

IN THE HIGH COURT OF TANZANIA
AT BUKOBA
LAND APPLICATION NO. 54 OF 2020

ROGERS B. RWOTO (Administrator of the Estate
of the Late Alphonse Rwoto).....**APPLICANT**
VERSUS

PROSPER KABERWA (Administrator of the Estate of
the late Kezia K. Joel)**RESPONDENT**
*(Application for extension of time to appeal out of time from
the decision of District land and Housing Tribunal at
Bukoba in Application No. 70 of 2021)*

RULING

19 & 26 July, 2021
MGETTA, J:

What is before me is an application for extension of time to file an appeal to this court against the judgment and decree made on 5/8/2016 by the District Land and Housing Tribunal at Bukoba (henceforth the district tribunal) in Application No. 70 of 2012 whereby the parties were prosper Kaberwa (suing as administrator of the estate of the late Kezia K. Joel) and Alphonse Rwoto. It is reported that Alphonse Rwoto is dead and his estate is now administered by his son, the applicant, who is now intending to challenge the district tribunal decision.

On 29/7/2020 after finding out that he was already late to file on appeal before this court, the applicant Rogers B. Rwoto, acting as

administrator of the estate of the late Alphonse Rwoto, lodged the chamber summons supported by his sworn affidavit under the provisions of **section 41 (2) of the Land Disputes Courts Act, 2002** (henceforth Cap 216) seeking for extension of time therein.

When the application was called on for hearing, Mr. Lameck John Erasto, the learned advocate appeared for the applicant; while, Ms Gisera Maruka, the learned advocate was representing the respondent namely Prosper Kaberwa.

Now, in order to appreciate the spirit behind this application, the following brief background information is helpful. After the district tribunal had delivered its judgment, the late Alphonse Rwoto was dissatisfied with that judgment and through his advocate Mr. Lameck he appealed to this court. The appeal was placed before by Hon. F. H. Kiwonde, resident magistrate with extended jurisdiction. On 6/8/2019, he struck out the appeal on technical ground that the memorandum of appeal was accompanied with defective decree. He returned the parties to the district tribunal to obtain a rectified decree.

In his submission, Mr. Lameck stated that efforts were made to have the district tribunal case file returned for rectification of the decree. The

ruling of the extended jurisdiction magistrate was signed and certified by him on 26/9/2019. The case file was returned back to the district tribunal. It took time to have rectification done on the decree, while keeping on knocking at the doors of the district tribunal for the rectified decree.

Alphonse Rwoto became sick from diabetes and heart disease which eventually made him to be referred to Bugando Hospital where he passed away on 2/10/2019. After the mourning period, clan members recommended the applicant to be administrator of the deceased estate. On 6/10/2019, the applicant was appointed as administrator of the deceased estate by Bukoba Urban Primary court. He made follow up of the deceased estate and was also informed of the case at the district tribunal.

Mr. Lameck went on submitting that while making follow up of the rectified decree, the applicant's mother got sick. Again, he had to deal with the health of his mother. She was admitted to Hospital. Finally, she died on 5/8/2020.

All these events prevented him to lodge appeal to this court within time. Mr. Lameck added that, failure to file memorandum of appeal within the prescribed time was not due to his negligence, but due to circumstances beyond his control.

I understand that extension of time cannot be granted on sympathy that his father died on 2/10/2019 and mother died on 5/8/2020, or that due to sickness of his father and mother who eventually passed away. It is the discretion of the court to grant it if there are sufficient reasons warranting the grant of extension of time to him.

Along with the foregoing, Mr. Lameck requested me to look also at the irregularities committed by the district tribunal that the procedures it adopted to reach at the decision complained of were tainted with irregularities and illegalities which infringed the rights of the parties.

He referred me to the case of **Bishop Roman Catholic Diocese of Tanga versus Casmir Richard Shemkai**; Civil Application No. 507/12 of 2017 (CA) (Tanga) (unreported) which at pages 6 – 7 provides for circumstances which will support the grant of extension of time. He also referred me to the case of **Amour Habib Salim v. Hussein Bafagi**; Civil Application No. 52 of 2009 (CA) (DSM) (unreported) at pages 4 – 6 where it was stated that sufficient reasons should be given to warrant the grant of extension of time.

Ms Gisera Maruka, the learned advocate for the respondent vehemently submitted that the applicant had failed to advance sufficient

reasons warranting the grant of extension of time. She submitted, the applicant was appointed on 6/10/2019 as administrator of the deceased estate but he filed application for extension of time on 29/7/2020. To her that was inordinate delay which the court should not let it go. She cited to me the case of **Ramadhani J. Kihwani v. Tazara**; Civil Application No. 401/10/ of 2018 at page 8 – 9 where it was found that, a delay of a single day is a delay. The application was dismissed.

I have considered all what were submitted by the two learned advocates and have also consider the affidavit and counter affidavit sworn by their respective clients, as well reading the cases cited to me. I understand the decision complained of by the applicant was handed down 5/8/2016. Alphonse Rwoto was dissatisfied with that decision. He filed memorandum of appeal accompanied with decree and judgment as the law requires. It was discovered the decree was defective. The appeal was dismissed; and, he was advised to go to district tribunal to have the decree rectified. It took time to transfer the original file from the magistrate with extended jurisdiction at Bukoba RM's court to the district tribunal. Alphonse Rwoto make follow up to have the decree rectified so that he could lodge a

fresh memorandum of appeal to this court, but he died before fulfilling his desire.

Upon being appointed as administrator of the deceased estate, the applicant made also follow up. His mother got sick; She died. After the mourning period, he stated making follow up again. Finally he obtained the documents, but he could not come before this court equipped with memorandum of appeal because he found himself late and he was required to obtain extension of time first before filing an appeal.

With due respect, I am convinced by Mr. Lameck's submissions that the applicant was prevented by reasons beyond his control. I find there are sufficient and good reasons warranting the grant of extension of time. Similarly, in view of the fact there are alleged illegalities and irregularities on the procedures followed at the district tribunal, that to me also are additional reasons to support the applicant's application.

For the reasons stated herein above, the application for extension of time is accordingly granted. The applicant is given forty five (45) days from the date of this ruling to lodge his appeal. Costs will be in the cause.

It is so ordered.




J. S. MGETTA
JUDGE
26/7/2021

COURT: This ruling is delivered today this 26th July, 2021 in the presence of Ms Erieth Barnabas, the learned advocate for the applicant who is also present. The respondent is not present for reason known to him.




J. S. MGETTA
JUDGE
26/7/2021