

TANZANIA / JUDGMENT

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DECIDED
1 July 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND APPEAL NO. 19364 OF 2024 fOriginating from the Ruling of the District Land and
Housing Tribunal for Bagamoyo in Misc. Application No.73 of2023 delivered on 1st July, 2024) BI
HALIMA KONDO..... APPELLANT VERSUS KONDO
PANDU..... RESPONDENT

JUDGMENT

& 29h November2024 L, HEMED, J, On 1st July 2024, Hon. R.S.Mnyukwa, the chairman of the District Land and Housing Tribunal for Bagamoyo, dismissed Misc. Application No. 73 of 2023 for want of merit. The said application was presented by the Appellant herein BI HALIMA KONDO seeking for extension of time to apply to set aside the order of the trial Tribunal dated 29th March 2010 that dismissed Appeal No. 173 of 2009. Briefly, the Respondent herein KONDO PANDU successfully sued the Appellant at the ward tribunal for Dunda ward in 'SHAURI LA ARDHI NO. 64 OF 2009. Aggrieved, the Appellant herein preferred an appeal before the District Land and Housing Tribunal for Costal Region at Kibaha i which was registered as Appeal No. 173 of 2009. The said appeal was called for hearing on 29th March 2010 but the Appellant herein did not attend the matter without notice hence the dismissal of the same. The Applicant was aggrieved by the dismissal order, however, due to the fact that she delayed and became out of time, the Appellant presented Misc. Application No. 73 of 2023 which ended up being dismissed on 1st July 2024 on merit. Dissatisfied with the said ruling, the Appellant knocked the gates of this court with an appeal containing the following grounds: - "1. That the trial chairperson erred in law and in fact for failure to evaluate evidence in records and reaching a decision not to extend time on a ground that the appellant herein instituted an application for extension of time after ten years to pass a fact which is contrary to the evidence in records.

2. That the tribunal chairperson erred in law for failure to consider the issue of illegality surrounding mother land case No. 64/2009 which the appellant intended to challenge by way of an appeal.
3. That learned trial chairperson erred in law and in fact for failure to note that the respondent in Land Case No. 64/2009 was suing without the required locus stand to sue and to be sued hence failed to not the existence of illegality of the proceedings!' Hearing of the Appeal was conducted by way of written submissions which were promptly and timely filed. Mr. Gilbert

Rweyemamu, learned advocate duly acted for the Appellant while the Respondent enjoyed the legal service of Mr. Fabian Seif, learned advocate. In arguing the Appeal, the learned counsel for the Appellant combined the 2nd and 3rd grounds and argued the 1st ground separately. In respect to ground No.1, the learned counsel was of the view that the trial chairperson erred in law and in fact for failure to evaluate evidence in records that depicts that the applicant before instituting Misc. Application No.73/2023, she had previously instituted numerous applications all of them at Kibaha Tribunal and at Bagamoyo, however, all of the stated applications were unfruitfully. He cited those applications to include Application No. 15/2013 which its decision was delivered in 2015; Application No. 60 of 2019; Application No. 68 of 2021; and Application No.23/2022. The learned counsel faulted the findings of the chairman of the trial Tribunal that the application for extension of time was filed after 10 years. 3 In his view, such finding was wrong because the last application was decided in 2023. He insisted that the presence of such applications for a couple of years trying to find the way forward after dismissal of the Land Appeal No. 173/2009 constitutes a good cause for extension of time. He fortified his argument by the decision in *Fortunatus Masha vs William Shija & Another* [1997] TLR 154 arguing that the delay was technical. With regard to the 2nd and 3rd grounds, the learned counsel of appellant argued that there was illegality on the decisions of Dunda ward tribunal but also in the dismissal order of appellate Tribunal. The learned counsel pointed out that the Respondent herein had no locus standi to institute the complaints before the ward tribunal as there was no proof that he acted as administrator of the estate. In fortifying the argument, he cited the case of *Lujuna Shubi Balonzi vs. Registered Trustees of Chama Cha Mapinduzi* [1990] T.L.R on locus standi. The learned counsel was of the view that the District Land and Housing Tribunal wronged for not granting extension of time because the said illegality in the impugned decisions constituted sufficient cause. Reliance was made on the decision of the Court of Appeal of Tanzania in *4 Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No.2 of 2010, where illegalities were listed as among the grounds for extension. He ended praying for the appeal to be allowed. In reply, to the 1st ground of appeal Mr. Seif contended that the Appellant is lying for having been in court corridors for more than 10 years. In his view, the Appellant has not said when he started going in court corridors and as to when they stopped going in court. He was of the opinion that the Appellant has not accounted for all the days of the delay as required by the law. As regard to the ground of illegality the learned counsel contended that such ground was never raised in the affidavit that was supporting the application before the District Land and Housing Tribunal. It was stated that the point of illegality was raised by the bar. The Respondent's advocate was of the view that even the alleged illegalities were not apparent on the face of the record. He prayed the court to dismiss the appeal. 5 In his brief rejoinder, the learned counsel for the Appellant reiterated his submissions in chief. He insisted that there was technical delay in lodging the application to set aside the dismissal order. Mr. Rweyemamu pointed out that there was illegality on the impugned decision of the ward tribunal which was intended to be challenged. He prayed the court to allow the appeal. Having carefully gone through the rival submissions in respect of the appeal at hand the

