

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**Misc. LAND APPLICATION No. 75 OF 2020**

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 34 of 2017)

**FLORENTINA PHILBERT.....APPLICANT**

**Versus**

**VERDIANA PROTACE MUJWAHUZI.....RESPONDENT**

**RULING**

**05.07.2021 & 06.07.2021**

**Mtulya, J.:**

The present application was filed in Misc. Land Case Application No. 75 of 2020 registry of this court by Ms. Florentina Philbert (the Applicant) seeking for enlargement of time to file an appeal out of time in this court to dispute the decision of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Application No. 34 of 2017** (the Application) delivered on 21<sup>st</sup> September 2017. The Applicant has registered one reason which led to her delay and that is she was misdirected and mistreated by the receptionist at the entry point of this court.

According to the Applicant's submission, she prepared her appeal in time that is 3<sup>rd</sup> November 2017. However, in accessing this to register her appeal she was informed by the receptionist to appear in the next day, 4<sup>th</sup> November 2017 to meet the Deputy

Registrar of this court for filing the appeal. According to the Applicant she made several follow-ups and attempt in this court to access the Registrar unsuccessfully and hence opted for the office Regional Commissioner to intervene and assist in either filing or accessing the Registrar, which was successfully hence preferred **Land Case Appeal No. 39 of 2017** in this court (the Appeal) on 10<sup>th</sup> November 2017, four (4) days of delay. However, the Appeal was dismissed on 30<sup>th</sup> October 2020. Being vigilant in protest of the Application, the Applicant approached this court again on 10<sup>th</sup> November 2020 praying for enlargement of time and cited the Court of Appeal (the Court) decision in **Samwel Sichone v. Bulebe Hamis**, Civil Application No. 8 of 2015, which stated that extension of time is discretionary powers of this court.

The prayer was resisted by Ms. Verdiana Protace Mujwahuzi (the Respondent) contending that the Appeal was dismissed for want of time limitation in this court and therefore the Applicant is barred to file the Application in the same court. With remedies available to the Applicant, the Respondent submitted that she has to appeal to the Court of Appeal as per precedent in **Tanzania Breweries Limited v. Edson Muganyizi Barongo & Seven Others**, Misc. Labour Application No. 79 of 2014, which held that this court cannot resurrect the matter it killed (dismissed). With the reason of delay registered by the Applicant, the Respondent briefly stated





that the reason does not constitute sufficient cause and in any case it was not supported by Affidavit of the receptionist.

On my part, I think, the established rule in law and precedents in this court and the Court is for the Applicant to provide good cause to persuade this court to decide in her favour. What constitutes a good cause, received a reply from the Court's precedent in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010:

*What constitutes **good cause cannot be laid down by any hard and fast rules**. 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 the present Application, the Applicant had delayed four (4) days in bringing the Appeal in this court and it was dismissed for want of time limitation and registered the present Application seeking for extension of time attached with the reason of misdirection from the receptionist of this court. However, the Application was protested by the Respondent contending that is not good cause and the statement is not supported by the receptionist affidavit.

To my opinion, I think, in granting extension of time, this court is guided by other several factors, including promptness in bringing the application, good faith on party of the applicant, access to court and search of justice. It is fortunate that all of the factors have received judicial interpretation. In **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987, the Court stated that:

*What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly.*

In the present Application the Applicant filed the Appeal in four (4) days of delay and present Application in ten (10) days of delay. This displays promptness on part of the Applicant in bringing actions in this court hence justifies his vigilance (see: **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017 and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019).

Reading the present registered materials of the Applicant there are facts which show that the Applicant is prosecuting his case in good faith. In the decision of **Royal Insurance Tanzania**



**Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No.

116 of 2008, the Court stated 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, I have said it all. The materials registered by the Applicant show that the Applicant was prompt and filed the Application in good faith to search justice in this court. The Applicant is struggling to have her substantive right be determined in this court. It is substantive justice where the rights and duties of disputants are fairly determined. The wording of East African Court of Appeal in **Essaji v. Sollank [1998] EA 220** at page 224 are important in scenarios like the present one. In that decision, their Lordships sought that:

*The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessary debar a litigant from the pursuit of his rights.*

To my opinion the words of the East African Court of Appeal in the Essaji's precedent and the Court in **VIP Engineer & Marketing Ltd. v. Said Salim Bakhresa**, Civil Applicant No. 47 of 1996, I have formed an opinion to grant the Applicant extension of time to file an appeal. This move is part of cherishing articles 13 (6) (a) & 107A (1) (e) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) and enactment in section 3A of the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code).

I understand the Respondent contended that the Appeal was dismissed and cannot be entertain again in this court and to justiy his argument she cited the decision of this court in in **Tanzania Breweries Limited v. Edson Muganyizi Barongo & Seven Others** (supra). However, the precedent is persuasive in this court. I also think, this application touches the constitutional right to fair hearing and second & third pillars enshrined in the Judiciary of Tanzania Five-Years Strategic Plan 2020/21-2025/2026 (the Plan) on: access to justice; expeditious decisions making; and winning of public trust & confidence. A lay women from a village of this country cannot understand legal technicalities and appreciate this court if she is not heard on substance.

I also understanding there are decisions of this court and the Court which state that a matter dismissed unheard on merit in this

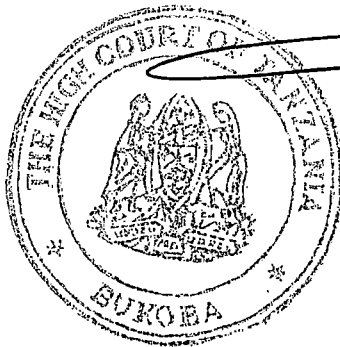
court for reason of time limitation may be considered for leave of extension of time to file the same out of time (see: this court in: **Theotimo Itanisa & Another v. Godwin Rugomolo**, Misc. Civil Application No. 13 of 2018 & **Edith Nababi v. Kemebos English Medium Boarding Primary School**, Misc. Labour Application No. 8 of 2020 and the Court of Appeal in **Ramadhani Beka v. The Republic**, Criminal Appeal No. 349 of 2016 & **Francis Petro v. Republic**, Criminal Appeal No. 534 of 2016).

I am aware that a delay of even a single day has to be accounted for by the Applicant (**Bashiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007) and applicants for enlargement cannot file an applications for extension of time as and when they wish (**Bank of Tanzania v. Saidi Malinda & 30 Others**, Civil Ref. 3 of 2014). However, I shall keep myself reminded of the general principle that every case is decided upon its peculiar facts (see: **NBC Limited & Another v. Bruno Vitus Swalo** (supra)).

Having said so, and considering all factors I stated in this Application, I have decided to grant the Applicant fourteen (14) days leave within which to file an appeal before this court from today, 6<sup>th</sup> July 2021, without any further delay. Having said so and considering award of costs is the discretion of the court, and taking

regard the dispute has not been determined to its finality, I award  
no costs. Each party shall bear its own costs.

It is accordingly ordered.

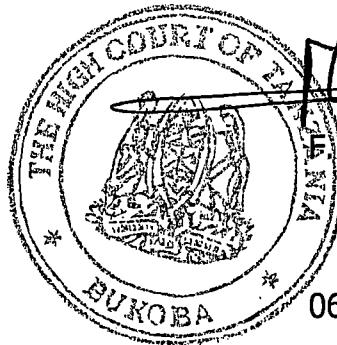


  
F.H. Mtulya

**Judge**

06.07.2021

This Ruling was delivered under the seal of this court in Chambers  
in the presence of the Applicant Ms. Florentina Philbert.



  
F.H. Mtulya

**Judge**

06.07.2021