

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

LAND APPLICATION No. 53 OF 2018

(Arising from High Court in Bukoba (Bukoba District Registry) in Miscellaneous Land Appeal No. 23 of 2014 & District Land and Housing Tribunal for Kagera at Bukoba in Application No. 73 of 2012 & Original from Kikuku Ward Tribunal in Civil Case No. 13 of 2011)

TRASIAS KAGOMBORA ----- APPLICANT

Versus

PRINCE DEVELIAN ----- RESPONDENT

[The Administrator of Estate of the
Late Augustine Kabuga]

RULING

28/05/2020 & 29/05/2020

Mtulya, J.:

This is an application for enlargement of time to institute application for leave to appeal to the Court of Appeal out of statutory time (the Application) against the decision of this court in Miscellaneous Land Appeal No. 23 of 2014. The Application was lodged by Mr. Trasias Kagombora (the Applicant) on 28th August 2018. The reasoning of the Applicant is found at paragraphs 6 of his Affidavit stating that he travelled Dar Es Salaam to attend his sick Aunt.

The reasoning of the Applicant was strongly disputed by Mr. Prince Deverian (the Respondent) for two reasons: first, the applicant has to provide proof of his statement and second, the order sought is

misconceived. The Application was scheduled for hearing on 28th May 2020, and both the Applicant and Respondent invited legal services of learned counsels, Mr. Seth Niyikiza and Joseph Bitakwate respectively.

I have to thank both learned counsels. They were brief and straight forward to the point. Mr. Niyikiza submitted that the Applicant was aggrieved by the decision of this court in Miscellaneous Land Appeal No. 23 of 2014 and preferred an appeal which was delivered on 18th May 2018 and was supplied with the copy of judgment on 20th June 2018. According to Mr. Niyikiza, immediately after receipt of the copy, the Applicant faced family challenges and was forced to travel to Dar Es Salaam on 21st June 2018 to attend his Aunt who was sick.

Mr. Niyikiza submitted further that the Applicant attended his Aunt and returned Bukoba on 15th August 2018 hence filed the Application on 28th August 2018. Finally Mr. Niyikiza argued that the Applicant has sufficient reason to justify the delay and if the Application is granted will not prejudice the Respondent as the case will be heard by our final court of appeal.

The submission and reasoning was strongly contested by Mr. Bitakwate and registered three protests, namely: first, the dispute started at Kikuku Ward Tribunal in Civil Case No. 13 of 2011 and under

section 47 (2) of the **Land Courts Disputes Act [Cap. 216 R.E. 2002]** (the Act), the Applicant was supposed to seek for certification on point of law, rather than the Application for extension of time to file leave to appeal to the Court of Appeal. To Mr. Bitakwate, leave to the Court of Appeal without certification is nothing and therefore the present Application was misconceived. Mr. Bitakwate cited the precedent of the Court of Appeal in **Maulid Makame Ali v. Kesi Khamis Vuai, Civil Appeal No. 100 of 2004** and stated that the Applicant must be barred from changing his previous prayers.

Secondly, Mr. Bitakwate submitted that the Applicant has shown a high level of negligence in enforcing his land rights. To bolster his statement, Mr. Bitakwate argued that the Applicant was availed copy of the judgment on 20th June 2018 whereas the Notice of Appeal was registered in the Court of Appeal, Bukoba Sub Registry on 18th June 2018. To Mr. Bitakwate, the Applicant was supposed to file application for leave on certification on point of law on the same day, 20th June 2018.

On the third protests, Mr. Bitakwate disputed the reason of attending sick Aunt in Dar Es Salaam contending that there are several unanswered questions such as: name of the Aunt, name of Hospital

which treated the patient, and when the Aunt was admitted and discharged. Mr. Bitakwate submitted further that these questions need a lot to be desired and in any case the Applicant has not produced sufficient reasons to justify extension of time. Finally, Mr. Bitakwate stated that the Respondent will be prejudiced if the Application is granted as he has been busy following up this case without rest in term of time, money and enjoyment of his land right.

