

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**MISC. LAND CASE APPEAL NO. 82/2016**

*(Arising From Miscellaneous Application No. 59/2013 of the District Land and  
Housing Tribunal and Original Civil Case No. 9/2012 of the Rukoma Ward  
Tribunal)*

**DEOGRATIAS JOSEPH ..... APPELLANT**

**VERSUS**

**PETRONIDA KATARAIHA ..... RESPONDENT**

**JUDGMENT**

***28/05/2018 & 31/08/2018***

**KAIRO, J:**

This appeal arises from the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Misc. Application No. 59 of 2013

into which the applicant therein (Appellant) prayed for an extension of time to file his appeal out of time which was dismissed for want of sufficient course. Originally the Respondent; Petronida Kataraiha filed Case No. 9 of 2012 at Rukoma Ward Tribunal against the Appellant; Deogratias Joseph for encroachment into her two pieces of land. The trial tribunal after visiting the locus in quo and hearing the parties entered a verdict in favor of the Respondent. The same was delivered on 09/10/2012.

Dissatisfied, the Appellant filed Misc. Application No. 59 of 2013 for extension of time within which to appeal out of time before the DLHT. The appellate Chairman dismissed the application on 21/10/2013 on the ground that there was no good and sufficient reason to allow the application.

Being aggrieved, the Appellant preferred the present appeal raising two grounds couched as hereunder:

- 1. That, the tribunal gravely failed to evaluate the strong and sufficient reasons supported by the affidavit for the failure of filing the Petition of Appeal within the time.***
- 2. That, when dismissing the filed Application the tribunal did not take into consideration of the overwhelming chances of success of the appeal regarding the lack of the jurisdiction of the trial tribunal in entertaining the dispute.***

The issue in dispute concerned the ownership of the two *shambas* which were alleged to have been sold by the Appellant twice to different people.

The record depict that the Appellant had two *shambas*; one purchased from Koloneli Renard which he sold to the Respondent at the tune of Tshs 200,000/= that was converted into one heard of cattle. The second *shamba* that he bought from Petero Bukulu was also sold to the Respondent at Tshs 150,000 of which was converted into 7 goats. It was further stated that the sale transaction was reduced into writing. However, the document caught fire in the house of the Respondent. When the Appellant was approached by the Respondent to re-write the sale agreement, the Appellant did not act promptly. But thereafter the Appellant sold the same to another person and further invaded the shamba and expelled one of the children of the Respondent who was cultivating therein and took away the hoe. That is when the dispute arose between the Appellant and the Respondent which led to the institution of Case No. 9 of 2012 at Rukoma Ward Tribunal by the Respondent complaining the encroachment to land and grabbing of the hoe by the Appellant at the shamba in dispute. The trial tribunal ruled in favor of the Respondent as already stated. The Appellant was aggrieved and decided to file Misc. Application No. 289/2012 for revision at the Rubale Primary Court. However he was advised to lodge his appeal at the District Land and Housing Tribunal being an appropriate forum. Subsequently, he filed Misc. Application No. 59 of 2013 for extension of time to file appeal out of time. The same was dismissed for want of sufficient cause. He was further aggrieved, hence this appeal.

At the hearing of this appeal, the Appellant had the service of Mr. Matete learned advocate while the Respondent was absent without notice. The matter therefore proceeded in her absence as prayed by the learned advocate, Mr. Matete.

In support of the appeal, Mr. Matete charged that the tribunal erred for failure to evaluate and consider the sufficient cause as explained in the affidavit which prevented the Appellant from appealing within time.

Arguing on the first ground of appeal, Advocate Matete submitted that the application that Rukoma Ward Tribunal concerned encroachment of two *shambas* and grabbing of the hoe. As a result, the Appellant termed it as a criminal complaint and thus went to file Revision at Rubale Primary Court after being dissatisfied. However, the Rubale primary court advised him to forward his claims to the District Land and Housing Tribunal where he was aware that he was out of time. He thus made an application to be allowed to file his appeal out of time.

It was further submitted by the learned counsel that if there would have been no confusion of terming the matter criminal, the Appellant would have taken the matter to the DLHT within time. He reiterated that the Ward Tribunal sometimes constitutes itself as criminal tribunal [section 8 of the Ward Tribunal Act No. 7 of 1985 [Cap 206 RE 2002]]. He further stated that, the Ward Tribunal can also be composed as Land tribunal as per Act No. 2 of 2002. He further argued that in the matter in hand, the Ward Tribunal used

both Acts which confused the Appellant as to which court could be proper to entertain his dissatisfaction, hence he went to the Primary court of Rubale.

As to the second ground, the learned counsel submitted that the DLHT erred for its failure to consider that the appeal has overwhelming chances of success as the Ward Tribunal has no jurisdiction to hear and determine the complaint.

It was further argued that in the first claim that is encroachment of the land, the tribunal was to sit or composed itself as the Ward Tribunal for land matters as per Act No. 2 of 2002. But in criminal matters, it was to sit as Baraza la Usuluhishi as per the Ward Tribunals Act No 7/1985 (supra). He contended that since two issues were mixed, definitely one issue must be out of jurisdiction. He categorically stated that in criminal matters, appeal or revision is being preferred at the Primary Court while for the Land issues, appeal or revision is being preferred at the DLHT. He forcibly contends that this ground concerned with jurisdiction which needs to be determined at the appeal.

