

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[LAND DIVISION]

AT ARUSHA

MISC. LAND APPLICATION No. 64 OF 2022

*(Originating from application No. 162 of 2013 of the District land and Housing tribunal
for Arusha at Arusha)*

SAIGURANI KILAMIAN (Suing as the Next

Friend of UPENDO SAILEVU)APPLICANT

VERSUS

ABDALLAH HASSAN.....1ST RESPONDENT

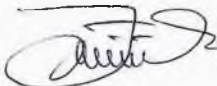
HUMPREY MICHAEL.....2ND RESPONDENT

RULING

05th September & 27th October 2022

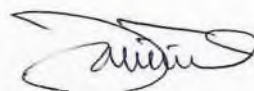
TIGANGA, J

This is an application for extension of time filed by the applicant herein seeking for enlargement of time to file an appeal against the decision of the District Land and Housing Tribunal for Arusha at Arusha in Land Application No. 162 of 2013. The applicant moved this court by way of chamber summons and an affidavit sworn by the applicant himself. He made this application under section 38(1) of the Land Disputes Courts Act, [Cap 216

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R.E 2019] and section 14 of the Law of Limitation Act, [Cap 89 R.E 2019] and any other enabling provisions of the law.

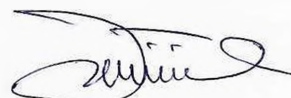
The background of this matter is that both, the applicant and the respondent had land dispute before the District Land and Housing Tribunal for Arusha at Arusha. The dispute was over a piece of the land measuring 53 meters' width and 82 meters' length which is hereinafter referred as the suit land. The said land is located at Terati village in Muriet ward within Arusha Region. The applicant contends that the suit land belonged to the late Sailevu, the father of Upendo Sailevu. It is after the demise of the late Sailevu, her father, she realized that the respondents had assumed ownership of the suit land. She instituted Land Application No. 162 of 2013 and she was represented by Saigurani Kilamian who sued as the next friend. Among other things, he prayed for declaratory order to the effect that the land in dispute belongs to Upendo Sailevu. Before the DLHT, the applicant lost. The decision aggrieved him, consequent of which he was to appeal to this Court. However, before appealing, he realized that he was out of time, therefore he was to apply for extension of time, hence this application.



The application was opposed by the respondent who filed counter affidavit sworn by Dismas Philipo Lume, the respondent's counsel. In the counter affidavit he contended that the applicant in his affidavit has not explained the delay, stating that the three years and five months' delay are inordinate.

With leave of the Court and consent of the parties, the application was argued by way of written submissions. For the applicant Mr. Joseph Moses Oleshangay of the Legal and Human Right Centre Arusha Legal Aid Unit, submitted in support of the application. He contended that, the moment the time to appeal lapsed Miss Upendo Sailevu was busy seeking for a person to prosecute the appeal as the next friend.

He further submitted that the decision of the District Land and Housing Tribunal for Arusha is tainted with ambiguities and illegalities, since the same dispute was legally determined by Muriet Ward Tribunal in land complaint No. 52 of 2007. He added that subsequently Upendo Sailevu filed Misc. Land Application No. 45 of 2008 in the District Land and Housing Tribunal for Arusha, for execution and the same was executed vide execution report dated 26th May 2010 from Lumaliza Investment and Auction Mart.

A handwritten signature in black ink, appearing to be 'Joseph Moses Oleshangay', written over the page number.

He further alluded that impliedly the decisions of both tribunals mean there are two different owners of the suit land declared by the lower particular tribunals something which is *ex facie* ambiguous. According to Mr. Oleshangay, it is upon that illegality he thinks the applicant has an arguable appeal before this Court. He continued to submit that, Miss Upendo Sailevu was incapacitated hence the only option was to find a next friend to represent her, the process which took a long time thus resulting the delay to file appeal.