In a brief rejoinder, Mr. Niyikiza argued that that the present Application was filed before the amendment of the Act in 2018 via Written Laws (Miscellaneous Amendment) Act, No. 3 of 2018 and filing of extension of time to file application for leave is proper as per requirement in section 47 (1) of the Act and certification will be applied after extension of time.

With the complaint on negligence on the part of the Applicant, Mr. Niyikiza contended that the Applicant is a lay person and cannot be considered as learned counsel. With two weeks delay, between 15th and 28th August 2018, Mr. Niyikiza stated that the Applicant was psychologically settling in at his home, taking care of family which he left for a while and looking for an advocate to take up his Application. Finally, Mr. Niyikiza insisted that there would be no any prejudice to

the Respondent if the Application is granted as the dispute will finally be determined by the Court of Appeal.

In the present Application this court is invited to determine enlargement of time period for the Applicant to file an application for leave to appeal to the Court of Appeal. This court is empowered under the provision of section 11 (1) of the Appellate Jurisdiction Act [Cap. 141 R. E. 2019]. However, for enlargement of time, the practice of this court and our superior court reveals that there must be sufficient reason or reasonable cause to persuade the court in favour of the Applicant.

It is therefore important for Applicant of extension of time to file application before this court to abide with the established practice of this court and Court of Appeal in showing good cause. The practice is extracted in various decisions of this court and Court of Appeal (see: **Alliance Insurance Corporation Ltd v. Arusha Art Ltd, Civil Application No. 33 Of 2015; Eliah Bariki v. Republic, Criminal Appeal No. 321 Of 2016; Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited, Civil Application No. 116 Of 2008 (Unreported), Sebastian Ndaula v. Grace Rwamafa, Civil Application No. 4 of 2014, Lyamuya Construction**

Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010).

For instance when interpreting the word *reasonable cause or good cause*, Court of Appeal in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd, Civil Application No. 13 of 2010**, stated as follows:

*What constitutes **good cause cannot be laid down by any hard and fast rules**. The term good cause is a relative one and is dependent upon party seeking extension of time to provide the **relevant material** in order to move the court to exercise its discretion.*

With regard to specific definition of good cause, the decision in **Dar Es Salaam City Council v. Jayantilal P. Rajani, Civil Application No. 27 of 1987**, the Court of Appeal observed that:

What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly. The absence of

any explanation for delay lack of diligence on the part of the applicant.

This decision was amplified in 2010 in the decision of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010**, where the following principles were set, *viz*:

- i. The applicant must account for all period of delay*
- ii. The delay should not be inordinate*
- iii. The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take; and*
- iv. 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.*

In the present Application, the Applicant's counsel, Mr. Niyikiza advance two reasons in this Application. First, the Applicant was attending his sick Aunt in Dar Es Salaam and was not negligent in following his case. However, the law require Applicants for extension

to act promptly after becoming aware that they are out of statutory time. In the present Application, the Applicant stated to have descended from Dar Es Salaam on 15th August 2018 and filed this Application two weeks later, that is 28th August 2018. This cannot be said is expeditious filing of the Application as per decision in **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited, Civil Application No. 116 of 2008**, where the Court of Appeal stated that:

*It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, **act very expeditiously** and that the **application has been brought in good faith** (emphasis supplied).*

It is the practice of this court and our superior court that, if the Application for extension of time is not brought in this court promptly, then the Applicant must account on every day of delay. This is certain and settled. In the authority of **Sebastian Ndaula** (supra), it was stated that:

The applicant has suggested in his supporting affidavit that he has all along been pursuing his case both in the

High Court, and in this Court. But, on a closer look, there are some gaps which the applicant has not accounted for (emphasis supplied).

The said accountability in the gaps is tested in every day of delay. The Court of Appeal in the decision of **Bashiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** stated that:

...a 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 taken (emphasis supplied).

The firm entrenchment of this position was reiterated in the same Court in the decision of **Elius Mwakalinga v. Domina Kagaruki and Five Others, Civil Application No. 120/17 Of 2018** where it stated that:

...in this regard, I am obliged to reiterate this Court's firm entrenched position that an application seeking extension of time...is required to account for each day of the delay (emphasis supplied).

