IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC. LAND APPLICATION NO. 37 OF 2021

(C/F Land Appeal No. 40 of 2019 Arusha Resident Magistrates' Court Extended Jurisdiction, Application No. 225 of 2007 of the District Land and Housing Tribunal for Arusha at Arusha)

YAMAT MBARNOT YAMAT MBATNOT (Suing as an administrator of the estate of the late MBARNOT MARMALI).....1ST APPLICANT

YAMAT MBARNOT----------2ND APPLICANT

VERSUS

NAKUDANA MUNGAYA .....RESPONDENT

RULING

31/08/22 & 31/10/2022

GWAE, J

Aggrieved by the decision of the Land District Land and Housing Tribunal for Arusha at Arusha (Trial Tribunal) dated 2nd June 2018, the applicants herein preferred an appeal to this court vide Land Appeal No. 64 of 2018. The applicants' appeal before the court was transferred to the Resident Magistrate's Court of Arusha at Arusha to be heard and determined by the Resident Magistrate with extended jurisdiction through RM/Land Appeal No. 40 of 2019.

However, the applicants' appeal before RM's Court was struck out due to legal technicalities namely; differences of date in judgment and its decree. The applicants still desirous to pursue their appeal by refiling the same nevertheless they found themselves out of the prescribed period (45 days).

As the applicants could not re-file their appeal without seeking an extension of time, thus, this application was brought under section 14 (1) of the Law of Limitation Act, Cap 89 Revised Edition, 2019. In their joint affidavit, the applicants sought diligence of the court in extending time on the ground that the delay to file their appeal was out of their control since the trial tribunal is the one, which caused the error that appeared in the judgment and decree and that there are illegalities that are apparent in the trial tribunal judgment. The applicants' application was opposed by the respondent who stated that, they have not accounted for days of delay from when they were supplied with the copy of the ruling rectifying the decree.

Before me, the applicants appeared in person whilst Mr. Mnyiwala Mapembe, the learned advocate from Mnyiwala Mapember (Advocate) and D'Souza and Company, Advocates appeared for the respondent. It

was consensually agreed that this application to be argued by way of written submission.

The applicants argued in support of their application that, the Trial Tribunal rectified its decree on 13th August 2021 and that the applicants were availed with the ruling on 7th day of May 2021. Thus, according to them, this application was filed promptly. The applicants also expounded the ground of illegality by stating that it was wrong for the trial tribunal to award the respondent general damages of Tshs. 10,000,000/=, failure to analyse evidence. They urged this court to adhere to the principle in **Principal Secretary, Ministry of Defence and National Services VS. Devram Valambia** (1992) TLR 18 where courts are required to extend time where they are illegality established in order to take remedial measures.

On the other hand, the respondent's counsel reiterated his counter affidavit by stating this application be dismissed for want of accounting each day of delay. He inspired his arguments by citing case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association,** Civil Application No. 2 of 2010 and **Bushori Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (both unreported-CAT).

Submitting on the alleged point of law or illegality, the respondent's counsel stated that, in order an application for extension to be granted on ground of illegality, there are two elements that must be established namely; apparent error on the face of the record or point of law that is of sufficient importance in the decision. He referred this court to judicial decisions in the case of Principal **Secretary, Ministry of Defence and National Services VS. Devram Valambia** (supra) and **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported).

In rejoinder, the applicants strongly stated that, there is legal requirement to account each day of delay taking into account of the constitutional right to be heard provided under Article 13 (6) (a) of the Constitutional, 1997. They further stated that, there are irregularities in the trial tribunal decision, the irregularities known by the respondent as well that require intervention of the court.

This court is now duty bound to ascertain if the applicants have given good cause for their delay and whether there is illegality or point of law that require an attention of the court.

As to whether the applicants have given an account of the day of delay. Examining the parties' written submissions, it goes without saying

that during pendency of appeal before this court and RM's court with extended jurisdiction and subsequent to the application filed by the respondent's counsel for rectification of the trial tribunal decree . The period there was pendency of a matter before a court or tribunal is usually excluded or it is considered as self-explanatory provided that, there are such pleadings supported necessary documents. However, in this application as correctly argued by the respondent's counsel that the applicants were to account each day of delay from when they were availed with the copy of rectified decree that is 7th May 2021 to 14th day of June 2021.

