



IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT BUKOBA

BUKOB DISTRICT REGISTRY

MSC.LAND APPLICATION NO.81/2016

Arising from Land application no.165/2011 at DLHT Bukoba.

FAIMU KAMUGISHAAPPLICANT

VS

NATIONAL MICROFINANCE BANK (NMB) AND 2 ORS.....RESPONDENTS

RULING

13/10/2020 & 30/10/2020

Kairo, J

The Applicant herein seeks an extension of time within which to lodge an appeal against the decision of the Bukoba District Land and Housing Tribunal (DLHT) in Land application No.165/2011.

The Applicant's chamber summons is supported by his sworn affidavit which accounts for the delay time. Paragraph 3 and 4 are relevant to this application as they embody the reason of delay to which he stated was due

to non- obtaining of the necessary documents for appeal purposes in time. The Applicant contended that when he obtained the relevant documents on 26/8/2016, there remained two clear days before the lapse of the time required for filing of an appeal. The Respondents through Advocate Rugambwa opposed the application through counter affidavit arguing that the documents were obtained two days before lapse, thus in time before expiration of time to appeal.

At the hearing, the Applicant had the legal representation of Advocates Bitakwate while the 1st and 3rd Respondents enjoyed the legal services of Advocate Rugambwa.

Amplifying his affidavit which he prayed to be adopted as part of his oral submission, Advocate Bitakwate submitted that the decision subject to impunity was delivered on 13/7/2016 and on 19/7/2016 the Applicant wrote a letter requesting for the relevant documents for appeal purposes and obtained them on 26/8/2016. He went on that, when received, only a day remained before the lapse of 45 days required to file the appeal. He argued that according to section 19(2) and (3) of the Law of Limitation Act Cap 89.R.E 2019, the time spent in following up the prerequisite documents is excluded in computation. He was therefore to the effect that the 45days must be computed from 26/8/2016 when he obtained the relevant documents. According to him this reason is a sufficient cause of delay to move the court to exercise its discretion to extend time. He backed up his argument in with the case of **Josephine A.Kalalu vrs Isack Michael Malya:**



Civil Reference No.1/2010 CAT Mza(Unreported) at pg 9-11 where the Court of Appeal explained the circumstance to extend time.

Advocate Bitakwate further submitted that there were illegalities in the trial court decision subject to impunity which also warrants the court to extend time. He mentioned them to be: **One**: the Chairman mixed some facts as he stated that the Applicant herein is the one who applied loan while the pleadings didn't so state. (Page 11 of the case), **Two**: the Chairman didn't analyze the evidence adduced. **Three**: the Chairman didn't consider assessors opinions. **Four**: the decision wasn't in tandem with section 23(2) of Cap 216 R.E 2002.

In his reply, Advocate Abel Rugambwa dismissed the Applicant's submission. He also prayed the court to adopt the counter affidavit as part of his oral submission.

Opposing the application, the Respondent's counsel elaborated that it is not in dispute that the decision was delivered on 13/7/2016 and later the Applicant requested the relevant documents on 19/7/2016. He went on that the said relevant documents were certified ready for collection on 6/8/2016, which means, there were about 26 days from the delivery date to certification date arithmetically, as such the Applicant was remained with plenty of time for him to collect the documents and appeal out of the 45 days legally provided. Yet he did not file the appeal. He further argued that the contention by the Applicant that he has collected the necessary documents on 26/8/2016 which was 20 days later after certification has not



been evidenced. Besides, the Applicant was still within time to appeal even on 26/8/2016 when he alleges to have obtained the necessary documents but didn't appeal and he did not state in his affidavit whether it was a working day or not. He argued further that the present application was filed on 16/9/2016 which is 20 days later since he alleged to have got the necessary documents and his affidavit does not state what he was doing in those 20 days after getting the necessary documents. Even the advocate in his submission didn't account for those 20 days of delay.

It was Respondent's counsel submission that the stance of the law is to the effect that the Applicant has to account for each and every day of delay. He thus pleaded with this court to exercise its discretion judiciously and referred the court to the case of **DSM City Council vrs Group Security Co.ltd: Civil Application No.234/2015 CAT, DSM(Unreported)** at pg 7 and **Abdul Issa Bano vrs Mauro Daolio: Civil Application No.563/02/2017** (Unreported). Advocate Rugambwa considered his delay to be the delay of justice and nothing more.

With regards to the alleged illegalities, Advocate Rugambwa argued that time has not arrived to discuss them, as such they were raised prematurely. He prayed the court to reject this application for want of merit with cost. In rejoinder, Advocate Bitakwate reiterated that he has demonstrated sufficient cause of delay, which was due to delay to be supplied with the copies of judgment and decree in time and that the same is permissible



under section 19 of Cap 89(supra) adding that the cited cases by the Respondent's counsel are distinguishable to the circumstances of this case. Having considered the records, *viva voce* submissions and affidavits of both parties adopted therein, the court is required to determine whether the Applicant has demonstrated sufficient cause to warrant the extension of time sought.

There is no definition of sufficient cause but an attempt through various case laws have been made when the court seize the opportunity to define/explain during an invitation to exercise judicial discretion to extend time.

