



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

**MISC. LAND APPLICATION NO. 18 OF 2018**

*(Arising from land application No. 164/2014 at Bukoba District Land and Housing Tribunal for Kagera at Bukoba)*

**VERDIANA RWIZA YOHANA.....APPLICANT**  
*(Administratrix of the late Yohana M. Rwiza)*

***VERSUS***

**DR. CORNELIA MUGANDA.....1<sup>ST</sup> RESPONDENT**  
*(Administratrix of the estate of Dr. Ndibalema Rwekaka)*  
**ALHAJI ALI HASSAN.....2<sup>ND</sup> RESPONDENT**  
**RWAGATI VILLAGE COUNCIL.....3<sup>RD</sup> RESPONDENT**  
**BUKOBA DISTRICT COUNCIL.....4<sup>TH</sup> RESPONDENT**

**RULING**

*Date of last order 18/05/2020  
Date of ruling 22/05/2020*

***N.N. Kilekamajenga, J.***

This is an application for extension of time to file an appeal out of time. The application is made under **section 38 (1) of the Courts (Land Disputes Settlements) Act, Cap. 216 RE 2002** and accompanied with an affidavit deposited by the applicant. On the other hand, the respondent filed the counter affidavit objecting the application.

When the application came for hearing, the learned advocate, Mr. Bengesi appeared for the applicant while Mr. Henry Muyanga appeared for the 1<sup>st</sup> respondent under the power of attorney. During the oral submission, the learned counsel for the applicant informed the Court that when the judgment was scheduled for hearing, the judgment was not pronounced. There was no date fixed for the judgment and the applicant knew about the judgment nine months after the judgment was pronounced. He further informed the Court that when the survey of the disputed land was conducted, the applicant was not involved something which is contrary to the law. Based on these two reasons, Mr. Bengesi urged the Court to allow the application.

In response, Mr. Muyanga objected the application and informed the Court that the applicant and her counsel were present when the judgment was pronounced. So, they knew about the judgment but never appealed on time. The counsel for the applicant was awakened by the execution order and filed this application. The argument that the applicant was not involved in the survey process is not a sufficient cause for extension of time.

When rejoining, the counsel for the applicant questioned the representation of the 1<sup>st</sup> respondent. There is no evidence suggesting that the 1<sup>st</sup> respondent is sick to be represented by Mr. Muyanga who also seems to speak for other respondents who are not in Court. He urged the Court to allow the application.

It is pertinent at this stage to determine whether the applicant has advanced sufficient cause to warrant this Court to extend time to file an appeal out of time. It is an established principle of law that extension of time is the discretion of the Court which may be exercised when the applicant show **sufficient cause**. This position is clearly stated in the cases of **Tanga Cement Co. 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); **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**.

However, this discretion must be exercised judiciously. In the case of **Tanga Cement Co. v. Jummanne Masangwa 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 judiciously, 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'.*

I have carefully considered the submissions from the applicant. The applicant has submitted two reasons for the delay; **first**, that the applicant was not aware of the decision of the District Land and Housing Tribunal until the respondent was about to execute the decree. On the other hand, the respondent argued that the counsel for the applicant was present before the tribunal when the judgment was delivered. I have perused the court file and I do not see anywhere that the applicant or her advocate was present when the judgment was delivered. Besides, this is not a sufficient cause for extension of time because the applicant was aware of the case and she was represented by the counsel. The applicant was supposed to know the date of the judgment and follow the progress of the case appropriately. On this ground, the applicant and her counsel were negligent. On the other hand, negligence on the part of the applicant or his/her advocate does not amount to sufficient cause for extension of time. This position is stated in the case of **Transport Equipment Ltd Versus D.P. Valambhia [1993] TLR 91 (CA); Umoja Garage Versus National Bank of Commerce [1997] TLR 109 (CA); Inspector Sadiki and others Versus Gerald Nkya [1997] TLR 290 (CA)**. Therefore, this ground is not a good cause for this court to grant extension of time.

**Second**, the counsel for the applicant argued that the applicant was not involved in the survey of the land something which is contrary to the law. In my

view, this ground does not amount to sufficient cause because it is not among the reasons that caused for the delay in filing the appeal. Unless the applicant was informing the Court that there is possibility of success in the appeal, this ground does not amount to sufficient cause.

However, in exercise of the discretion vested to this Court, I have perused the court file, especially the records of the District Land and Housing Tribunal and discovered some blatant illegalities which cannot be left in the records of the court. For instance, it is not clear whether the matter entered in the District Land and Housing Tribunal by way of appeal or originated from the same tribunal. If the matter originated from the District Land and Housing Tribunal, as it seems to be, there was no evidence to prove the claim and no issues were raised before the hearing. The proceedings are incomplete and do not contain any valuable sequence. In my view, this is an illegality enough to move the Court to grant extension of time to file the appeal so that the matter may be heard on merit so that justice may be determined. The following cases provide guidance on this point: **Veronica Fubile v. National Insurance Corporation and Three Others**, Civil Application No. 168 of 2008 (unreported); **Citibank (T) Limited v. TTCL and Others**, Civil Application No. 97 of 2003 (Unreported); **William Malaba Butabutemi v. The Republic** Criminal Application No. 5 of 2005;

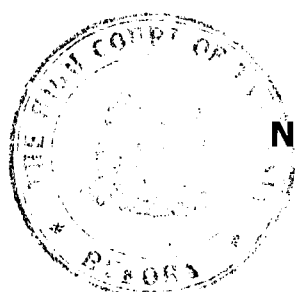
**National Insurance Corporation of (T) LTD v. Shengena Limited**, Civil Application No. 63 of 2011.

On this point, I wish to emphasize the principle stated in the case of **VIP Engineering and Marketing Limited v. Citibank (T) LTD**, Consolidated Civil Reference Nos. 6,7 and 8 of 2006 (unreported), where the court stated that:

*'It is, therefore, settled law that a claim of illegality of the challenged decision constitutes reason for extension of time under Rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay.'*

Based on the reasons stated above, I exercise the discretion vested in this Court by extending time for the applicant to file the appeal out of time. The appeal is allowed. No order as to costs. Order accordingly.

Dated at Bukoba this 22<sup>nd</sup> May 2020.




  
**Ntemi N. Kilekamajenga**  
**Judge**  
**22/05/2020**

Court:

Ruling delivered in the presence of the counsel for the applicant, Mr. Eliphasi Bengesi and Mr. Henry Muyanga for the first respondent. The right to appeal is explained to the parties.



  
**Ntemi N. Kilekamajenga**  
**Judge**  
**22/05/2020**