IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB REGISTRY
AT SHINYANGA

MISC. LAND APPLICATION N0.17705 OF 2026

(Arising from the Decision of Kahama District Land and Housing Tribunal in Land Application No. 26 of 2023 dated 25th July 2025)

SONDA MACHIBYA .....APPLICANT

VERSUS

ENOKA BUDEBA LYOCHI. .....RESPONDENT

RULING

15th October & 3rd November, 2026

Massam, J: -

The applicant filed the present application seeking an extension of time within which to lodge an appeal out of time against the decision of the District Land and Housing Tribunal for Kahama in Land Application No. 26 of 2023, delivered on 25th July 2025 by A.M. Kapinga, Chairman.

The application was brought under section 44(2) of the Land Disputes Courts Act, Cap. 216, R.E. 2023. It was supported by an affidavit sworn by the applicant, Sonda Machibya, and opposed by counter affidavit sworn by the respondent, Enoka Budeba Lyochi.

During the hearing, the applicant was represented by Mr. George Alfred, learned counsel, while the respondent was represented by Mr. Simon Gerald Kamkolwe, learned counsel. The application was heard by way of written submissions, and both parties duly complied with the court's scheduling orders.

In support of his application, Mr. Alfred stated that although an application seeking an extension of time is generally required to account for each day of delay, also an allegation of illegality in the impugned decision constitutes sufficient reason for granting an extension of time. In support of this position, he cited the case of **Attorney General vs Emmanuel Marangakisi and 3 Others**, Civil Application No. 138 of 2019 [2023] TZCA 63, which referred to **National Service vs Devram Valambhia** [1992] T.L.R. 185 and **VIP Engineering and Marketing Limited & 3 Others vs Citibank Tanzania Limited**, Consolidated Civil References Nos. 6, 7 and 8 of 2006.

Again, he argued that where illegality is alleged, the court has a duty to extend time to enable the alleged illegality to be examined.

Mr. Alfred identified two alleged illegalities in the proceedings of the trial Tribunal. First, it was argued that the Tribunal improperly relied on

hearsay evidence given by Yusuph Enoka Budeba, the respondent's donee of a special power of attorney.

According to Mr. Alfred, the donee testified that the respondent had not sold the disputed land to the applicant, although that fact was within the personal knowledge of the respondent, who did not testify. Mr. Alfred submitted that such evidence was inadmissible hearsay and ought to have been expunged from the record. Reliance was placed on **Olini Andendekisye Mwantila and Another** vs **Pride TZ Ltd and Others**, Land Appeal No. 22 of 2011 [2013] TZHC 2605.

Second, Mr. Gerald argued that the donee of the power of attorney was improperly permitted to testify as though he were a party to the proceedings. Mr. Alfred submitted that a donee cannot substitute for the principal in proving facts that are within the principal's personal knowledge unless there are sufficient reasons for the principal's absence and the donee has direct knowledge of the disputed facts. In support, Mr. Alfred cited **Emmanuel M. Kifua and Another vs Lazaro Michael Mhungati**, Civil Appeal No. 21111 of 2024 [2025] TZHC 8824, and **Nazdine Premji (Administratrix of the Estate of the Late Shirazali Premji) and Another vs Multaza Alloo and Another** [2025] TZHC 8881.

Again, Mr. Alfred further submitted that the record did not establish that the respondent was unable to attend the Tribunal proceedings due to sickness or old age. No medical report was tendered to substantiate the alleged illness, and the Tribunal declined to admit the attendance sheets because they did not establish the respondent's inability to attend. Mr. Alfred therefore maintained that there were no sufficient reasons to justify the respondent's failure to testify personally on matters within his knowledge.

Moreover, Mr. Alfred contended that the Tribunal's reliance on the donee's hearsay evidence constituted an illegality apparent on the face of the record, warranting an extension of time to enable the applicant to challenge the impugned decision on appeal.

Finally, he prayed that the application be granted with costs.

On the other hand, Mr. Gerald submitted that the applicant had failed to account for the delay of over one year in seeking to appeal against the impugned decision. Relying on **Firmin Paul Mghamba & 15 Others vs Tanzania Breweries Ltd***,* Miscellaneous Application No. 356 of 2022 [2022] TZHCLD 1072.

Also, he argued that the applicant was required to provide a reasonable explanation for the delay and could not rely solely on the allegation of illegality. Again, he contended that no illegality was apparent on the face of the record regarding the testimony of Yusuph Enoka Budeba, the donee of the power of attorney, as the same was competent to testify as an ordinary witness because he was the respondent's son and had personal knowledge of the family affairs and the disputed land. His evidence was subjected to cross-examination, enabling the Tribunal to assess his credibility.

Once more, Mr. Gerald further maintained that the question of whether the evidence amounted to hearsay concerned the admissibility and evaluation of evidence and was a matter to be determined on appeal rather than a sufficient ground for extending time.

Further, Mr. Gerald distinguished the authorities relied upon by the applicant, namely **Olini Andendekisye Mwantila and Another vs Pride TZ Ltd and Others** [2013] TZHC 2605, **Emmanuel M. Kifua and Another vs. Lazaro Michael Mhungati** [2025] TZHC 8824, and **Nazdine Premji (Administratrix of the Estate of the Late Shirazali Premji) and Another vs Multaza Alloo and Another** [2025] TZHC

8881. He argued that those cases were distinguishable because the donee in the present case possessed personal knowledge of the relevant facts and the respondent's absence was attributed to sickness and old age.

