



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

**MISC. LAND CASE APPLICATION NO. 97 OF 2019**

*(Originating from Misc. Land Case Appeal NO. 2 of 2008 of the High Court at Bukoba)*

**THEROD FREDRICK.....APPLICANT**

***VERSUS***

**ABDUL SAMADU SALIMU.....RESPONDENT**

**RULING**

*Date of last order 02/03/2021*

*Date of ruling 12/03/2021*

***Kilekamajenga, J.***

This application seeks for the following orders:

- i) To file a notice of appeal to the Court of Appeal, in Misc. land Case Appeal No. 2 of 2008 out of time;*
- ii) A certificate of point of law in Misc. land Case Appeal No. 2 of 2008 be issued out of time;*
- iii) Letter applying for proceedings in Misc. Land Appeal No. 2 of 2008 be files out of time;*
- iv) Any other order of this Court deems fit to grant.*

The application was made by way of chamber summons accompanied by an affidavit deposed by the counsel for the applicant, Mr. Mathias

Rweyemamu. The application was made under **Section 11 (1) of the Appellate jurisdiction Act, Cap. 141 RE 2002** and **Section 47 (2) of the Land Disputes Courts Act, Cap. 216 RE 2002**.

When the application was called for hearing, the applicant enjoyed the legal services of the learned advocate, Mr. Mathias Rweyemamu whereas the respondent appeared in person and without legal representation. During the oral submission, the counsel for the applicant argued that, in Civil Appeal No. 145 of 2015, the Court of Appeal of Tanzania discovered that the appeal lacked assessors' opinions from the proceedings of the District Land and Housing Tribunal. Also, the certificate on point of law was obtained without the applicant seeking extension of time. For those reasons therefore, the Court of Appeal struck out the records of appeal and everything crumbled. On 23/03/2016, Mr. Rweyemamu wrote a letter to the Deputy Registrar for the records to be returned to the District Land and Housing Tribunal. On 21/09/2016, he wrote a letter to the District Land and Housing Land requesting for certified copies of the assessors' opinions.

On 01/03/2017, he filed an application No. 14 of 2017 seeking extension of time to get certificate of point of law. He thereafter withdrew the

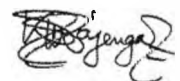


application (i.e. application No. 14 of 2017) with leave to re-file so that he could also include the application for notice of appeal to the Court of Appeal. He withdrew the application on 14/11/2019 and filed the instant application on 10/12/2019. He finally urged the Court to allow the application.

In response, the respondent who was unrepresented assailed the counsel for the applicant for employing delaying tactics in this case. He further argued that the delay was caused by the counsel for the applicant and there is no sufficient reason to extend time.

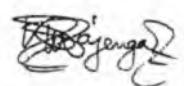
When rejoining, Mr. Rweyemamu insisted that, he was not negligent in handling this matter. He reiterated the prayer to allow the application.

After considering the submissions from the parties; the applicant's affidavit and the respondent's counter affidavit, it is opposite to consider the merits in this application. In this application, the applicant is generally seeking extension of time to approach the Court of Appeal for the second time after the first attempt was struck out because the assessors' opinions were missing in the records of appeal and that the certificate of point of law was

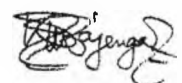
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given out of time. I am alive of the fact that an extension of time is the discretion of the Court which however must be exercised judiciously because the applicant must advance sufficient reason explaining the delay. See, the cases of of **Tanga Cement 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**.

In the instant application, the applicant's appeal before the Court of Appeal of Tanzania was struck out on 11<sup>th</sup> February 2016. The applicant was silent until on 1<sup>st</sup> March, 2017 when he filed Misc. Civil application No. 14/2017 seeking extension of time for a certificate of point of law. **This was a delay of almost a year.** Again Misc. Civil Application had errors hence he withdrew it on 14<sup>th</sup> November, 2019 and he finally lodged the instant application on 10<sup>th</sup> December, 2019. In my view, the applicant has been so negligent in prosecuting this matter due to the following reasons. **First**, before the applicant made an attempt to the Court of Appeal of Tanzania for the first time, he delayed to seek a certificate of point of law. **Second**,



the applicant was supposed to file an application for extension of time before seeking the certificate of point of law but he did not do so. As a result, he secured a certificate of point of law out of time which was rejected by the Court of Appeal. **Third**, when the appeal was struck out by the Court of Appeal, the applicant stayed for almost a year before lodging Land Case Application No. 14 of 2017 which also omitted the application for notice of appeal to the Court of Appeal. Again, he withdrew the application hence this application. The allegation that the counsel for the applicant wrote a letter to the Deputy Registrar and the District Land and Housing Tribunal has no proof because such letters are not attached to this application. For that reason therefore, the counsel for the applicant has been negligent and under the law, negligence of the counsel for the applicant is not a sufficient cause or good reason for extension of time. It is a settled principle that omission or negligence of an advocate is not a good cause to grant 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).**

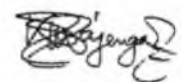
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I find the delay demonstrated by the applicant is inordinate and such delay has not been accounted for. Furthermore, there was a lapse of three years from the time when the initial appeal to the Court of Appeal to the filing of the instant application. In my view, such a long delay was caused by the laxity and negligence of the counsel for the applicant. I understand, the delay has an adverse effect to the respondent who also wants to enjoy his rights without disturbance from the applicant. In view of the above reasons, I find the applicant has failed to advance sufficient reasons to warrant this Court enlarge time as prayed. I hereby dismiss the application with costs. Order accordingly.

**DATED** at **BUKOB**A this 12<sup>th</sup> Day of March, 2021.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**12/03/2021**



**Court:**

Ruling delivered in the presence of the respondent present in person while the applicant was absent. Right of appeal explained.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**12/03/2021**

