

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

**AT BUKOBA**

**LAND APPLICATION No. 33 OF 2019**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land  
Application No. 106 of 2017)*

**MATUNGWA STANSLAUS ----- APPLICANT**

Versus

**KAGERA FARMERS CO-OPERATIVE BANK LTD ----- RESPONDENT**

**RULING**

23/02/2021 & 23/02/2021

**Mtulya, J.:**

Mr. Matungwa Stanslaus (the Applicant) approached this court praying for extension of time to file an appeal out statutory time. The Applicant filed the present Application on 30<sup>th</sup> April 2019 from the decision of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Application No. 106 of 2017** (the Application) delivered on 28<sup>th</sup> February 2019. When the Application was scheduled for hearing today morning, the Applicant stated that the reason of delay was caused by the Tribunal in failure to issue copies of the Judgment and Decree of the Application within time.

In substantiating his claim, the Applicant submitted that the decision of the Tribunal was delivered on 28<sup>th</sup> February 2019, but

certified copies of the Judgment and Decree were issued to him on 17<sup>th</sup> April 2019. According to the Applicant, after receipt the copies, he approached his learned advocate in preparation of the present Application.

The Applicant's reason of delay was protested by the Respondent through learned State Attorney Mr. Gerald Njoka. In his brief submission, Mr. Njoka stated that section 41 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E 2019] (the Act) provides for an appeal be lodged in this court within forty five (45) days, and failure to meet the days requires sufficient cause to be produced in court for an extension of time to file an appeal. To his opinion, Mr. Njoka thinks that the Applicant has not registered good or sufficient reason to be granted extension of time as he did not account for thirteen (13) days of delay from 17<sup>th</sup> April 2019, when the Applicant received the certified copies of the Judgment and Decree, to 30<sup>th</sup> April 2019, when the Applicant approached this court and filed the Application. In a brief rejoinder, the Applicant submitted that he was late only for two (2) days as other days he was busy searching of legal representation.

I have perused the record of this Application. The record shows that **Application No. 106 of 2012** in the Tribunal was delivered on 28<sup>th</sup>

February 2019. The Applicant received copies of the Judgment and Decree emanated from the Application on 17<sup>th</sup> April 2019, and filed in this court on 30<sup>th</sup> April 2019. The question before this court is whether the Applicant has produced good causes as per proviso in section 41 (2) of the Act and precedent in **Dar Es salaam City Council v. Jayantilal P. Rajan**, Civil Application No. 27 of 1987. According to the Applicant he has produced good causes from the delay whereas Mr. Njoka thinks there is no good cause.

The law in section 41 (2) of the Act provides that an appeal from the Tribunal to this court may be lodged within forty five (45) days after the date of the decision or order. However, this court may enlarged time to file an appeal out of the forty five (45) days, provided the applicant produces good cause. The provision on good cause is interpreted and already received plenty of precedents (see: **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009).

There are no presently pigeon holes on good causes or relevant materials established by our courts of record, High Court and Court of Appeal. The difficulty involved in determining good causes is displayed in the precedent of **Dar Es Salaam City Council v. Jayantilal P. Rajani** (supra) and **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010).

Nevertheless, the decision in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd** (supra), states that the term good cause is a relative one and is dependent upon party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion in his favour. It is fortunate that there is general acceptable principle in our courts that when the situation is beyond applicant's control, extension of time may be granted [**Eksteen v. Kutosi** [1951] 24 (2) K.L.R. 90, **Foreign Mission Board of Southern Baptist Convention v. Alexander Panomaritis** [1984] T.L.R 146 and **Benezeth Mwebesi & Two Others V. Baraka Peter**, Misc. Civil Application No. 46 of 2019].

However, applicants who cite delay in getting copies of the decision of the courts as the cause of delay, must file their application for extension of time expeditiously. The proviso in section 41 (2) of the Act and precedent in **Royal insurance Tanzania Limited v. Kiwengwa**

**Strand Hotel Limited** (supra) call for prompt application for extension of time once an applicant becomes aware that he is out of time. The statement of the Court of Appeal in this regard is that:

*...it is trite law that an applicant before the court must satisfy the court that since becoming aware of the fact that he is out of time **act very expeditiously** and that the application has been brought in good faith...*

(Emphasis supplied).

In the present application there is the complaint on thirteen (13) days of delay. The only question this court is invited to reply is whether thirteen (13) days of delay in bringing the present Application is a prompt step. In the precedent of **Dr. Ally Shabhay v. Tanga Bohora Jamaat** [1997] TLR 305, the Court of Appeal stated that: *those who come to courts of law must not show unnecessary delay in doing so.*

This court in 1979 when determining the suit in **Tanzania Zambia Railway Authority v. Halikans & Another** (1979) LRT 21, stated that five (5) years stay without following up suits is a long time. Eleven years later, this court repeated the same thinking in the decision of **General Manager KCU (1990) Ltd v. Theobald Kainani**, Civil Application No. 9 of 2005. With regard to days, both twenty four (24) days and five (5)

days were held to be a long period of time by the Court of Appeal in the decision of **Zawadi Msemakweli v. NmB PLC**, Civil Application No. 221/18 of 2018 and **Inspector Sadiki and Others v. Gerald Nkya** [1997] TLR 290, respectively. This was the position even in the Court of Appeal for Eastern Africa [see: **Daphne Parry v Murray Alexander Carson** [1963] EA 546].

Our superior court in 1997 when stating on days of delay to applicants, cited the precedent in **Daphne Parry v Murray Alexander Carson** (supra), at page 292 of the precedent in **Inspector Sadiki and Others v. Gerald Nkya** (supra) and stated that:

*...we were not persuaded to extend time... we found no sufficient reason. Just for purposes of completeness, in **Daphne Parry v Murray Alexander Carson** [1963] EA 546, the applicant was late for only five days when he applied for extension of time, but the Court of Appeal for East Africa refused to do so.*

In the present Application, the Applicant had delayed for thirteen (13) days due to his sloppiness. From the cited practice above, it is difficult to say he filed his Application promptly after becoming aware that he was out of time. In any case, the issue of promptness is no

longer part of our laws or has been taken by event following the adjustment of the law on accountability of every day of the delay [see: **Sebastian Ndaula v. Grace Rwamafa** (supra) and **Bashiri Hassani v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007].

The two cited precedents of our superior court have changed the position of the law from prompt application to accountability on every days of delay. In the present application, the Applicant is silent on his Affidavit and submission on the thirteen (13) days of delay. This court cannot depart from current directives of our superior court, even if it appears there are good reasons to do so.

Having said so, and considering the Applicant has not produced good causes of delay in filing his appeal within time hence failed to persuade this court to decide in his favor. This application is hereby dismissed with costs.

It is so ordered.

  
F.H. Mtulya  
  
**Judge**  
23.02.2021

This Ruling was delivered in chambers under the seal of this court in the presence of the Applicant, Mr. Matungwa Stanslaus and in the presence of Respondent's Liquidation Officer, Ms. Adeni Kiraja and learned State Attorney Mr. Gerald Njoka.



  
F.H. Mtulya

**Judge**

23.02.2021