

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

**AT BUKOBA**

**LAND APPLICATION No. 57 OF 2020**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 98 of 2018  
& Original from Kishogo Ward Tribunal in Civil Case No. 6 of 2017)*

**SELESTINE ERNEST ----- APPLICANT**

**Versus**

**AUGUSTINE PETRO ----- RESPONDENT**

**Ex-Parte RULING**

11/06/2021 & 11/06/2021

**Mtulya, J.:**

Mr. Selestine Ernest approached this court on 19<sup>th</sup> August 2020 praying for enlargement of time to dispute a decision of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Land Appeal No. 98 of 2018** (the appeal) delivered by the Tribunal on 27.09.2019 and **Civil Case No. 06 of 2017** (the case) decided by **Kishogo Ward Tribunal** (the Ward Tribunal) in 2018. Today when the application was called for hearing the applicant decided to invite Mr. Lameck John Erasto to argue the application on his behalf.

Mr. Lameck briefly stated that the applicant is applying for leave to enlarge time period to file an appeal in this court out of time and has registered two (2) reasons of delay in the 4<sup>th</sup> and 6<sup>th</sup> paragraphs of his affidavit, which show sickness and illegality on the decision of

the Ward Tribunal. To justify his submission Mr. Lameck stated that the Applicant was sick as depicted in the 4<sup>th</sup> paragraph of the affidavit and attachment A. With illegality, Mr. Lameck submitted that the Applicant was not afforded opportunity by the Ward Tribunal to be present to show his land demarcations during *locus in quo* which is contrary to the law in the precedent in **Nizar M.H. Ladak v. Gulamali Fazal Janmohamed** [1980] TLR 29.

According to Mr. Lameck, it is established law that where there is complaint on a point of law, that is illegality and itself constitutes sufficient reason for enlargement of time to file an appeal out of time. To justify his statement, Mr. Lameck cited precedents of the Court of Appeal in **Amour Habib Salim v. Hussein Bafagi**, Civil Application No. 52 of 2009 and **The Bishop of Roman Catholic Diocese of Tanga, v. Casmir Richard Shemkai**, Civil Application No. 507/12 of 2017.

I have gone through the record of this application and found out that the Applicant's affidavit in paragraph 4 and 6 show that the applicant was sick and receiving medication which were supported by Annexure 'A' filed in this Application. I also noted that paragraph 7 there are complaints on crucial point of law on presence of the Applicant during *locus in quo* which was not considered by the Ward Tribunal. The decision of the Court of Appeal in full court is to the

effect: *where it is necessary to visit a locus in quo, the court should attend with the parties and/or their advocates and with witnesses as may have to testify in a particular matter* (see: **Amour Habib Salim v. Hussein Bafagi** (supra)). When there are allegations of illegalities of the decision sought to be challenged, this court may grant leave for extension of time. Our superior court has already issued directives on the subject of illegality in an application for enlargement of time in the precedent of **The Principal Secretary, Ministry of Defence & National Service v. Devram P. Valambia** [1992] TLR 185, where at page 189, it was stated that:

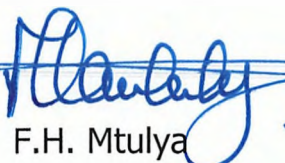
*In our view when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right.*

As it is a settled law that the 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 cannot be busy determining the days of delay (see: **Attorney General v.**

**Tanzania Parts Authority & Another**, Civil Application No. 87 of 2016) or busy determining the reason of sickness in enlargement of time, although I understand there is a bundle of precedents on the subject of sickness (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).

I think I do not need to disturb the established practice of this court and our superior court in enlargement of time based on the reason of illegality of the decision sought to be challenged in an appeal. I have therefore decided to grant the Applicant fourteen (14) days leave to file an appeal in this court without any further delay. No order as to costs as the Respondent declined to appear to protest the Application.

It is so ordered.

  
F.H. Mtulya

**Judge**

11.06.2021



This Ruling was delivered in the presence of the Applicant Mr. Selestine Ernest and his learned counsel, Mr. Lameck John Erasto.

A handwritten signature in blue ink, which appears to read "F.H. Mtulya", is written over a horizontal line.

F.H. Mtulya

**Judge**

11.06.2021