

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

**MISC. LAND APPLICATION NO. 639 OF 2023**

*(Originating from Land Application No. 261 of 2012 of the District Land and Housing Tribunal for Ilala at Mwalimu House by Hon. JM. Bigambo Chairperson)*

**DEMAS MUTANI NYABUKIKA ..... APPLICANT**

**VERSUS**

**ELIZABETH SIMON MWAKAPANGALA**

*(As Administratrix of the late Said Shomari)* ..... **1<sup>ST</sup> RESPONDENT**

**LINANIEL AMOS ..... 2<sup>ND</sup> RESPONDENT**

**SALUMU ALLY ..... 3<sup>RD</sup> RESPONDENT**

**MAGOGO YUSUF ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

*16<sup>th</sup> November, 2023 & 8<sup>th</sup> January, 2024*

**L. HEMEDI, J**

**DEMAS MUTANI NYABUKIKA** is the Applicant in the instant Application which has been preferred under section 41 (2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019]. The Application is against, **ELIZABETH SIMON MWAKAPANGALA** (Administratrix of the estate of the late Said Shomari), **LINANIEL AMOS, SALUMU ALLY** and **MAGOGO**



**YUSUF**, the respondents herein. The orders sought by the Applicant are as follows: -

- 1. That, this honourable court be pleased to extend time within which the Applicant may can (sic) file an Appeal against the decision of he District Land and Housing Tribunal for Ilala at Mwalimu House 6<sup>th</sup> floor, in Land Application No. 261 of 2012 delivered on 12/6/2020 before Hon. Bigambo, JM Chairman.*
- 2. Costs of this application be in the cause (sic )*
- 3. Any other relief (s) this honorable court may deem just and equitable to grant"*

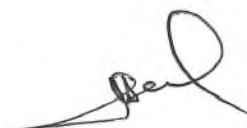
The application which has been supported by the affidavit of the Applicant, **DEMAS MUTANI NYABUKIKA**, is challenged by the 1<sup>st</sup> Respondent through the counter affidavit of one **ELIZABETH SIMON MWAKAPANGALA**. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents did not appear of file counter affidavits despite being duly served, including by Publication in Mwananchi Newspaper of 1<sup>st</sup> November 2023. The matter proceeded *ex parte* against them.



The Applicant was at all the time appearing in person while the 1<sup>st</sup> respondent was duly represented by **Mr. Daniel Oduor**, learned advocate. From this reason, when the matter was called on 16<sup>th</sup> November, 2023 the court directed to be argued by way of written submissions. Parties Complied with the directives of the court as they promptly filed their submissions.

The Applicant herein was also the Applicant in Land Application No. 261 of 2012 before the District Land and Housing Tribunal for Ilala. The respondents were also respondents in the said case before the trial Tribunal. Having deliberated on the matter, the trial Tribunal through its Judgment delivered on 12<sup>th</sup> June, 2020 dismissed both the original suit and the counter claim.

According to the affidavit deposed by the Applicant, he was seriously aggrieved by the decision of the District Land and Housing Tribunal, but he could not file the Appeal in time as he suffered a serious stroke since 2011 and has not fully recovered to date. He also asserted that on 25<sup>th</sup> July, 2022 he wrote a letter to the Registrar of the High Court (Land Division) seeking for his intervention but the DR advised him to appeal.

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He further stated that the Judgment of the trial Tribunal is tainted with irregularities and illegalities. It was also insisted that, apart from sickness, the delay was caused by "lack of money" to engage the services of a private advocate. According to him, from 17<sup>th</sup> August, 2022 when he received a reply from the Registrar, he was struggling to look for legal aid in respect of the present application.

The 1<sup>st</sup> Respondent refuted all the assertions made by the Applicant. In general, it has been contended that the delay in appealing against the impugned decision was resulted out of negligence on the part of the applicant.

As afore said, this application is for leave to lodge an Appeal out of time. It has been brought under Section 41(2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] which provides this

*"An Appeal under subsection (1) may be lodged within  
forty five days after the date of the decision or order.*

*Provided that, the High Court may, **for the good  
cause, extend the time for filing an appeal** either*



*before or after the expiration of such period of forty five days.*"[Emphasis added]

The word "good cause" has not been defined by any statute including the Land Disputes Courts Act (supra). Having not been defined by statutes or rules, it cannot be laid by any hard and fast rules but is dependent upon the facts available in case-by-case basis. Principally, extension of time is in the discretion of the court which is judicial. Therefore, such discretionary power must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily.

