

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

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**MISC. LAND APPLICATION NO. 67/2018**

*(Arising from High Court Land Appeal No. 69/2016)*

**GELARDINA BENEDICTO ..... APPLICANT**

**VERSUS**

**FREDRICK FELICIAN .....RESPONDENT**

**RULING**

**20/2-20/3/2020**

**BAHATI, J.**

By Chamber Summons filed on 12<sup>th</sup> November, 2018, this application for the “grant an order for re-admission of the appeal” was preferred by the applicant named above. The application has been brought under Order XXXIX Rule 19 of the Civil Procedure Code, Cap. 33 together with section 14 (1) of the Law of Limitation Act, Cap. 89 and it is supported

by the affidavit of Gelardina Benedicto and counter affidavit of Fredrick Felician. The subject application results from the dismissal of the applicant's appeal by Bongole, J., for want of prosecution on 26/6/2018.

The applicant herein has filed this application praying for the following orders:

1. The Court be pleased to extend time within which to file an application for re-admission of an appeal which was dismissed for want of prosecution by this Court on 26/6/2018
2. The Court be pleased to order for the re-admission of an appeal which was dismissed for want of prosecution on 26/6/2018
3. Costs of this application abide by results

The learned counsel, Gerasi Reuben represented the applicant, while the respondent, Fredrick Felician was unrepresented.

The application proceeded orally. In his submissions, the counsel for the applicant submitted that the Land Appeal No 69 of 2016 was dismissed for want of prosecution on 26/6/2018 by Bongole, J.

He submitted further that, the dismissed appeal (No. 69 of 2016) was filed on 17/11/2016 after the appellant in the said proceedings) was granted leave to file it out of time by his Lordship Matogoro, J. The major reason which was advanced to secure the subject leave was the fact that the trial DHLT's file was unfound or misplaced.

Furthermore, according to the Counsel for the applicant, after she filed the appeal, the applicant continued to make unsuccessful follow ups on summons as she was notified that it takes long time to prepare. However, in October 2018 she learnt that Fredrick Felician had obtained a judgement against her. Thus, she then made follow up to the Ward Executive Officer at Nyakibimbili where she got a copy of ruling of this court which has dismissed her appeal.

The applicant's counsel also submitted that after being served with the said ruling, she rushed for a legal consultation from which she was advised to make an application for re-admission of an appeal out of time.

Accounting for what had transpired, the counsel for the applicant submitted that, the appeal was filed on 17 /11/2016 and called for first mention in court on 6 /6/2017, about seven months after the filing. On the latter date, the presiding Judge ordered for the parties to be notified. Hence, to the applicant's counsel, the respondent and other

responsible people had the duty to notify the appellant (now applicant herein). It was stated further that on 14/9/2018 when the matter was again called for mention, the Respondent (Felician) who had been notified attended but the appellant did not attend because she had not been notified despite her several follow ups in court. Moreover, the applicant's counsel submitted that this trend indicates that there was an ill motive from the Respondent as was apparent at the trial DHLT which ill motive was also observed by Matogolo, J. before he granted her leave to file the subject appeal out of time.

In conclusion, the applicant's counsel submitted that the dismissed appeal otherwise stands good chances of success. Therefore, he requested the court to both extend time to the applicant as applied and consequently re-admit the appeal out of time.

In reply, the respondent strongly asserted that all those grounds submitted by the applicant have no legs to stand for being afterthoughts.

The respondent further asserted that the applicant is employing every illegitimate means to take deny him justice including having made him to be arrested and charged at Bukoba Primary Court in Criminal Case No. 876/2018 .

The respondent finally submitted that the grounds raised by the applicant have no reasonable justification in law but a mere strategy made purposely to delay justice and wasting time of both the court as well as of the respondent. According to him, since she is the one who filed the appeal the applicant ought to make necessary follow ups, failure of which leaves her to be blamed than otherwise.

Having carefully considered the arguments of both parties, I have observed that the main issue to be determined by this court is whether the applicant establishes sufficient reasons for this court to extend time and/or to re-admit an appeal out of time.

In principle, Order XXXIX Rule 19 of the Civil Procedure Code, Cap .33 provides that:

*" where an appeal is dismissed under rule 11 Sub Rule (2) or rule 17 or 18, the appellant may apply to the court for the re-admission of the appeal, and where it is proved that he was prevented by any sufficient cause from appeal when the appeal was called for hearing, the appeal on such terms as to costs in otherwise as it thinks fit.." (emphasis supplied).*

From the records of the Court, I have tried to peruse to see if the applicant in this case was served with the summons or any other means with no success. I took trouble to ask the respondent how did he

manage to get the information , he said through good samaritan, and he stated that it was not his duty to notify the applicant.

Therefore, the applicant has satisfied this court that she was prevented by sufficient cause from appearing at the hearing of appeal when it was called for hearing.

In my view, the duty of the court is to make sure that all parties appear before the Court to resolve the matter beforehand. Since the applicant was not served summons to appear, any adverse action would be unfair as this would amount to condemning her unheard. For the interest of justice it is desirable extend time and to re-admit the appeal.

As it has been established that, the applicant has been in Court corridors in pursuit of justice before and after the dismissal of her appeal together with the act that in so far as she has been promptly taking necessary steps wherever there had been a failure on her efforts to restore the appellate proceedings, it cannot be said that she was inactive or overly negligent. I have also considered the fact that the grant of the application will not occasion any injustice to the respondent.

This application is therefore granted with no costs.

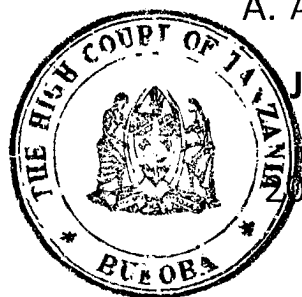
Order accordingly.

Right of appeal explained.

*A. A. Bahati*

A. A BAHATI

JUDGE



20/3/2020

Date: 20.03.2020

Coram: Hon. A. A. Bahati – J

Appellant: Geraldina Benedicto (Geras Reuben)

Respondent: Absent.

B/Clerk: L. Kyaruzi.

**Appellant:** This matter is coming for ruling. We are ready.

**Court:** The ruling was delivered in the presence of Appellant Miss Geraldina Benedicto and her Advocate Geras Reuben.



A. A. BAHATI