question for determination is whether the appeal is meritorious. I have opted to begin with the 1st ground of appeal which was argued separately. In the 1st ground the Appellant is faulting the decision of the DLHT for refusing the application on the ground that it was presented after ten(10) years which according to the learned chairman, the delay was quite inordinate. According to case law, the applicant who seeks for extension of time is duty among others, to account for the delay. This was held in *Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania*, Civil Application No.2 of 2010, thus: - 6 "(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. '[Emphasis added] In order to find out if the Appellant herein accounted for the delay, I had to go through the affidavit that was deposed by the Applicant to support Misc. Application No.73 of 2023. I have opted to reproduce all 8 paragraphs to find out if the Applicant accounted for the delay. It reads as follows: - '7 . That I am the Applicant in this chamber summons thus conversant with the fact I am about to depone herein
2. That sometimes..... I filed land appeal against the decision of Kibaha District Land and Housing Tribunal in Land Application No. 173/2003, Copy of 7 the ground of appeal is hereby annexed marked "1 "forming party of this affidavit
 3. That when the matter came for hearing but the Applicant failed to appear to prosecute her case hence was dismissed for want of non prosecution (sic)
 4. That I tried to file application to set aside the dismissal but without success due to technically

issues

5. That I see that the time to file application to set aside is out of time as required by law I therefore to file chamber summons to apply for extension of time.
6. That it is not a negligent of my partly to file application out of time but due to reason stated above
7. I see that it is only by way of decision of this honourable tribunal will determine who is the lawfully owner of the disputed land
8. It is the interest of justice that the prayers sought in the chamber summons be granted as will not prejudice the respondent since is not living at the dispute (sic) land and did not develop anything 8 thereon and I am whelming of success of the appeal." It should be noted

that accounting for the delay has to be made or stated in the affidavit that support the application and not in the submissions. Going through the above paragraphs of the Applicant at the trial Tribunal, I do not find the delay to have been properly accounted. In paragraph 4 of the affidavit, the Appellant/Applicant stated "... That I tried to file application to set aside the dismissal but without success due to technicality issues." However, there was no any other paragraph stating when such 'application' was filed and decided. In fact, the affidavit did not state any other cause for the delay. Failure to state in the affidavit facts that establish cause of delay is as good as failure to demonstrate reasonable and sufficient cause that may warrant the court to extend time. Without prejudice to the foregoing, in the course of perusing the records of the trial tribunal I came across with a ruling dated 02nd May 2023 dismissing Misc. Application No.23 of 2022, which was instituted by the Appellant herein in an attempt to set aside the dismissal order in Appeal No. 173 of 2009. Misc. Application No. 73 of 2023, whose ruling is the subject of this appeal was presented for filing before the trial 9 Tribunal on 31st May 2023. Assuming that Misc. Application No.23 of 2022 was filed by the Applicant to challenge the dismissal order and decided on 2nd May 2023, then the Applicant was duty bound to account for the delay from 2nd May 2023 to 31st May 2023. I am holding so because it is a trite law that each day of the delay needs to be accounted for as was held by the Court of Appeal of Tanzania in Hassan Bushiri v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007 that; "Delay of even a single day has to be accounted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be &? Xre/7/z[Emphasis added] As aforesaid, the affidavit of the Applicant did not mention Misc. Application No.23 of 2022 or any other application and or accounted for what the Applicant was doing between 2nd May 2024 and 31st May 2024. In the light of the above authority, I find the Applicant to have failed to account for each day of the delay. Therefore, the 1st ground has no merit at all. The 2nd and 3rd grounds of appeal which have been combined during hearing, the Appellant has argued that the trial Tribunal did not take into account the illegalities which were manifestly found in the decision of the ward tribunal. Certainly, the current position of law is that illegality is one of the reasonable and sufficient cause for extension of time. This has been insisted by courts in plethora of decisions, including that of the Court of Appeal of Tanzania in The Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia [1992] TLR 387. Nevertheless, for the alleged illegality to constitute a sufficient ground for extension of time, it has to be apparent on the face of the record. This was emphatically stated in Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania (supra), where it observed thus: - "Since every party intending to appeal seeks to challenge a decision either on points of law or fact, it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should as of right, be granted extension of time if he applies for one...such, point of law must, be that "of sufficient importance and I would, add, that it must also be apparent on the face of the record, not one that, would be discovered, by a long, drawn argument or, process." [Emphasis added] In the instant matter, the Appellant alleges illegality of locus standi on the part of the Respondent herein to institute

the matter at the ward tribunal. I have gone through the affidavit that was deponed to support the application for extension of time before the trial tribunal and found no ground of illegality raised therein. The question of illegality was raised by the advocate of the Applicant in submission. Principally, any ground to support the application must be founded in the facts deponed in the affidavit supporting such application. Any thing in the submissions that does not find its root in the affidavit is considered to be coming from the bar and must be ignored. This being the case, the trial chairman ought to have ignored the ground of illegality as it was not founded in facts deponed in the affidavit. By the way, it should be noted that when the applicant opts to rely on illegality for extension of time, such illegality must be apparent on the face of the impugned decision, not otherwise. The matter before the trial tribunal, was for extension of time to apply to set aside the 'dismissal 12 order' in Appeal No. 173 of 2009. Therefore, the impugned decision before the trial tribunal subject of the application was the 'dismissal order' of the DLHT in Appeal No.173 of 2009. In that regard, the illegalities which would be relevant in deciding whether or not to grant the application before the trial tribunal would have been those in the impugned dismissal order. In the submissions before the trial Tribunal, the alleged illegalities were said to be on the face of the decision of the ward tribunal which in fact was not subject to the application before the trial tribunal. In that regard, even if the point of illegality would have been rooted in the facts deponed in the affidavit that was supporting the application, the same would have not constituted a reasonable and sufficient cause for extension of time. I find the 2nd and 3rd grounds to have no merit as well. In the final analysis, I find the trial chairman to be justified to dismiss the application before him. In the upshot, I dismiss the entire appeal with costs. Order accordingly. DATED at DAR ES SALAAM this ovember, 2024 ED JUD 13

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Prepared on 14 October 2026 · Esheria