

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

AT BUKOBA

LAND CASE APPLICATION NO. 23/2016

*(Arising from High Court Land Appeal No. 41/2011 Originating from Bukoba
DLHT in Land Application No. 195/2009).*

1. GARATIANA KAZIMOTO

2. HAMAD ABDU

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----- **APPLICANTS**

VERSUS

MODEST MFURUKI ----- RESPONDENT

RULING

10/11/2017 & 9/2/2018

Kairo, J.

This ruling is the result of an application by the Applicants praying for the following orders:-

1. That this Hon. Court be pleased to extend time for the applicant to file notice of appeal in the Court of Appeal out of time.

2. Any other relief this court may deem fit to meet ends of Justice.

The Application was preferred under Rule 10 of the Court of Appeal Rules, and section 95 of the CPC Cap 33 RE 2002 read together with section 14 of the Law of Limitation Act Cap 89 RE 2002.

The application is supported by a joint affidavit sworn by the Appellants.

The Respondent raised three preliminary points of objection (POs) when filed his counter affidavit which were couched as follows:-

- a. That the application for extension of time to file a notice of appeal to the court is not maintainable in law for having been filed out of time without leave of this court.
- b. That the application in question is incompetent and bad in law for failure to cite specific relevant provision of the law that empowers this court to hear and decide the same.
- c. That the said application is not maintainable in law for being supported by a defective affidavit.

He thus prayed the court to uphold the POs raised and dismiss this application with cost.

The parties in this matter are self represented.

When invited to make oral submission to amplify the POs raised the Respondent submitted that, the application was out of time of 60 days prescribed and further that, the Applicants did not file the application for

notice of appeal within 30 days prescribed by law attributing the action to negligence. He went on that, the land appeal matter sought to be impugned was No. 41/2011 which its decision was delivered on 27/8/2015. He added that, the application for the extension of time was filed on 18/3/2016 being a lapse of 8 months. The Respondent further averred that the Applicants failed to abide to the time prescribed to appeal instead opted to do what they want at their own pace which is not acceptable.

The Respondent in submitting for the second P.O Contended that their affidavit was not properly attested by the Applicants as Moslem and Christian attest differently:- a Moslem affirms and a Christian swears but in the affidavit no such distinction was shown. He thus prayed the Court to uphold the P.Os raised and struck out the application. He further prayed for a court order that the Respondent continue with the execution proceedings halted.

In reply, the 2nd Applicant who replied for both Applicants after reporting the admission to hospital of the 1st Applicant, He submitted that the Advocate who was representing them in appeal No. 41/2011 did not inform them what transpired in court that is why they delayed to appeal.

Regarding the alleged improperly sworn affidavit, he argued that there was no defect in the attestation as each of the Applicants was attested as per his faith, Him being a Moslem while the 1st Applicant is a Christian. The 2nd Applicant thus prayed the court to reject the POs raised for want of merit.

In rejoinder, the Respondent invited the court to dismiss the reason for delay arguing that the Appellants had a duty to come to court to follow up for their case despite hiring an advocate. Thus the failure to come to court was to their detriment as they decided to abandon their case and leave the same to the advocate. He reiterated his prayer to have this application dismissed with cost.

Before analyzing the arguments given by the parties, I wish to clarify from the onset that the first P.O raised is the gist of this application by the Applicants, having in mind that what is sought is leave of the court to extend time to file notice to appeal to the Court of Appeal. Thus it is a misconception on the part of the Respondent to allege that the application was filed without leave of the court as the leave is what the Applicants are seeking from this court. I will thus deliberate on this point as both parties have fronted their arguments over it.

Regarding the 2nd P.O I am convinced that the cited provisions are applicable to the prayer sought by the Applicants. As for the 3rd P.O it is true that the word “*Sworn*” in the attestation was meant to cover both Applicants while the 2nd Respondent who is a Moslem was supposed to be affirmed. However in my view the anomaly is not fatal to render affidavit defective. I thus found the 2nd and 3rd Pos to have no merits.

