

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

MISC. LAND APPLICATION NO. 32 OF 2020

(Arising from the High Court (Bukoba District Registry) in Land Case Appeal No. 10 of 2018 & original District Land and Housing Tribunal for Karagwe at Kayanga in Land Application No. 70 of 2016)

ELIAS KAMOKYO ----- APPLICANT

Versus

**1. JASSON KASAIZI
2. THEODOZIA KASAIZI
3. NELSON JASSON KASAIZI** } ----- **RESPONDENTS**

RULING

17.05.2021 & 17.05.2021

Mtulya, J.:

This is an application for enlargement of time to file an appeal out of time (the Application). The Application was filed by Mr. Elias Komokyo (the Applicant) in this court on 14th May 2020 claiming a point of illegality as a reason for the enlargement of time to prefer an appeal in this court to contest the decision of the **District Land and Housing Tribunal for Karagwe at Kayanga** (the Tribunal) in **Land Application No. 70 of 2016** (the Land Application). The Applicant drafted the reason at paragraph 8 of his affidavit in the following words:

That there is serious illegality on the record of proceedings of the District Land and Housing Tribunal for Karagwe as

its Chairman suo moto raised an aspect of res judicata and consequently concluded Application No. 70 of 2016.

The Application was scheduled for hearing today morning and Applicant's learned counsel Mr. Samuel Angelo briefly submitted that the Chairman of the Tribunal in the Land Application raised an issue of *res judicata suo moto*, argued and determined the Land Application to the finality by dismissing it with costs without inviting the parties to argue the issue. To Mr. Angelo's opinion, the learned Chairman denied his client an opportunity to be heard which is unprocedural in determining individual rights.

The argument of right to be heard and reason of extension of time on the claim of illegality were not protested by Mr. Christian Byamungu, learned counsel for the Respondent, but claimed that litigations must have an end and that the Land Application in the Tribunal had reached to its finality. In a brief rejoinder, Mr. Angelo admitted that it is correct that disputes must have their ends. However, he submitted that in the present dispute, the parties were not afforded an opportunity to be heard hence it cannot be part of the end of litigations.

I have gone through the record of this Application and perused the proceedings of the Tribunal in the Land Application conducted on 25th

January 2018, and at page 9 to 10 of the proceedings, the following script is depicted:

***Tribunal:** I have gone through the records. This matter is res judicata to former case between Nelson Jason and Joakim Johansen. The matter was concluded on merit and executed. The applicant is trying to circumvent the ends of justice. This is a delay of justice.*

***Order:** This application is hereby dismissed with costs for being res Judicata to Civil Case No. 49 of 2016 and Misc. Application No. 66 of 2016. It is so ordered.*

The record further shows that Mr. Angelo, learned counsel for the Applicant was before the Tribunal and was not given the opportunity to enjoy his right to be heard. To his opinion, Mr. Angelo prays extension of time to rectify the record of the Tribunal. Whether that is correct or not, or whether there is any breach of the principle of natural justice or constitutional right enshrined under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E 2002] and precedents in **Mbeya Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002 and **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44, that is to be determined in an appeal. However, as there

is an allegation of illegality, the law through precedents is very clear that the court may enlarge time period for applicants of extension of time to file appeals out of time to contest the illegality claimed (see: **The Principal Secretary, Ministry of Defence & National Service v. Devram P. Valambia** [1992] TLR 387. The reasoning of such practice is explained by the Court of Appeal in **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017, that:

...the superior courts have the additional duty of ensuring proper application of the laws by the courts below... [the courts] have duty to address vivid illegality and that cannot justifiably close their eyes thereof.

The point of illegality in extension of time is now evolved to the extent that a claim of illegality of a challenged decision may not only allow the application, but also may disregard the requirement of registration of plausible explanations of delay on part of applicants. In the precedent of **Attorney General v. Tanzania Parts Authority & Another**, Civil Application No. 87 of 2016, the Court of Appeal categorically stated that:

It is a settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has

been given by the applicant under the rule to account for the delay.

In final event, I think, Mr. Angelo has spotted the claim of illegality hence registered good reasons to justify enlargement of time and I hereby grant the Applicant ten (10) days leave to file an appeal in this court without any further delay from today, 17th May 2021. Costs in due course.

Ordered accordingly.



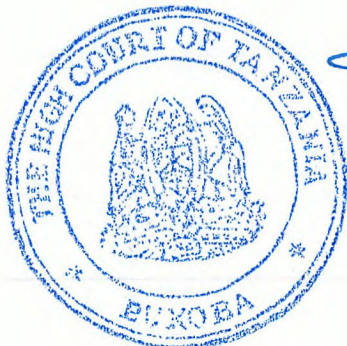


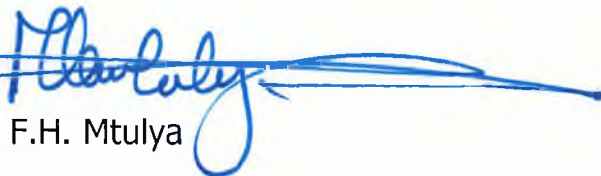
F.H. Mtulya

Judge

17.05.2021

This Ruling was delivered in chambers under the seal of this court in the presence of the Applicant's learned counsel Mr. Samwel Angelo and in the present of the First Respondent, Mr. Jasson Kasaizi and Third Respondent, Mr. Nelson Jasson Kasaizi and in the presence of their learned counsel, Mr. Christian Byamungu.





F.H. Mtulya

Judge

17.05.2021