

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

MISC. LAND CASE APPLICATION NO. 477 OF 2023
(Arising, from Misc. land Application No. 208 of 2021, by Massoud, J.)

BEATUS MABERE (Suing as Attorney of
SALIM HAMID AND ISLAM AGIL).....APPLICANT

VERSUS

GEOFREY NDOSSA.....1ST RESPONDENT
SAMWEL KILUA.....2ND RESPONDENT

R U L I N G

Date of Last Order: 22.06.2023

Date of Ruling: 29/09/2023

T. N. MWENEGOHA, J.

This Application was brought under **Sections 11(1) of the Appellate Jurisdiction Act, Cap 141 R. E. 2019**. The applicant sought among others, for an order to extend time within which the applicant may apply for leave to appeal to the Court of Appeal out of time, against the decision of Hon. Massoud J, dated 19th October, 2022, vide Misc. Land Appeal No. 208 of 2021. It was supported by the affidavits of the applicant and his Advocate, Raphael Lefi David.

In his written submissions. Mr. David for the applicant, maintained that, there are illegalities in the impugned decision of Hon. Massoud J, that

need to be corrected by the Court of Appeal of Tanzania. That, in the impugned decision, Hon. Massoud J has joined hands with the Tribunal chairman who relied on the quashed records in his decision. That, this is a serious illegality, that needs to be cured by the Court of Appeal. That, the said illegalities constitute a sufficient cause for allowing the instant Application, as stated in the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambia (1992) TLR 182.**

Counsel for applicant submitted further that, there was a mistake done by the applicant's previous Advocate, who ended in filing a Notice of Appeal alone, instead of filing also a Leave to Appeal. Hence, that is not a mistake of the applicant, he should not be punished for mistakes of his Advocated, as observed in **Kambona Charles (Adminstrator of the Estate of the late Charles Pangani) versus Elizabeth Charles, Civil Application No. 529/17 of 2019.**

In reply, Advocate Othman Omary Othman, for the respondent, was of the view that, the Application is devoid of merits and highly misconceived. That, the applicant's Advocate has admitted under paragraph 6 of the submissions in chief that, the previous Advocate intentionally skipped applying for Leave to Appeal and that, having realized the mistake, as advised, the applicant filed the instant Application.

He argued that, however, it is not clear as when exactly the applicant ended his relations with the former and engaged his present Advocate. Therefore, it is not true that the applicant was not aware of the need to file an Application for Leave to Appeal.

That, the applicant's failure to obtain proper legal assistance is not a ground for allowing an extension of time. Above all, the applicant has failed to account for the days he delayed in taking his intended course. The decision in question was delivered on the 19th October, 2022. The applicant's current Advocate became aware of the said decision in March, 2023. But he waited until May, 2023, to file the application at hand. There are 210 days which have not been accounted for as stated in **Sebastian Ndaula versus Grace Rwamafa, Civil Application No. 4 of 2014, Court of Appeal of Tanzania, at Bukoba**, (unreported).

Further, on the ground of illegality, it was argued that, the same was not shown or pleaded in the applicant's affidavit. Hence this Court cannot make a decision based on allegations without mentioning them. This was the position of the Court in **Tumsifu Kimaro (The Administrator of the Estate of the late Eliamin Kimaro) versus Mohamed Mshindo, Civil Application No. 28/17/2017** (unreported).

I have gone through the submissions of parties, their affidavits in support of the Application and the counter affidavit opposing it. The issue for determination is whether the Application has merits or not.

Two reasons were given by the applicant's Advocate as to why this Application should be allowed. Firstly, the existence of illegalities in the impugned decision of Hon. Massoud J, vide Land Appeal No. 208 of 2021. The applicant's counsel referred this Court at pages 13 and 14 of the said decision where he claimed that, it was illegal for Hon. Massoud J to join hands with the Chairman of the Tribunal in his decision, over the quashed records.

I went through the said pages to satisfy myself on the existence of what was alleged by the applicant's counsel. My perusal of the said decision, found that, it is true, Hon Massoud, J explained the impacts of the actions by the Tribunal's Chairman to compare his findings with the decision of the Ward Tribunal as far as administration of justice is concerned. His conclusion at the end, came in dissatisfaction on part of the applicant, hence this Application. If that explanation amounts to illegality is not an issue to be dealt with by this Court in the Application at hand. It definitely, need the attention of the Court of Appeal of Tanzania.

As argued by the applicant's counsel, the Court in a number of authorities, has insisted that, when a point of illegality is mentioned as a reason for applying for extension of time, in itself, constitutes a sufficient reason for allowing the said Application, see **Principal Secretary, Ministry of Defence and National Service versus Devram Valambia**, (supra). For the above explained reason, I find this Application to have merits. I see no need to discuss the second reason given for filing this Application.

In the end, the Application is allowed, the applicant is given 14 days to file his intended Application as prayed. No order as to costs.

It is so ordered.


T. N. MWENEGOHA

JUDGE

29/09/2023

