

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

**MISC. LAND APPLICATION NO. 7 OF 2020**

*(Arising from application No. 76/2009 of the District Land and Housing Tribunal for  
Kagera at Bukoba.)*

**EXECUTIVE DIRECTOR LAGEKA CO. LTD.....APPLICANT**

***VERSUS***

**K.C.U (1990) LTD.....RESPONDENT**

**RULING**

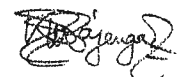
*26<sup>th</sup> November, & 11<sup>th</sup> December, 2020*

***Kilekamajenga, J.***

The applicant lodged the instant application seeking for the following orders:

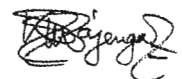
- 1. That, this Honourable Court be pleased to order for the extension of time to file an appeal against the ruling that was delivered by the District Land and Housing Tribunal on 17<sup>th</sup> February, 2017;*
- 2. That, the costs of this application to follow the event;*
- 3. Any other order(s) and relief(s) as this Honourable Court may deem just to grant.*

The application is made under **section 41(2) of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2016** and any other enabling provisions of the law and it is supported by an affidavit sworn by



Ladislaus Gerald Rutananukwa. When the parties appeared to argue the application, the applicant was represented by the learned advocate, Miss Erieth Barnabas whereas the respondent was represented by the learned advocate, Mr. Aaron Kabunga.

In her submission, Miss Erieth prayed for the applicant's affidavit be adopted to form part of the submission. She further informed the Court that on 24<sup>th</sup> November 2014, an ex parte judgement was granted against the applicant. The applicant applied to set aside the ex parte judgment before the District Land and Housing Tribunal at Bukoba but the application was dismissed on 17<sup>th</sup> February 2017 for lack of good cause. The applicant applied for the copy of the ruling which was issued on 09<sup>th</sup> April 2018; that means one year since the decision was made. As a lay person, he lodged an appeal before this Court before seeking an order for extension of time. Later, the applicant prayed to withdraw the appeal in order to file the instant application. Generally, the applicant was struggling to regularise the application. She fortified the argument with the cases of **CRDB LTD v. Gracious Mwanguya [2017] TLS LR 361** and **Mobrana Gold Corporation LTD v. Minister for Energy and Mineral and 2 others [1998] TLR 425**. She finally urged the Court to allow the application.



When invited to respond, Mr. Kabunga objected the application on the reason that the same is devoid of merit. He prayed for the respondent's counter affidavit be adopted to form part of the submission. Mr. Kabunga further submitted that the applicant has been in occupation of the respondent's commercial house for more than 15 years without paying rent. The respondent sued the applicant in the District Land and Housing Tribunal enforcing payment of rent and seeking an eviction order. The applicant did not appear to defend the case hence it was decided ex parte. The applicant vacated from the suit premise but did not pay the rents due. After the decision of the tribunal, the applicant did not apply for the copy of judgment and decree. After one year, he approached the tribunal for certification that he received the copy of judgment and decree after a year.

Mr. Kabunga further argued that in an application for extension of time, the applicant must demonstrate diligence something which the applicant never did. On 06<sup>th</sup> August 2019, the applicant, through the services of his counsel, withdrew the appeal. But he lodged the instant application on 20<sup>th</sup> January 2020, which is about five months after the withdrawal of the appeal. The applicant has failed to account for such inordinate delay. Mr.



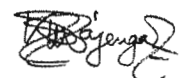
Kabunga further averred that the applicant is supposed to show sufficient cause to warrant the Court grant extension of time; he must also account for any single day of delay as it was stated in the case of **Sebastian Ndaula v. Grace Rwamafa, Civil Application No. 4 of 2014**. Also, Mr. Kabunga invited the Court to consider the case of **Zawadi Msemakweli v. NMB PLC, Civil Application No. 221/18/2018**, CAT at Dar es salaam. He insisted that the applicant has failed to account for each day of delay. He finally urged the Court to dismiss the application with costs.

In the rejoinder, the counsel for the applicant argued that the applicant was denied the right to be heard and he is requesting extension of time so that he can be heard. Also, the application for extension of time does not need to attach the copy of judgment nor decree. The applicant did efforts to ensure that the matter is before the Court. Miss Erieth argued further that the cases cited by the learned counsel for the respondent are distinguishable to this application because they are based on the Court of Appeal Rules. She insisted that the applicant was delayed in getting the copy of ruling from the trial tribunal. She reiterated the prayer to allow the application.

After considering the parties' affidavits and oral submissions, the major issue is whether the applicant has advanced sufficient cause or good reason to warrant this Court to order extension of time. Extension of time is the discretion of the court which must however be applied judiciously. This principle of the law was stated in the case of **Tanga Cement Co. v. Jummanne Masangwa and Another, Civil Appeal No. 6 of 2001** thus:

*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, for the Court to grant extension of time, the applicant must advance sufficient cause indicating reason(s) for the delay. See, **Tanga Cement Co. Ltd 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) and **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 case, the exparte judgment against the applicant was pronounced on 24/11/2014. On 09/12/2014, he applied for the copy of judgment and he later applied to set aside the exparte judgment. However, his application was dismissed on 17/02/2017. On 20/02/2017, the applicant applied for the copy of the ruling but he received the same copy on 09/04/2018. Because the copy of the ruling was inordinately delayed, he demanded the tribunal to authenticate that the copy was delayed and the tribunal real verified that the copy was issued on that date. On 09/05/2018, the applicant lodged an appeal before this Court. The appeal was later withdrawn on 06/08/2019 and the instant application was filed on 20/01/2020. Based on these facts, it is evident that the applicant has been in constant struggle to ensure that the matter comes to court for hearing. In my view, he was prompt enough to convince this Court to grant extension of time.

I understand, from the date when the appeal was withdrawn to the date of filing the instant application, there is a delay of about four months, but I have considered the fact that the applicant is struggling to challenge the decision of the trial tribunal which was delivered in his absence. The right to be heard is a fundamental constitutional right which should not be denied to a party unless there are such compelling reasons. I see the essence of invoking the discretion of this Court in order to afford the applicant the right to be heard. I hereby allow the application and costs will follow in the course. Order accordingly.

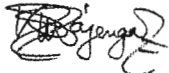
**DATED** at **BUKOBA** this 11<sup>th</sup> Day of December, 2020.



  
**Ntemi N. Kilekamajenga..**  
**JUDGE**  
**11/12/2020**

**Court:**

Judgment delivered this 11<sup>th</sup> December 2020 in the presence of the learned counsel for the applicant, Miss Erieth Barnabas and the learned advocate



for the respondent, Mr. Frank John. Right of appeal explained to the parties. Order accordingly.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**11/12/2020**