To hold that there is no law that provides for requirement of accounting for each day of delay as wrongly argued by the applicants, is equal to ignore the principles of law including case law. In my view requirement to give reasonable or sufficient cause for the delay includes among other things, accounting for each day of delay. How can you count the length of delay without counting reasons for each day of delay? This position of law has been consistently emphasized by our courts for example in the case of **Sebastian Ndaula v. Grace Rwamafa,** Civil Application No. 4 of 2014 (unreported), the Court of Appeal of Tanzania stated that;

"The position of this court has consistently been to the effect that an application for extension of time, the applicant has to account for every day of delay."

(See also, **Lyamuya Construction Company LTD v. Board of registered Trustee of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010 (unreported-CAT) and **William Kasanga vs. Republic,** (Criminal Application No. 79 of 2020) [2021] TZCA 145 [15 April 2021 TANZLII]

In our instant application, the applicants are vividly seen to have been supplied with the copy of the rectified decree on 7th May 2021 while this application was filed on 14th June 2021. Hence, the delay to file this application is of more 37 days. Delay of thirty-seven days, in my firm opinion cannot be termed as the ordinate delay. The applicants' delay to file this application is therefore inordinate and inexcusable which ought, in my cautious view, to have pertained with sufficient explanation in the applicants' affidavit. In this application, the applicants have said nothing relating to their delay from 8th May to 13th June 2021. This delay is vividly distinguished from eleven days' delay held in the instructive decision of the Court of Appeal in **Loshilu Karaine and three others vs. Abraham Melkizedeck Kaaya** (Suing as a legal representative of Gladness Kaaya), Civil Application No. 140/02/ of 2018 (unreported) it was held that;

"That, unexpected and unforeseen event definitely needed re-organization and, to be fair, period of eleven days cannot be said to be inordinate in preparing and lodging the present application".

Guided by the above courts' decisions, I unhesitatingly find that the applicants have failed to give sufficient cause especially by accounting each day of delay.

Now, to the determination of the complained illegality of point of law, it is trite law that whenever irregularity or illegality is established in the impugned judgment by the applicant in an application for extension of time or leave and certificate on point of law, the court will grant such application brought before it. Therefore, it is my considered view that the complained illegality must be apparent on the face of the record amounting to serious violation of the law apprehended to have occasioned injustice. Hence, a minor irregularity or mere assertion that there is illegality in the judgment to be appealed without proof cnnot warrant the court to grant extension of time. The Court of Appeal of Tanzania when faced with the similar situation in the case of Tanzania Harbours Authority vs. Mohamed R. Mohamed (2003) TLR 76 held;

"This Court has said in a number of decision that time would be extended if there is an illegality to be rectified;

however, this Court has not said that time must be extended in every situation. In this case the defence has been grossly negligent and surely cannot be heard now to claim that there is a point of law at stake";

Also in **Finca (T) Limited & another vs. Boniface Mwalukisa,** Civil Application No. 589/12/2018 had the following to say;

"It is, however, significant to note that the issue of consideration of illegality when determining whether or not to extend time is well settled and it should be borne in mind that, in those cases were extension of time was granted upon being satisfied that there was illegality, the illegalities were explained".

Basing and applying the above position of the law in relation to the application at hand, the applicants have merely stated that, the judgment and its decree subject to the intended appeal contain illegalities. I have carefully looked at his complaints such as the award of general damages, and the complained failure to take proper record and observed that, the applicants' complaints are all about analysis of evidence by trial tribunal. Hence, there is no point of law that has been demonstrated in the legal sense. In this regard, therefore, I am not convinced that, the alleged illegality is apparent on the face of the record justifying this court grant this application for extension of time basing on the complained illegalities.

I have further considered the fact that, it is the applicants who were under obligation to ensure that, they properly filed their appeal to the court with proper decree and if they failed to do so as was the case, they ought to have applied for rectification of the same so that they would timely apply for extension of time.

In the upshot and foregoing reasons, I find that the applicants have failed to give sufficient cause to enable the court to judiciously exercise its discretion to enlarge time. Accordingly, this application is dismissed in its entirely with costs. It is so ordered.

DATED at **ARUSHA** this 31st day of October, 2022

M. R. GWAE
JUDGE