Mr. Matete maintained that the Appellant has never been negligent to pursue his right, only that the way was not smooth due to explained reasons. Hence, he prays this court to grant him an extension of time so that he can be allowed to appeal out of time against the decision of Rukoma ward tribunal with costs.

Having heard the submission of the learned counsel and taking into account the grounds of appeal, the issue to be resolved is whether there were sufficient grounds to grant the application for the extension of time sought within which to file the appeal before the DLHT.

It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been established that the delay was with sufficient cause. [Refer the case of **Benedict Mumello versus Bank of Tanzania, Civil Appeal No. 12 of 2002, at page 6. CAT at Dar Es Salaam, (Unreported)**].

In the instant appeal, the Appellant attacks the refusal of the DLHT to take serious account of the reasons for delay to file appeal within prescribed time. In his affidavit, the appellant averred that:

*2. That, after the decision of the Rukoma Ward Tribunal, the applicant having been aggrieved filed an application for revision before Rubale Primary Court on time since Rukoma Ward Tribunal entertained the matter without jurisdiction as it entertained and determined it as a criminal matter.*

*6. That, the time wasted in seeking revision in the primary court made us be out of time to file the appeal but we honestly believed that the Primary Court had jurisdiction because it was a criminal matter.*

- It is not disputed that the Rukoma Ward Tribunal determined the suit in hand where the Respondent complained about the trespassing into the land and grabbing the hoe. Looking at the claim, the grabbing the hoe is a distinct claim which ought to be determined as a criminal matter. In the proceedings, the trial tribunal was constituted to deal with the dispute over the land. However, it dealt with both matters of land dispute over encroachment of the land and the grabbing of the hoe. The trial tribunal went further to arrest the Appellant by using the militia man and determined the suit by ordering the appellant to return the hoe to the Respondent and pay the fine of Tshs 15,000/= for failure to obey the order of the Tribunal under section 18 (2) of the Ward Tribunal Act No. 7 of 1985 (supra).

Under these circumstances, I am in complete agreement with the learned counsel for the Appellant that mixing of two issues misled his client and termed it to be criminal matter as the trial Ward Tribunal misdirected itself and determined both issues of criminal nature and land dispute over ownership of the land collectively. In my view, with these glaring confusions, the trial tribunal cannot escape the blame of contributing to the delay as claimed by the learned counsel for the Appellant. As to what constitute sufficient cause, the same hasn't been defined, but depends on the circumstance of the matter concerned. The observation has been given in the case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and**

**Amos A. Mwalwanda-** Civil Application No. 6 of 2001 (unreported) wherein it was held that:

*“What amount 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 or valid explanation for the delay; lack of diligence on the part of the applicant”.*

Applying the cited case to the facts at hand I am of a candid view that the confusion caused by the Rukoma Ward Tribunal to determining the land proceedings and the criminal proceeding together in case no 9/2012 thereby confusing the Appellant was a sufficient cause to warrant the DLHT grant the extension of time sought. In my opinion the Appellant has established a valid explanation for the delay.

In his second ground Advocate Matete argued that the intended appeal has overwhelming chances of success as the Ward Tribunal had no jurisdiction to hear and determine the complaint. Suffice to state that at this juncture that stated argument is speculative as it would depend on the merit of the intended appeal. Besides, this appeal is confined to challenge the DLHT’s decision and not the Primary court’s decision; as such this is not a proper forum. I am thus constrained in making any observation on the argued ground.

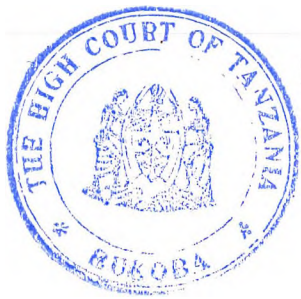


In the aforesaid, I found this appeal to have merit and I accordingly allow it. I further order the file be reverted to the DLHT so that the Appellant can file the intended appeal. In the circumstance of this case, no party is awarded cost

Appeal allowed.

R/A explained.

Order accordingly.



L.G. Kairo  
Judge

At Bukoba

31/08/2018

Date: 31/8/2018

Coram: Hon. L.G. Kairo, J

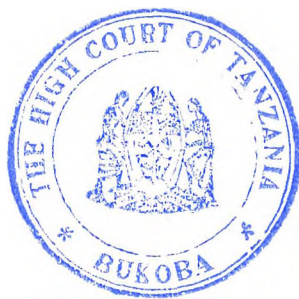
Appellant: Present in person; Advocate Matete

Respondent: Absent

B/C: R. Bamporiki

**Advocate Matete:** Hon. Judge, the matter is for Judgment. We are ready to proceed.

**Court:** The matter is scheduled for Judgment. The same is ready and is read over in open court before the Appellant in person and Advocate Matete representing the Appellant but in the absence of the Respondent today 31/8/2018.



L.G. Kairo  
**Judge**

31/8/2018