

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND APPLICATION NO. 57 OF 2018

(Arising from Bukoba District Land and Housing Tribunal in Land Appeal No. 9 of 2012)

PRISKILA MWAINUNU-----APPLICANT

VERSUS

MAGONGO JUSTUS-----RESPONDENT

RULING

Date of last order 24/02/2020

Date of ruling 28/02/2020

N.N. Kilekamajenga, J.

The applicant was seeking leave to extend time for filing of an appeal out of time. The applicant moved the Court by way of chamber summons supported by an affidavit deposed by the learned advocate, Mr. Alli Chamani. The application is made under **section 41(2) of the Land Disputes Courts Act, Cap. 216 RE 2002**. The parties appeared before me to argue the application. The applicant was represented by the learned advocate, Mr. Alli Chamani while the learned advocate, Mr. A. Kabunga appeared for the respondent.

During the oral submission, the counsel for the applicant submitted that the applicant requested the copy of judgment and decree on 9th July 2018 and

received the same on 14th September 2018. However, under **section 19 of the Law of Limitation Act, Cap. 89 RE 2002** the days used to secure the copy of judgment and decree are normally not counted when computing the time to appeal. Therefore, from 19th July 2018 when the applicant requested for the said copies to the date when he received the appeal on 14th September 2018, such days should not be counted. According to case law, especially the case of **Ponsian Baitatafe v. Khalid S. Hussein and others, Civil Appeal No. 28 of 2016**, HC at Bukoba the days used by the applicant to secure the judgment and decree are not automatically excluded. Hence, the applicant has to seek extension of time.

Mr. Chamani argued further that there are chances of success in the appeal in case this application is allowed. To buttress his argument, he referred the Court to the case of **Gibb Eastern Africa Ltd v. Syscon Builders Ltd and two others, Civil Application No. 5 of 2005**. He informed the court that the trial court tried the case without assessors and that there is an illegality on the decision. Where there is an illegality on the decision, then it constitutes sufficient cause for extension of time. He referred the Court to the cases of **Principal Secretary Ministry of Defence and National Service [1992] TLR 387; Chadha and Company Advocates v. Arunaben Chagani Chita Ministry and Others [2017] TLS –LR 419; VIP Engineering and Marketing Ltd v.**

Citibank Tanzania Ltd, Consolidated Civil Reference No.6,7 and 8 of 2006.

Mr. Chamani informed the court that the illegality in this decision is based on the fact that the tribunal did not comply with the provisions of **Section 23(1)(2) of the Land Disputes Courts Act, Cap. 216 RE 2002** because the tribunal was not fully composed as it did not sit with assessors.

The counsel for the applicant insisted that, it is not the obligation of the applicant to request the copy of judgment and decree. The tribunal's registry office was supposed to inform the applicant after the said copies were ready. The applicant was supposed to wait until he is informed about the availability of such documents and not otherwise. He cemented the argument with the case of **Trans-continental v. Tanganyika Motors Limited [1997] TLR 328**. He finally urged the Court to allow the application.

On the other hand, the counsel for the respondent prayed to adopt the counter affidavit to form part of his submission. He further objected the application as there was no reason for delay advanced by the applicant. Extension of time is the discretion of the Court which must be exercised judiciously. **Under section 41(2) of the Land Disputes Courts Act**, there must be sufficient cause for

the Court to extend time. As the applicant failed to advance any reason for the delay, both in the affidavit and oral submission, this application is devoid of merit. The applicant alleged that the copies of judgment and decree were secured on 14th September 2018, however there was no letter which requested such copies as alleged by the applicant.

Mr. Kabunga argued further that the judgment was delivered on 29th June 2018, the same was certified on 15th August 2018. If the applicant received the copy of judgment and decree on 14th September 2018, then 45 days had not lapsed.

Order XXXIX, Rule 1(1) of the Civil Procedure Act, when read together with **section 19(2) of the Law of Limitation Act** excludes the date when the applicant was seeking copies of judgment and decree. If the applicant got the copies of judgment and decree on 14th September 2018, then she was supposed to file the appeal on 29th October 2018 but the instant appeal was filed on 29th April 2019. The time when the applicant is waiting for the copy of judgment is normally automatically excluded. He supported the argument with the case of **Registered Trustees of the Marian Faith v. The registered Trustees of the Catholic Church, Civil Appeal No. 64 of 2006**.

The counsel for the respondent argued further that the applicant is supposed to account for everyday of delay as stated in the case of **Sebastian Ndaula v.**

Grace Rwamafa, Civil Application No. 4 of 2014. Negligence of the applicant cannot constitute sufficient cause for extension of time as stated in the case of **Sebegele v. Tanzania Portland Cement Co. Ltd, Civil Application No. 25 of 2002.** In the instant application, the applicant demonstrated negligence. Mr. Kabunga also assailed the applicant's chamber summon for containing grounds of appeal something which is wrong. This Court cannot discuss the grounds of appeal at this stage. He cemented the argument with the case of **Shekh Issa Seif Gulu and 3 others and Rajabu Mangara Mtoro and 10 others.** There is no illegality in the judgment and chances of success of the appeal are irrelevant at this stage. This argument has been brought as an afterthought and the application lacks merit and should be dismissed with costs.

