

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

MISC. LAND APPLICATION NO. 50 OF 2019

*(Arising from land application No. 246 of 2012 of the District Land and Housing
Tribunal for Kagera at Bukoba)*

FLORIDA EMMANUEL.....1ST APPLICANT
WINFRIDA EMMANUEL.....2ND APPLICANT
MATUNGWA EMMANUEL.....3RD APPLICANT

VERSUS

RICHARD KABYEMELA.....1ST RESPONDENT
MUDDY ALLY.....2ND RESPONDENT
HENERY EMMANUEL.....3RD RESPONDENT
RUGEMALIRA EMMANUEL.....4TH RESPONDENT
HELENA EMMANUEL.....5TH RESPONDENT
SANDEY EMMANUEL.....6TH RESPONDENT

RULING

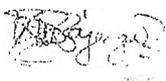
Date of last order 18/11/2020

Date of Ruling 20/11/2020

Kilekamajenga, J.

The applicants approached this Honourable Court seeking for the order for extension of time to appeal against the decision of the District Land and Housing Tribunal for Kagera at Bukoba. More specifically, the applicants sought for the following orders:

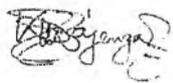
- 1. That, this Honourable Court be pleased to grant leave to the applicants to appeal out of time against the judgment and decree in land application No. 246/2012 of the District Land and Housing Tribunal for Kagera at Bukoba*



2. Costs of this application.

The application was made under **Order XLIII Rule 2 of the Civil Procedure Code, Cap. 33 RE 2002 and section 41(2) of the Land Disputes Courts Act, Cap. 216 RE 2002** and it is supported with an affidavit deposed by the applicants. On the other hand, the respondents filed a counter affidavit resisting the application. The parties finally appeared before this Honourable Court to argue the application. The learned advocate, Mr. Dunstan Mutagahywa appeared for the applicants while the 2nd to the 6th respondents were represented by the learned advocate, Miss Pili Hussein.

In the oral submission, the counsel for the applicants argued that when the decision of the District Land and Housing Tribunal was delivered on 05th September 2016, the applicants immediately appealed to this Court. However, their appeal was resisted by a point of preliminary objection on the ground that the appeal was accompanied with a decree which was not dated, hence the appeal was struck out on 19th October 2018. The applicants went back to the District Land and Housing Tribunal to look for the correct decree. When the applicants got the decree, they were already time-barred hence this application. Mr. Mutagahywa further argued that the applicants were not negligent in filing the appeal. He finally prayed for the Court to allow the application.



On the other hand, the counsel for the respondents resisted the counsel's submission. She argued that the applicants did not show the date when the correct decree was granted. Therefore, they have failed to account for every day of delay as provided in the case of **Ramadhani J. Kihwani v. Tazara, Civil Application No. 401/18 of 2018, CAT at Dar es salaam.**

When rejoining, the counsel for the applicant reiterated the points given in the submission in chief.

After considering the applicant's affidavit, respondent's counter affidavit and oral submission made by counsels for the parties, it is apposite at this stage the merit of the application. Extension of time is the discretion of the court which must be exercised judiciously. For instance, in the case of **Tanga Cement Co. v. JummanneMasangwa and Another, Civil Appeal No. 6 of 2001** (unreported) the court insisted that:

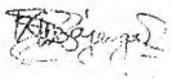
*This unfettered discretion of the court, however, has to be exercised judicially, and the overriding consideration is that there must be 'sufficient cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including 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'.

However, the major reason for the extension of time is the obligation of the applicant to disclose **sufficient cause** or **good reason** for the delay. The law on the requirement to advance sufficient cause for extension of time is well settled and stated in a number of cases including **Tanga Cement Co. v. JummanneMasangwa and Another** Civil Application No. 6 of 2001(unreported); **SospterLulenga 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**.

The applicant is obliged, under the law to show sufficient cause for the delay and also take prompt steps or diligence in ensuring that the matter is lodged in court on time. 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 v. Casmir Richard Shemkai, Civil Application No. 507/12 of 2017**, CAT at Tanga (unreported), the stated the following principles to guide the court in granting extension of time:



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 on 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:

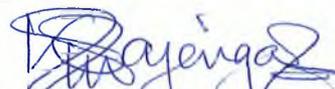
'Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion...the Court must consider factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended,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

In the instant case, the applicants brought the initial appeal in time which, unfortunately, was struck out for being attached with the decree which was not dated. The applicants went back to the District Land and Housing Tribunal to look for the dated decree and finally lodged the instant application. In my view and based on the above principles of law, the applicant has taken prompt steps



in ensuring that the appeal is file in Court on time. That is what they did; it was not their fault to attach the decree which was not dated because the trial tribunal had an obligation to ensure that the decree is proper. Generally, the applicants were not negligent and they have done was supposed to be done. This is a sufficient cause enough to warrant this Court to enlarge time for filing the appeal. The application is hereby allowed with costs. Order accordingly.

Dated at Bukoba this 20th November 2020.


Ntemi N. Kilekamajenga
Judge
20th November 2020



Court:

Ruling delivered in the presence of the 1st and 3rd applicant and their counsel, Mr. Dunstan Mutagahywa. The 1st respondent is present and other respondents absent. Right of appeal explained to the parties.


Ntemi N. Kilekamajenga
Judge
20th November 2020

