

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

MISC. LAND APPLICATION NO. 36 OF 2019

(Arising from land appeal No. 54 of 2015 and Misc. Land Application No. 69 of 2016 at the High Court and Land Application No. 116 of 2012 of the District Land and Housing Tribunal of Bukoba)

GEORGIA MALANGIRWA.....APPLICANT

VERSUS

ARISTIDES PHILIPO.....1ST RESPONDENT
FIDELIS GEREON.....2ND RESPONDENT
JULIETH DIDAS.....3RD RESPONDENT

RULING

Date of last order 16/11/2020

Date of Ruling 20/11/2020

Kilekamajenga, J.

The applicant appeared before this Court seeking for the following orders:

- 1. That, your honourable court (sic) be pleased to order the (sic) extension of time to file this appeal out of time from the decision of Land Application No. 116 of 2012 at (sic) District Land and Housing Tribunal for Kagera at Bukoba;*
- 2. Costs of this application;*
- 3. And any other relief(s) this Hon. Court shall deem fit to meet the ends of justice.*



The application is made under **section 41(2) of the Written Laws (Miscellaneous Amendments) (No.2) Act, 2016**. The application is supported with an affidavit deposed by the applicant. In response, the respondent also filed a counter affidavit resisting the application. When the parties were invited to argue the application, the applicant was present while enjoying the legal services of the learned advocate, Mr, E. Bengesi whereas all the respondents were absent. The third respondent though was absent, she was represented by the learned advocate, Mr. Mathias Rwenyemamu.

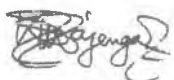
During the oral submission, the counsel for the applicant prayed for the applicant's affidavit to be adopted to form part of the submission. He argued further that the instant application originated from appeal No. 54 of 2015 which was filed before this Court. That appeal was struck out because it was not accompanied with the decree. The applicant later filed an application for extension of time through application No. 69 of 2016. The application was also struck out for being brought under a wrong provision of the law hence the instant application. Mr.Bengesi argued that the applicant has been in this Court within time. Every applicant's application was made within time. This is a sufficient cause to warrant this Court to extend time for filing the appeal. He finally prayed for the Court to allow the application.



The counsel for the third respondent objected the counter affidavit and insisted that the applicant has failed to show whether she complied with the order of attaching the decree to the appeal. Furthermore, the applicant has no entitlement to sue and she has failed to show what she was going to achieve. Mr. Mathias Rweyemamu referred the court to the case of **Quality Group Ltd v. Tanzania Building Agency, Civil Application No. 102 of 2015**, CAT at Dar es salaam. He also argued that the application is brought under a wrong provision of law and finally urged the Court to dismiss the application with costs.

When rejoining, the counsel for the applicant argued that attachment of the decree at this stage is premature. The decree will be attached during the filing of the appeal. He further submitted that the application is made under the proper provision of the law. He finally urged the Court to allow the appeal with costs.

After considering the applicant's affidavit, the respondent's counter affidavit and oral submission made by the parties, it is apposite at this point to consider the merits in this application. It is an established principle of law that the Court may grant extension of time where the applicant has advanced sufficient cause or good cause for the delay. This principle of the law has been reiterated in number of cases including the cases of **Tanga Cement Co. Ltd 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**.

Also, it should be understood that extension of time is the discretionary power of the court which must be exercised judiciously. This position of law was stated in the case of **Tanga Cement Co. v. JummanneMasangwa and Another, Civil Appeal No. 6 of 2001** (unreported) the court had this to say:

*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'.*


In this case, the applicant filed the initial appeal on time which was dismissed on the reasons that the proper decree was not attached to the appeal. Again, the applicant brought another application for extension of time which was struck out



for being brought under the wrong provision of the law. In my view, the initial appeal was brought promptly and the applicant has been fighting for the appeal to properly land into this Court. In my view, the applicant is not negligent and she has taken all prompt steps to ensure that the appeal is received. This ground alone is enough to warrant the Court to grant extension of time to allow the applicant to file the appeal though out of time.

Based on the above reasons, I find the applicant has advanced sufficient cause or good reason to warrant this Court to grant extension of time. I hereby allow the application. No order as to 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 applicant present in person and the counsel for the applicant, Mr.Bengesi. The respondents are all absent. Right of appeal explained to the parties.


Ntemi N. Kilekamajenga
Judge
20th November 2020