In reply submission, the counsel for the respondents submitted that it is the legal requirement that for the court to exercise its discretionary power of granting an extension of time, it is important that the applicant furnishes good and sufficient reasons for the delay. He continued submitting that section 38 of the Land Disputes Courts Act is not the proper provision cited by the applicant, the proper one is section 41 of the same Act which related to extension of time in land matters.

He also submitted that the counsel for the applicant has failed to account for the whole period of delay as the law requires, instead he has just stated that there was serious illegality made by the tribunals in

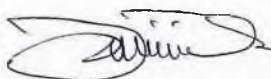
dispensing justice; Regarding the illegality, he thinks is logical enough to make this court extend the time for the applicant to file an appeal.

According to the respondent Advocate, He further submitted that, since the applicant has no tangible evidence to prove the alleged incapacitation. He attends that, the applicant has totally failed to account for the whole period of delay which is three years and five months' period. The argument that he was seeking for someone to sue on her behalf is immaterial for seeking a person to sue on her behalf for three years and five months' period entails lack of seriousness on the party of an applicant. He asserted that there is no illegality raised by the applicant worth consideration by this Court to grant an extension of time.

Mr. Luume contended that, there is nowhere the applicant proved such overwhelming chances to succeed in his intended appeal; He maintained his position that since the applicant has failed to account for the whole period of delay, his application should suffer the fate of dismissal not otherwise. There was no rejoinder filed, hence the reply submission marked the end of both Parties' submissions.

From the application, I find the issue for determination before this Court is whether, the applicant has furnished good causes for the extension of time to appeal to this Court.

It is the mandatory principle of the law that a party seeking foring for the extension of time must account for the whole period of delay. The law is also very clear that whenever an illegality is raised as ground for the extension of time, the party applying for the same is duty bound to substantiate the particular point of law to be of a sufficient importance. The Applicant's argument as reflected at para 3 page 2 of his submissions raises an allegation that there are ambiguities and illegalities which tainted the decision of the District Land and Housing Tribunal for Arusha. It is my considered view that, for an illegality to stand as a ground for the extension of time, it should be apparent error on the face of record not otherwise. The applicant has not even pointed out specifically the kind of an alleged illegality, his allegation of illegalities attracts adducing evidence which will put this court in the danger of entertaining the intended appeal not an application for extension of time. In **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's**

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Christian Association of Tanzania, Civil Application No.2 of 2010

(unreported), a single Justice of the Court elaborated that:

"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view be said that in VALAMBHIA 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 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."

In this matter, the alleged point of law to stand as an illegality has in fact not been demonstrated to be of sufficient importance and to be apparent on the face of record, therefore it fails the test of being the point of law to warrant extension of time sought.

The other ground raised by the applicant is that she was incapacitated hence failed to stand by herself to sue the respondents hence for the whole period of three years and five months she has been seeking for someone to sue on her behalf. On this, I would rather say, three years and five months'

period is an inordinate period for a party dissatisfied with the decisions of the lower courts to decide to appeal. The fact that the applicant was incapacitated requires proof, and such proof is supposed to be medical report not otherwise; Failure to substantiate the same, it entails failure to account for the whole period of delay; As I have observed from the records there is nothing rather than lack of seriousness by the applicant. In the case of **Lyamuya constructions Limited company Ltd vs Board of Registered Trustee of Young Women's Christian association of Tanzania** (supra), there are established principles to adhere to in matters of extension of time, **firstly** that the applicant must account for the whole period of delay, **secondly** that the delay should not be inordinate, **thirdly** that the applicant must show diligence, not apathy, negligence, sloppiness in the prosecution of the action that he intended to take, **fourthly** that there is illegality which arises from the violation of fundamental legal principles.

In line with the above established principles, this court is in agreement with the respondents that the applicant has acted recklessly; The raised illegalities on the face records have not proved the violation of fundamental legal principles; In the upshot, it goes without saying that the applicant has failed to account for the whole period of delay for him to be granted

extension of time sought. That said, the application is hereby dismissed with costs.

It is ordered accordingly.

DATED at **ARUSHA** on the 27th day of October 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

J.C. TIGANGA

JUDGE.