When rejoining, the counsel for the applicant urged the Court to consider the principle of overriding objective in order to dispense justice on the application. He insisted that the applicant was not obliged to apply for the copy of judgment but wait until she was informed when such copy is available. He further informed the Court that the application was filed on 21st September 2018 and not on 29th April 2019. He urged the Court to allow the appeal.

In this application, I have taken the holistic view on the grounds for extension of time. Also, the perusal of the court file and the proceedings of the trial tribunal

have assisted in reaching the decision. Before venturing into the cause of the delay in filing the appeal, it should be understood that extension of time is the discretion of the Court. The discretion is provided under **section 93 of the Civil Procedure Code, Cap. 33 RE 2002**. The section provides:

'Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.'

However, this discretion must be exercised judiciously. See, the case of **Tanga Cement Co. v. Jummanne Masangwa and Another**, Civil Appeal No. 6 of 2001 (unreported) where the Court state that:

This unfettered discretion of the court, however, has to be exercised judiciously, and the overriding consideration is that there must be 'sufficient cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly: the absence of any valid explanation for the delay: lack of diligence on the part of the applicant'.

Furthermore, it is the principle of law which obliges the applicant to show sufficient cause or good cause for extension of time. See, the cases of **Tanga Cement Co. v. Jummanne Masangwa and Another** Civil Application No. 6 of 2001 (unreported); **Sospter Lulenga v. Republic, Criminal Appeal No. 107 of 2006**, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. Republic, Criminal Appeal No. 130 of 2003**, Court of Appeal of Tanzania at Mbeya (unreported) and **Shanti v. Hindochi and Others [1973] EA 207**.

In the instant application, the judgment of the District Land and Housing Tribunal for Kagera was delivered on 29/06/2018. The same judgment was certified on 15/08/2018 which means it was ready for correction on that date. Though, the counsel for the applicant alleged that when the judgment was delivered, she applied for the copy of judgment and decree. However, she did not get the said copies until on 14/09/2018. Now, there are two versions of information concerning the date when the judgment and decree were issued. The copy of judgment attached to the applicant's application shows that it was certified on 15/08/2018. That being the case, the applicant cannot allege that he received the copy of judgment and decree later than 15th August 2018.

On the other hand, the counsel for the respondent argued that even if the applicant received the said copies on 14th September 2019, she was still within

time to file the appeal. The instant application seeking extension of time was filed on 21st September 2018. For that reason therefore, if days used to wait for the copy of judgment and decree are excluded in computing the time, then the applicant was still within time to file the appeal. However, the counsel for applicant argued that the days used to secure the copy of judgment and decree are not automatically excluded. He possibly wanted to bring at home the point that the applicant delayed in filing the appeal because she was late to secure the said copies. On my side, I subscribe to the position of law which automatically excludes the days of securing the judgment in computing the time for limitation. If that is the case, the applicant was not time barred from filing the appeal.

Now, let me address the position of this application. As stated earlier, there are number of factors which amount to sufficient cause in moving the Court to enlarge time for filing the appeal. These reasons, as already stated in the case of **Tanga Cement** (supra), but also reiterated in a number of judicial decisions. In this regard, I wish to consider the position of law reiterated in the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), which is quoted with approval in the case of **Bishop Roman Catholic** (supra), where the Court stated the principles to guide courts in extension of time thus:

1. *That, the applicant must account for all period of delay.*
2. *The delay should be inordinate.*
3. *The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
4. ***If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality or the decision sought to be challenged*** (emphasis added).

The same principles of law are reiterated in the case of **Zawadi Msemakweli v. NMB PLC, Civil Application No. 221/18/2018, CAT at Dar es salaam** (unreported) thus:

*'Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion...the Court must consider factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether applicant was diligent, **whether there is point of law of sufficient importance** (emphasis added) such as the illegality of the decision sought to be challenged and overall importance of complying with prescribed timelines.'*

In the instant application, as already stated above, the applicant was diligent in ensuring that the appeal is brought before time. It is unfortunate that, instead of filing the appeal the applicant filed this application believing that she was time barred. In my view, the applicant showed promptness, diligence and was not

negligent in demonstrating that she was unhappy with the decision of the trial tribunal.

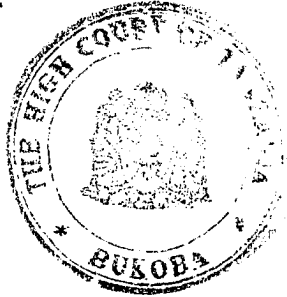
Furthermore, the counsel for the applicant argued that the anticipate appeal have chances of success in case the application is allowed. While, this argument may be relevant, it is not the task of this Court to investigate the possibilities of success in the appeal which is not before me. However, I have perused the proceedings of the trial tribunal and discovered some points of law sufficient to move this Court to extend time for filing the appeal. For those reasons therefore, in exercise of discretion, this Court see the reason for extending time to file the appeal. Therefore, I hereby allow the application. There is no order as to costs as this application has been brought by the applicant after mis-calculating the time to file the appeal. Order accordingly.

Dated at Bukoba this 28th February 2020.

N.N. Kilekamajenga
Judge
28/02/2020

Court:

Ruling delivered in the presence of the counsel for the applicant, Mr. Alli Chaman and Mr. James Mwainunu who appeared on the behalf of the applicant. The applicant and respondent were absent. The right of appeal is explained to the parties.




N.N. Kilekamajenga
Judge
28/02/2020