In **Lyamuya construction Company Limited vs. Board of Registered Trustee of Young Women's Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal of Tanzania laid down the following guidelines in determining applications like the one at hand: -

- "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 he 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."*

From the foregoing, the question for determination in the instant case is whether the applicant has demonstrated good cause to warrant the Court to grant extension of time as prayed. The applicant in this matter has relied on the following grounds in seeking leave for extension of time: -

1. Sickness of the applicant.
2. Illegalities and irregularities and
3. Lack of fund to engage an advocate.

Let me start with the ground of sickness. I am aware that as of now, sickness of a party has become among the reasons for extension of time. However, it has to be proved that the Applicant was sick, and that his/her sickness happened at a time when he/she was required to take action in respect of the matter the applicant seeks for extension of time.

In the instant application, the applicant has asserted to be serious sick since 2011. The impugned Judgment however was delivered on 12<sup>th</sup> June 2020 in his presence. If the Applicant was capable of attending his



case on 12<sup>th</sup> June, 2020, then, he is presumed to be able to process the appeal against the impugned judgment in time. I am holding so because there is no evidence showing that after 12<sup>th</sup> June 2020, the applicant was bed ridden or admitted to any hospital for serious sickness. For a person to rely on sickness to apply for extension of time, apart from proving existence of such sickness, he/she should be able to prove that such sickness prevented him/her from acting in time to process the matter which he/she seeks for extension of time.

In this matter, the Applicant has not been able to prove that after 12<sup>th</sup> June, 2020, when the impugned judgment was delivered, he suffered serious sickness that prevented him from processing appeal in time. In the absence of proof, this court is justified to find that the applicant did not suffer any serious sickness after 12<sup>th</sup> June, 2020 that prevented him from processing his appeal in time.

The second ground adopted by the Applicant in persuading the Court to grant his application for extension of time is illegalities. In paragraph 8 of the affidavit of **DEMAS MUTANI NYABUKIKA**, there are three (3) grounds which the applicant asserts to be points of irregularities and illegalities. The said grounds are as follows;



*" a) There was no proper analysis and evaluation of evidence by the District Land and Housing Tribunal.*

*b) In dismissing the Applicants application and also in dismissing the 1<sup>st</sup> Respondent' Counter-claim in respect of the disputed land the District Land and Housing Tribunal failed to declare who was the lawful owner of the disputed land and thereby leaving the dispute between the parties unresolved todate.*

*c) There is no proper decree by the Ilala District Land and Housing Tribunal which is capable of being executed by any party to the application."*

It is trite law that illegality if pleaded and proved, constitutes a good cause for extension of time. However, such illegalities must be apparent on the face of the impugned decision. In other words, not every pleaded illegality can warrant the Court to grant the application for extension of time.

I managed to access the decision of the Court of Appeal of Tanzania in **Charles Richard Kombe v. Kinondoni Municipal Council**, Civil





Reference No. 13 of 2019 where the Court was constrained to define the term illegality and irregularity. It held thus:-

*"...the words **"Illegality"** and **"Material Irregularity"** do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after formalities which the law prescribes have been complied with."*

From the above observation of the Court of Appeal of Tanzania, mere decisional errors, no matter how obvious they may be, such as improper evaluation of evidence, would not fall in the category of illegalities that constitute good cause for extension of time.

I have gone through the grounds/points stated by the Applicant. All of them seem to cast blames to the trial Tribunal on evaluation of evidence and the decision reached. I am of the settled view that the said grounds require going through the entire record to be able to discover them. This



being the case, the alleged illegalities fall short of constituting a good cause for extension of time as they are not apparent on the face of the impugned judgment.

The Applicant in his affidavit also raised a ground that he had no money that he could not engage an advocate to represent him. In my opinion this cannot be a good cause for extension of time because the applicant had an opportunity to seek for legal aid or to process the appeal personally.

I have also found that, reply to the counter Affidavit and all submissions to support the application were drawn and filed by the Applicant in person. This implies that the applicant was capable of initiating the appeal without legal assistance.

I have further noted that from 12<sup>th</sup> June 2020 up to 27<sup>th</sup> September 2023, is at least three (3) years delay, the time which the applicant has failed to account for it. In my opinion the time delayed is quite inordinate and in fact it demonstrates sloppiness and intolerable negligence on the part of the applicant in pursuing his appeal.

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Before I pen off, let me conclude with what the Court of Appeal of Tanzania observed in **Luswaki village Council and Paresni Ole Shuaka v. Shibesh Abebe**, Civil Application No. 23 of 1997, that;

*"...those who seek the aid of the law by instituting proceedings in Court of **law must file such proceeding within the period prescribed by law**...Those who seek the protection of the law in the Court of justice must **demonstrate diligence**" [Emphasis added].*

From the foregoing, I find no merits in the instant application. The same is dismissed. Each party to bear its own costs.

**DATED** at **DAR ES SALAAM** this 08<sup>th</sup> January, 2024.

  
**L. HEMED  
JUDGE**

