

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

**MISC. LAND APPLICATION NO. 02 OF 2021**

*(Arising from Misc. Land Application No. 11 of 2019; Originating from Application No. 30 of 2012 of Bukoba District Land and Housing Tribunal)*

**JOSEPH WILLIAM AZIINE.....APPLICANT**  
**VERSUS**  
**SAITORE MULUO RAIZER.....RESPONDENT**

**RULING**

*26<sup>th</sup> May & 28<sup>th</sup> May 2021*

***Kilekamajenga, J.***

This Honourable Court was moved vide Misc. Land Application No. 02 of 2020 for considering extension of time for the applicant to file an appeal. The applicant, through the legal services of the learned advocate, Mr. Alli Mtupesa Chamani, invited the Court to consider **section 41(2) of the Land Disputes Court Act, Cap. 216 RE 2002** and **section 21(2) of the Law of Limitation Act, Cap. 89 RE 2002** in enlarging the time. The application was legally coached and supported with an affidavit of the applicant. This Court invited the parties to present the reasons for the delay and they were both present and legally represented by two senior advocates of the High Court. The applicant enjoyed the representation and professional advice from the learned Advocate, Mr. Chamani and the respondent enjoyed the professional services from the learned advocate, Mr. Lameck John Erasto.



The legal battle in my presence was premised on the legal grounds that may warrant this Honourable Court to enlarge time for the applicant to file the intended appeal. In convincing the Court that the applicant was under justifiable delay, Mr. Chamani invited the court to consider the reasons stated in the applicant's affidavit. He further contended that the decision of the District Land and Housing Tribunal was delivered on 12<sup>th</sup> November 2018. Determined to challenge the decision of the tribunal, on 15<sup>th</sup> November 2018, the applicant applied for the judgement and decree which were finally issued on 22<sup>nd</sup> January 2019. By that time, the applicant could not do the impossible miracle of filing the appeal within the prescribed time. However, the applicant lodged an appeal which was struck out for being moved under the wrong provisions of the law.

Mr. Chamani further argued that there is an illegality on the records of the District Land and Housing Tribunal. On this point, the counsel questioned the legality and power of the village council in allocation of village land. In persuading the Court, the learned counsel allowed the court to envision the possibility of success in the intended appeal and finally pleaded for the court to allow the application.

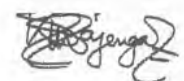
The learned counsel for the respondent did not swallow the counsel's submission without resistance. Mr. Erasto believed that the applicant was negligent in



collecting the copies of judgment and decree because the same were certified and made available on 11<sup>th</sup> January 2019. Instead, the applicant picked-up the documents after 11 days. He further solicited the court to peruse the case of **NBC v. Sadrudin Meghiji [1998] TLR 503**. Mr. Erasto objected the existence of illegality on the records of trial tribunal because proper procedures in allocation the land were followed and that the respondent's case was heavier than that of the applicant. On the possibility of winning the intended appeal, the counsel was armed with the case of **AG v. Twiga Paper Product LTD [2011] EA 16** to refute that argument.

The rejoinder from Mr. Chamani shifted the blame to the tribunal which did not inform the applicant about the availability of the decree and judgment. He further insisted the existence of illegality on the records of the trial tribunal and reiterated his previous prayer to allow the application.

The power to extend time for the applicant is within the discretion of this Court. Its exercise should be carefully exercised and be away from abuse. The only reason for the extension of time rests on the applicant's obligation to show sufficient or good cause for the delay. 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, there are several factors that may hinder the applicant from lodging the appeal on time hence the list for such factor is non-exhaustive. Also, it may be impossible to define 'good cause' because the delay is always gauged from the facts adduced by the parties and the surrounding circumstances of the case. Therefore, the court must consider several factors before granting or denying the application for extension of time. It is has become an established principle of the law, whenever an applicant proves that the decree and judgement/ruling to accompany the appeal were delayed, that is by itself a sufficient reason for extension of time. According to the case of **Tanzania China Friendship Textiles co. LTD v. Charles Kabweza and others**, Civil Application No. 62 of 2015, the delay of the copy of judgment by the court constitutes a sufficient reason for extension of time. See also the case of **Tanzania Sewing Machines Company LTD v. Njake Enterprises LTD**, Civil Application No. 56 of 2007.

The above ground is premised on the fact that an applicant cannot lodge an appeal without attaching the decree and judgment/ruling being challenged

otherwise the appeal will meet objects and delay the justice administration process. The availability of the decree and judgment/ruling is always beyond the reach of the party hence condemning or denying him/her extension may be an injustice.

Also, the court must go further and consider whether in the intended appeal there may be possibility for the applicant recovering his/her rights which was denied in the lower court. Of course, this fact also depends on other facts such as whether the delay was inordinate and whether the applicant was watchful enough not to allow inordinate number of days which he/she may fail to account. Furthermore, where the applicant had indicated promptness in challenging the decision of the lower court, it may be a sufficient cause for extension of time.

In addition, courts and especially the Honourable Court of Appeal of Tanzania has insisted that whenever the applicant alleges illegality, the court must grant an extension of time to allow the appellate court to clear the errors on the records. Where the records have errors on the face and extension of time is denied, the illegality will become part of the court record. In case of **Principal Secretary, Ministry of Defence and National Service Versus Devram P. Valambilia** [1992] TLR 185 the court stated that:-.

*"We think that where, as here, the point of law at issue is the illegality of or otherwise of the decision being challenged, that is of sufficient reason" Within the meaning of Rule 8 of the Rules for extension of time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand...in our view when the point at issue is one challenging illegality of the decision being challenged, the court has a duty even if it means extending the time for the purpose, to ascertain the point and, if the alleged be established, to take appropriate measures to put the matter and the record right."*

However, illegality as a sufficient cause for extension of time should not be abused by the parties. This should not be a leeway for every delaying party to allege illegality even where such an error does not, in fact, exist. On the other hand, the court is also enjoined to perusal the records to satisfy itself on the existence of illegality. In other words, not every alleged illegality may be a good cause for extension of time unless the court also believes that there is illegality in the court record. If this ground for extension of time is not qualified, parties with unwarranted laxity and negligent may find a hiding place. Furthermore, it is always prudent to offer the applicant another chance of platform of justice where the case was not heard on merit in the lower court. Where the delay not inordinate, the court may exercise its discretion and enlarge time for the parties' thirsty to be quenched on merit and not on mere technicalities.

In the instant case, I found that the applicant took steps to challenge the decision of the District Land and Housing Tribunal. After the delivery of the decision, he immediately applied for the decree and judgment which were delayed. Under these circumstances, the applicant may not be condemned for negligence or laxity because he did all he could do to ensure that the appeal lands in court on time. The delay was not within his control and this court is enjoined to grant the application for the interest of justice. I hereby allow the application. The applicant should file the appeal within 14 days from the date of this order. No order as to costs. It is so ordered.

**DATED at BUKOBA** this 28<sup>th</sup> Day of May, 2021.

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**28/05/2021**

**Court:**

Ruling delivered this 28<sup>th</sup> May 2021 in the presence of the applicant present in person and the counsel for the respondent, Miss Erieth Barnabas (Adv).

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**28/05/2021**