Let me now revert to the 1st P.O which as I earlier noted, is the centre of the application. It is now settled that, in determining whether an extension of

time is to be granted to the Applicant, the main issue to be addressed by the court is whether sufficient and cogent reasons have been adduced by the Applicant. The criterion was given in **Civil Application No. 1/2008 between Lucy Chimba Bihoye Vrs. Suleiman Rashid Juma: C.A Zanzibar** (unreported). Again it was echoed in the Case of **Mumello Vrs Bank of Tanzania: Civil Appeal No. 2/2012 C.A Dar es salaam** (unreported) wherein the court held that *“extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause”*.

According to record, the decision the Applicants wish to challenge at the Court of Appeal is High Court Appeal No. 41/2011 delivered on 27/8/2015. The law has put a requirement of filing a notice of appeal within 30 days from the date of the decision as per Rule 83 (2) of the Court of Appeal Rules GN No.368/2009. The record further reveals that the application for an extension of time to file notice of appeal was filed on 18/3/2016. Simple arithmetic denotes that, the same was filed after 202 days. According to the above cited cases, the issue for determination before the court therefore is whether sufficient cause was adduced by the Applicants to warrant the grant of the prayer for the extension of time sought.

The Applicants in their affidavit and when submitting orally gave the reason for delay to be failure by the Advocate hired to supply them with the information on what is going on in the court with regards to their case, as a result the matter was determined without their knowledge. Admittedly the Advocate was hired by the Applicant to represent them in the said appeal.

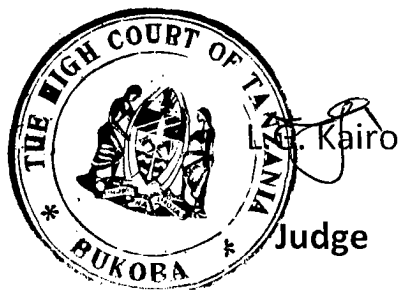
The interlocutory question is whether the negligence of the advocate and failure to inform them the outcome of the appeal is sufficient and cogent reason to warrant the grant of an extension of time sought. The courts have repeatedly resolved that the omission, or failure or negligence by an advocate is not a good reason to convince the court to grant the prayer for the extension of time. I found fortification in this stance in the case of **Kassim Magassa vrs Willy Bukuku: Civil Application No. 46/1998: CA Dar es salaam** (unreported) where it was held that “ *the party or Advocate’s inaction or negligence cannot be a good reason for revision for granting an extension of time*”

I concede that the Advocate once hired has a duty to represent the parties in court. However the party has a duty to follow up his or her case in Court so as to know what transpired or rather what is going on and not to abandon the case totally to him/her. The parties became aware of the determination of the case and filed the application more than six months later, which means they ceased to follow up the case in all that time which with much respect is the negligence of the highest degree. It is unacceptable that they now surface and come up with lame reasons for delay. The law has provided time frames for taking each step in case proceedings or solving of disputes. Disregarding them with no justifiable cause will defeat the ends of justice as observed in the case of **Ratman Curasamy & Another [1964] 3 ALLER 935**, wherein their Lordships observed as follows:-

"The rules of the court must prima face be obeyed and in order to Justify a court in extending the time during which some step in procedure required to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation".

In the upshot therefore, this application is dismissed with cost for want of sufficient cause.

It is so ordered.



9/2/2018

At Bukoba

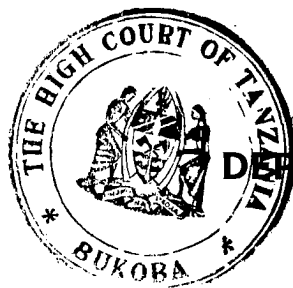
Date: 09/02/2018

Coram: Hon. S. M. Kulita

1st Applicant: }
2nd Applicant: } All Present
Respondent: }

B/Clerk: R. Bamporiki.

COURT: For ruling. It is ready and the same is hereby delivered today 09/02/2018 in the presence of both parties.



HL

S. M. Kulita

DEPUTY REGISTRAR

09/02/2018