

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

**AT BUKOBA**

**MISC. LAND APPLICATION NO. 34 OF 2019**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba  
in Land Application No. 175 of 2010)*

**FRANCE TIBENDA ----- APPLICANT**

**Versus**

**1. ADIJA SIMON**

**2. JONATHAN SIMON**

**3. BUTAIRUKA VILLAGE COUNCIL**

**----- RESPONDENTS**

**RULING**

**15/06/2021 & 15/06/2021**

**Mtulya, J.:**

The present application was filed in **Misc. Land Case Application No. 34 of 2019** registry of this court by Mr. France Tibenda (the Applicant) seeking for enlargement of time to file an appeal out of time in this court to dispute a decision of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Application No. 175 of 2010** (the Application). The Applicant had registered two (2) reasons in his affidavit to persuade this court to grant the application in his favour, *viz*: first, right to be heard; and second, sickness.

The application was scheduled for hearing today morning in civil session cases hearing, and the Applicant who appeared in person without any legal representation, briefly stated that he was prohibited from exercising his right to be heard by the Tribunal in the Application hence decided to prefer the present application to dispute the decision of the Tribunal in this court. On sickness the Applicant briefly submitted that he was sick and could not follow up his application in restoration of the dismissed application.

This submission of the Applicant was not protested by Adija Simon, the Third Respondent, and Mr. Albogast Bandio, Chairman of the Butairuka Village Council, for the Third Respondent arguing that the appeal will display all issues and substantive rights of the parties will be determined without interpolations of things.

I have gone through the record of this application and found out that the Applicant had filed **Application No. 175 of 2010** before the Tribunal and did registered his written submission per Tribunal's scheduling order, hence his application was dismissed. The Applicant approached the Tribunal again and sought a set aside order to restore the Application in **Misc. Application No. 27 of 2014** before the Tribunal, but also did not register his written submission within time as per Tribunal's scheduling order hence the application was also

dismissed with costs. Being dissatisfied with the decision and noting he was out of time, he preferred the present application and registered two (2) reasons of delay, namely: right to be heard and sickness.

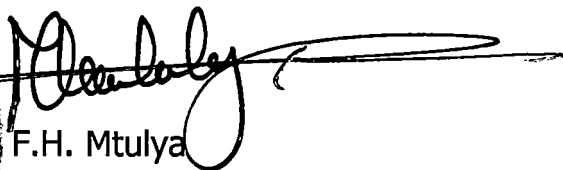
The two (2) reasons have already received judicial interpretation in **Mbeya Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002; and **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44) on right to be heard. The right is part of fair hearing enshrined in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and must be cherished.

With sickness, there is a bundle of authorities on the subject, which this court need not labour on it (see: **Kapapa Kumpindi v. The Plant Manager, Tanzania Breweries Limited**, Civil Application No. 6 of 2010; **Benezeth Mwebesi & Two Others v. Baraka Peter**, Misc. Civil Application No. 46 of 2019; **Safina Amri v. George Ruhinda**, Misc. Land Application No. 66 of 2018; **Sweetbert Ndebea v. Nestory Tigwera**, Civil Application No. 3 of 2019 (HC-Bukoba), and **Rozimery Telesfory v. Valelian Timuzigize**, Land Case Application No. 4 of 2019 (HC-Bukoba).

Having said so and considering parties are in agreement to search for substantive right in an appeal in this court, and noting there are settled precedents on the right to be heard and sickness on part of applicants constitute sufficient reasons in enlargement of time to file appeals out of time, this court will not hesitate to grant the application as I hereby do. The Applicant is granted fourteen (14) days leave to file an appeal in this court without any further delay. No costs awarded. Each party shall bear its own costs.

It is so ordered.

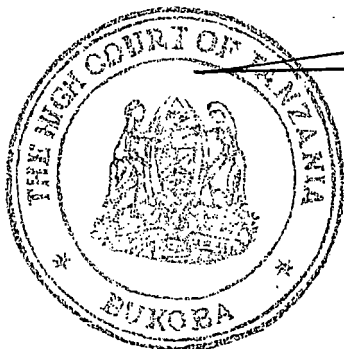


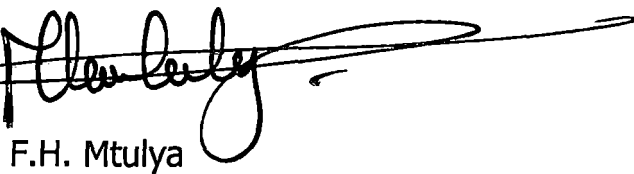
  
F.H. Mtulya

**Judge**

15.06.2021

This Ruling was delivered in chambers under the seal of this court in presence of the Applicant Mr. France Tibenda and in the presence of the First and Third Respondents, Ms. Adija Simon and Mr. Albogast Bandio.



  
F.H. Mtulya

**Judge**

15.06.2021