Once more, he submitted that the alleged irregularities were not clear illegality but complaints concerning the appreciation and admissibility of evidence, which required detailed examination. Relying on **Monica Mjungu vs Leonard G. Kish Alu Li and 10 Others**, Civil Application No. 364/1 of 2024, and **Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia** [1992] T.L.R. 387.

Also, Mr. Gerald argued that an illegality warranting an extension of time must be apparent on the face of the record and must not require lengthy arguments or a detailed examination of evidence.

Yet again, he contended that the application was an abuse of the court process because the applicant was attempting to reopen the merits of the original case under the guise of illegality.

Moreover, Mr. Gerald maintained that the applicant was merely dissatisfied with the Tribunal's assessment of the evidence and should not be permitted to use the allegation of illegality to overcome the unexplained delay.

Finally, he prayed that the application for extension of time be dismissed with costs.

In rejoinder, the applicant maintained that the alleged illegality arose from the respondent's failure to appear before the trial Tribunal to prove his case or refute the applicant's claim that he had purchased the disputed land. Instead, Yusuph Enoka Budeba, the donee of the power of attorney, testified on matters that were allegedly within the personal knowledge of the respondent, who was the original applicant before the Tribunal.

Mr. Afred referred to pages 18–19 of the Tribunal proceedings, where the donee testified that the respondent had been hospitalised at Bugando Hospital when the alleged trespass occurred and that, upon their return, they found the applicant asserting that he had purchased the land from the respondent.

Apparently. Mr. Alfred maintained that the donee's relationship with the respondent as his son did not authorize him to challenge the validity of a sale agreement allegedly executed by the respondent, in which the donee was neither a party nor a witness.

Again, Mr.Alfred submitted that a donee of a power of attorney may only substitute for the donor where the donor's absence or inability to

attend court is adequately explained and the donee possesses independent, direct knowledge of the disputed facts.

Also, Mr. Alfred argued that the respondent's alleged sickness and old age were not substantiated by a medical report and that the respondent was within the Tribunal's jurisdiction and could have attended the proceedings personally. The donee therefore could not competently testify on the disputed sale, which was a matter allegedly within the respondent's personal knowledge. He relied on **Abdul Rahim Jamal Mohamed vs Watumish Housing Co. Ltd***,* Civil Appeal No. 54 of 2021 [2024] TZCA 155.

Moreover, Mr. Alfred reiterated that the donee's testimony and the respondent's failure to testify personally constituted illegality apparent on the face of the record.

Finally, Mr. Alfred urged the court to grant the application for extension of time to enable him to challenge the Tribunal's decision on appeal.

I have carefully considered the application, the affidavit in support, and the submissions made by learned counsel for both parties. The main issue for determination is **whether the applicant has demonstrated**

sufficient cause to warrant this court exercising its discretion to extend the time within which to file the intended appeal.

It is settled law that an applicant seeking an extension of time must demonstrate sufficient cause. Although an applicant is ordinarily required to account for the delay, an allegation of illegality in the impugned decision may constitute sufficient cause, provided that the alleged illegality is apparent on the face of the record and sufficiently important to warrant consideration by the appellate court. See the case of **Principal Secretary, Ministry of Defence and National Service** vs **Devram Valambhia** [1992] T.L.R. 185 and reaffirmed in **Lyamuya Construction Company Limited** vs **Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 20 of 2010, and **Jeremia Mugonya Eyembe** vs **Hamisi Selemani**, Civil Application No. 44.0 of 2020 [2021] TZCA 695.

In the present application, Mr. Alfred alleged that the trial Tribunal improperly relied on the testimony of Yusuph Enoka Budeba, the respondent's donee of a power of attorney, concerning whether the respondent had sold the disputed land. While Mr. Gerald maintained that the evidence concerned matters within the respondent's personal

knowledge, the respondent argued that the donee testified as an ordinary witness with personal knowledge of the facts. In my view, it was an error of law for the tribunal to rely on the testimony of Yusuph Enoka Budeba concerning the alleged sale of the suitland, given that he was neither the seller nor a party to the alleged transaction. His testimony could not establish a transaction in which he did not participate.

Regarding the delay, the court acknowledges that the applicant did not adequately account for the entire period. However, as stated in **Attorney General vs Emmanuel Marangakisi and 3 Others**, Civil Application No. 138 of 2019 [2023] TZCA 63, an illegality satisfying the established legal threshold may constitute sufficient cause for an extension of time.

In the circumstances, I agree with Mr. Alfred that the applicant has demonstrated an apparent illegality on the face of the record sufficient to warrant an extension of time. Accordingly, it is not necessary for the applicant to account for every day of the delay, as argued by Mr. Gerald.

For the foregoing reasons, the application is hereby granted. The applicant is granted an extension of thirty (14) days from the date of delivery of this ruling to lodge the intended appeal against the decision of

the District Land and Housing Tribunal for Kahama in Land Application No. 26 of 2023, delivered on 25th July 2025. No order as to costs.

It is so ordered.

DATED at **SHINYANGA** this 3rd day of **November, 2026**.





R.B Massam

JUDGE