

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

MISC. LAND CASE APPLICATION No. 85 OF 2019

(Arising from the High Court of Bukoba in Misc. Land Appeal No. 45 of 2018; the District Land and Housing Tribunal of Karagwe at Kayanga in Land Appeal No. 82 of 2016 & Original Land Case No. 12 of 2015 of Bugene Ward Tribunal)

EMMANUEL MPAMBALA ----- APPLICANT

Versus

AURENT RWEYONGEZA ----- RESPONDENT

RULING

17/02/2021 & 17/02/2021

Mtulya, J.:

This is an application for extension of time to afford the Applicant to file an appeal in this court out of statutory time. Mr. Samwel Angel for the Applicant stated two reasons for the application, *viz*: first, delay in obtaining a certified copy of struck out order of this court in **Appeal No. 45 of 2018**, which was filed within time and second, claim of illegality.

With the order, he stated that the order was not availed to the Applicant within time and therefore the Applicant was late for a total of thirteen (13) days. On illegality, he mentioned two defects, namely first, the **District Land and Housing Tribunal for Karagwe at Kayanga** in **Land Appeal No. 82 of 2016** cited section 14 (1) of the **Land Disputes Court Act** [Cap. 216 R.E 2002] instead of section 11 (1) of the same

Act. According to him, section 14 (1) of the Act is invited when there is mediation, whereas section 11 (1) of the Act is invited when there is full trial on determination of land disputes. With the second part of the illegality, he stated that the judgment shows that assessors, did not give their opinions contrary to the requirement of the law and practice of this court.

Replying on the submission registered by Mr. Angelo, Mr. Zeddy Ally protested the reasoning contending that the first shows negligence on the part of the learned counsel or his client, and with the second, on illegality Mr. Ally argued that the law in section 11 (1) and 14 (1) of the Act are quietly clear. On assessors Mr. Ally argued that the fact was not pleaded in Angelo's Affidavit.

Rejoining the submission made by Mr. Ally, Mr. Angelo briefly stated that learned counsels cannot be dumb and are in courts to assist courts to arrive of justice. He submitted further that there is clear illegality in the decision of the Tribunal which need to be rectified.

On my part, I think, for straight forward cases and where the law is certain this court cannot use more time resources. There is certainty that when there is a claim of illegality of the decision of the lower courts this court may grant extension of time. In the present application there

are obvious illegality on the face of record which may invite intervention of the higher court. In the decision of **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016, our superior court in judicial hierarchy stated that:


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

This court and lower courts are bound by the decision of our superior court, and I think, I will not depart from their statement. Having said, so and considering interest of justice to the parties, I think Mr. Angelo has registered relevant materials to persuade this court to decide in his favor.

Therefore, the Applicant is granted fourteen (14) days leave to file an appeal in this court without any further delay. As the Applicant's counsel protested the Application, the Applicant is awarded costs of this Application.

It is so ordered.




F.H. Mtulya

Judge

17.02.2021

This Ruling was delivered under the seal of this court in presence of Mr. Angelo Samwel for the Applicant and in the presence of Mr. Zeddy Ally for the Respondent.




F.H. Mtulya

Judge

17.02.2021