These precedents of our superior court do not entertain gaps in days of delay. That is why in **Sebastian Ndaula** (supra), the Court observed some gaps which were not accountable and did not grant extension of time. The gaps which are stated by the Court, may be one or two days delay. **In Theotimo Itanisa v. Godwin Rugomora, Civil Appeal No. 46 of 1999**, the Appellant was late for two (2) days only to file an appeal, it was stated to be long time to file an appeal and was dismissed and in **Daphne Parry v. Murray Alexander Carson [1963] EA 546**, the applicant was late for five (5) days only when he applied for extension of time, but the Court of Appeal for East Africa refused to grant the enlargement.

In the present Application, the Applicant failed to account on every day of delay. When his learned counsel, Mr. Niyikiza was asked the reasons of two weeks delay, he offered general statements that the Applicant was psychologically settling in at his residence, taking care of his family which he left for a while and looking for an advocate to take up his Application.

I think, the Applicant, has failed to show vigilance in following up his Application. In any case, record show the up to the 18th June 2018, two days before getting hold of the copies of judgment, the

Applicant had the legal services of learned counsel Mr. Lameck Erasto who filed the Notice of Appeal in the Court of Appeal Sub Registry based in Bukoba. Therefore, the general statement that he was in search of advocate may not hold any merit. Again, under this period of science and technology, is not necessary for Applicants of extension of time to file Application themselves. They may hire advocates or send their family members to act for them or else request Deputy Registrars in the nearest High Court Registries on appropriate steps to be taken.

I understand, there are some exceptions which have been considered by this court in certain circumstances to grant extension of time, such as: filing applications in good faith (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited** (supra) or when there is complaint on illegality (**The Bishop of the Roman Catholic Diocese of Tanga v. Casmir Richard Shemkai** (supra).

However, it is unfortunate that this Application does not fit in the mentioned circumstances. The Applicant travelled a day after receipt of the copy of the judgment and three days after lodging the Notice of Appeal. He is not fit in the exception of good faith. Again, his

affidavit is silent on any illegality committed by this court in determining Miscellaneous Land Appeal No. 23 of 2014. This Application must fail. This is because the Applicant has exposed sheer negligence which has often times been held not to be sufficient reason to extend time.

To my opinion, it is established principle of this court and Court of Appeal that sheer negligence on the part of the Applicant (see: **Allan T. Materu v. Akiba Commercial Bank**, Civil Appeal No 114 of 2002) or their learned counsels (see: **Transport Equipment Ltd v. D.P. Valambhia [1993] TLR 91**, **D. P. Valambhia v. Transport Equipment Ltd [1992] TLR 246**, **Umoja Garage v. National Bank of Commerce [1997] TLR 109**, **Inspector Sadiki and Others v. Gerald Nkya [1997] TLR 290** and in **Daphne Parry v Murray Alexander Carson [1963]**), is not a sufficient reason to extend time.

Having said so and reasons adduced in this Ruling, the Applicant has failed to advance any good cause or sufficient reason to justify extension of time to file his application out of time. This Application is hereby dismissed with costs.

Ordered accordingly.

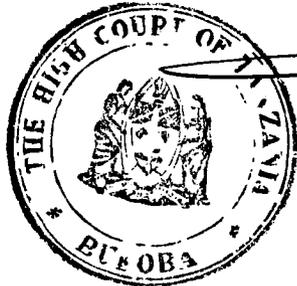


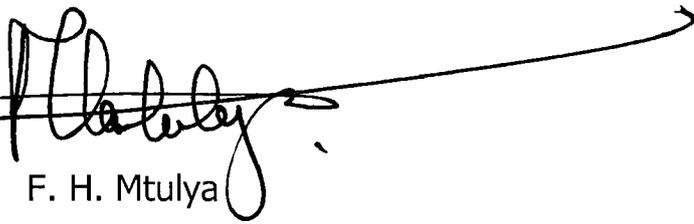

F. H. Mtulya

Judge

29/05/2020

This Ruling was delivered in Chambers under the seal of this court in the presence of the Applicant, Mr. Trasias Kagombora, and in the presence of the Respondent Mr. Prince Develian.




F. H. Mtulya

Judge

29/05/2020