly extracted by the applicant from the judgment and proceedings of the said case. He added that the illegality complained of is clear

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manifested from the proceedings and the judgment. He reiterated his prayers.

As correctly observed by the counsel for both parties, the extension of time is purely the court's discretion. However for the court to exercise its discretion for extension of time, good cause must be shown. It follows therefore that the applicants are required to demonstrate good cause before the court can grant an extension of time.

However, what constitutes good cause has not been defined in the provisions of law but has been set under case law in a number of decisions. In the said decisions a number of factors have to be considered before the court can exercise its discretion and grant the sought extension of time. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant and if there is existence of the point of law of sufficient importance such as the illegality of the decision sought to be challenged. (See the case of **Lyamuya Construction Company Ltd (supra)**)

It follows then that the issue for determination in the application at hand is whether the applicant has demonstrated good cause for this Court to exercise its discretion and grant the orders sought.

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I have read the contents of the affidavit and the reply to counter affidavit all in support of the application along with the submission by the counsel for the applicants in Court. It is clear that the major reason advanced by the applicant is the existence of illegalities in the impugned decision as pointed in paragraphs 13 of the affidavit.

In the case of the **Attorney General vs. Emmanuel Marangakisi (As Attorney of Anastansious Anagnostou) & 3 others**, Civil Application No. 130 of 2019, the Court of Appeal reiterated its position which has been set in numerous cases and held that:-

"In our jurisdiction the law is settled that where illegality is an issue in relation to the decision being challenged, the Court has a duty to extend time so that the matter can be looked into".

See also the case of **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1992] T.L.R 185.

By the above principle, the reason of illegality is taken as a sufficient cause for extension of time.

However, for this principle to apply, such point of law/illegality must be of sufficient importance and must also be apparent on the face of record, not one that would be discovered by a long-drawn argument or process.

In the case of **Lyamuya Construction Company Limited (supra)**, the Court of Appeal made observation that;

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*"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 VALAMBIA'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 the sufficient importance and, **I would add that it must 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 is mine).*

Guided by the above observations by the Court of Appeal, I have read the claimed illegalities as stated in the affidavit of the applicant. It is my view that what are claimed as illegalities are actually grounds of appeal. I say so because the claimed illegalities are not apparent on face of record and they need to go through the evidence to ascertain them. They can be ascertained by long drawn arguments between the parties. It is my finding that the illegalities pointed by the applicant does not qualify to be termed so and hence cannot be sufficient cause for extension of time.

Another reason which was advanced by the applicant is that since the delivery of judgment until this year, the applicant has been indisposed (suffering from partial paralysis) caused by old age and stress to the extent that he was not able to pursue his right of appeal against the judgment and he was undergoing traditional treatment at home.

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However, I find this reason needs the evidence to corroborate it as it is based on mere words of the applicant without any other support. The applicant said that he was getting treatment at home but there could have been affidavit from those people who were treating him because as per his claim, he has been sick since 2008 when the impugned judgment was delivered until this year 2024, all the time receiving treatment from home. This claim is too imaginary to be believed on the applicant's allegations only.

From foregoing reasons, I find that the applicants have failed to demonstrate sufficient reasons for this Court to grant the extension of time sought. It follows then that this Application has no merit and it is hereby dismissed with costs. Right of further appeal explained.

It is so ordered.



A. Msafiri

A. MSAFIRI

JUDGE

29/4/2024