In Tanga Cement Company Ltd vrs Jumanne D. Masangwa & Amos A.

Mwalwanda; Civil Application No. 6 of 2002 (unreported) wherein it was observed as follows: -

"What constitute 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 delay, lack of diligence on the part of the Applicant".

Apart from requiring the Applicant to demonstrate sufficient course, the court further requires the Applicant to accounting for the period of delay.

[Refer the case of **Bushiri Hassan vrs. Latifa Lukio Mashayo**, Civil Application No.3/2007] (Unreported) wherein the court resolved:-

“.....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”

See also **Elius Mwakalinga Vrs Domina Kagaruki and others Civil Applications No.120/2018, CAT Pg 10 (Unreported).**

The Applicant in his submission has conceded that on 6/8/2016 is when the necessary documents were certified. This means they were ready for collection but he did not take necessary steps to collect them and file an appeal despite the fact that they were certified about 22 days ahead of the lapse time. In my understanding, the applicability of 19 of Cap 89(supra) ceases to apply after the necessary documents were certified ready for collection, as such the Applicant cannot claim that he was still making the follow-ups since what remained was for him to collect them and not further follow-up. In other words, the time used to follow up the necessary documents which is excluded in computation under section 19 of Cap 89 comes to an end when the necessary documents are certified ready for collection by the court. Otherwise his failure to collect the same and proceed to appeal is to be viewed as laxity and inaction on the part of the Applicant.

Besides, the Applicant has simply told this court that he received copies of the relevant documents on 26/8/2016 but there was no verification or proof submitted to court to that effect as rightly argued by the Respondent's counsel. But even if it is assumed that the Applicant obtained the relevant



documents on 26/8/2016, still the Applicant was within time but didn't state why he could not file an appeal in the remaining time of two days which omission the court perceives to be negligence which does not warrant an extension of time sought. [Refer; **Civil Application No. 46/1998; Kassim Magassa vrs Willy Bukuku C.A.] (unreported)** wherein the CAT held that *"the party's or advocates inaction or negligence cannot be a good reason for revision"*. I hasten to add that: *In the same vein, it can't be a good reason for granting of an extension of time.*

Thorough scrutiny of the records reveals that there was a further delay of 20 days after he got the relevant documents in bringing an application which was not accounted for by the Applicant. This was argued by the Respondent's counsel to exhibit that the Applicant, having received the documents in time failed to appeal and that he was not even prompt in bringing his application which was filed after 20 days and hence they were not accounted for as well. I agree with Mr. Rugambwa's argument that promptness in bringing an application for the extension of time could have exhibited seriousness on the party of the Applicant on which the court might have considered to exercise its discretion to extend time. **See Tanga Cement Company Limited's case (Supra)**. However, the Applicant didn't do that and worse didn't state what was he doing for the 20 days if at all he wanted to put his matter in motion promptly, in a way impress the court to grant his prayers.

This court therefore hesitates to exercise its discretion to extend further time.

The Applicant had pointed out the issue of illegalities in the decision to be impugned. However, I observed that those are fit to be listed as grounds of appeal, thus I wouldn't want to cling into the same at this juncture. Suffice to state that the Applicant had all relevant weapons and ample time to challenge the trial judgment in time but due to his laxity and lack of diligence, he didn't. Instead he is now surfacing late and term them as illegalities for purpose of getting an extension of time to cure his unaccounted inaction. To say the least, this is an afterthought which this court is not ready to condone. I join hands with the Respondent's counsel argument that this is not the right time to discuss them. Besides, the same shall attract arguments of parties and in fact may as well pre-empt the intended appeal. The court must therefore warn itself of that danger so as to abstain from falling into such a trap.

I am alive that illegalities in a decision to be impugned warrants an extension of time as rightly argued by the Applicant's counsel and also as was decided in the case of **Backlays Bank of Tanzania Ltd vrs Tz Pharmaceutical Industries & Others** Civil Application no.62/16/ of 2018, CAT DSM (Unreported) Pg 15. However, in the case at hand the alleged illegalities were to be grounds of appeal to be determined in the intended appeal in the circumstances the extension of time sought is granted, thus distinguishable. But further every case is to be decided by its own facts.

In the end result, I see no sufficient grounds which have been demonstrated by the Applicant to warrant the extension of time sought.

I am thus constrained to dismiss it as I hereby do, with cost.

It is so ordered.




L.G.kairo
Judge

30/10/2020

Date: 30/10/2020

Coram: Hon. J.M. Minde, DR.

Applicant: Present

1st Respondent: Absent

2nd Respondent: Absent

3rd Respondent: Absent

B/C: Gosbert Rugaika

Mr. Abel Rugambwa (Adv) for the 1st and 2nd Respondent: This matter is set for ruling today. We are ready to receive the said ruling if it is ready.

Order: Ruling delivered this 30/10/2020 in the presence of Mr. Rugambwa Advocate for the 1st and 2nd Respondent and the Applicant who appeared in person.



J. M. Minde,

DEPUTY REGISTRAR

30/10/2020