

**IN THE HIGH COURT OF TANZANIA**

**AT BUKOBA**

**MISC. LAND APPLICATION NO 94 OF 2020**

**GODFREY LEOPORD.....APPLICANT**

**VERSUS**

**ANACLET BASHANZI.....RESPONDENT**

*(Application for extension of time to appeal out of time to this court  
from the decision of the District Land and Housing Tribunal  
of Bukoba in Application No. 122 of 2017)*

**RULING**

**5 & 9 July, 2021**

**MGETTA, J:**

Exercising its original jurisdiction, on 23/09/2019, the District Land and Housing Tribunal of Bukoba (henceforth the District Tribunal) handed down its judgment. Aggrieved by the decision of the District Tribunal, one Godfrey Leopord (henceforth the applicant) filed before this court "petition of appeal" on 22/11/2019. On 31/3/2020, one Anaclet Bashanzi (henceforth the respondent) filed notice of Preliminary Objection on point of law that the appeal was time barred.

When the preliminary objection was called on for hearing on 27/10/2020, Mr. Lameck John Erasto, the learned advocate appeared for the applicant. In absence of the respondent, he conceded that indeed the appeal which was filed by the applicant offended the provision of **Section**

**41 (2) of the Land Disputes Courts Act, CAP 216** as amended by **Act No 4 of 2016** (henceforth Cap. 216) as it was lodged out of time. The court found it correct and proceeded to strike out the appeal. Then the appellant was advised to file appropriate application.

Indeed, the appropriate application he took was on 8/01/2021 to file an application for extension of time within which to file an appeal out of time. His application is supported by his sworn affidavit. Relevant grounds in the affidavit are as hereunder:

*4. That, immediately after the judgment delivery he preferred the Appeal to this Court. He thus applied for copy of judgment and decree for the purpose.*

*5. That, being a layperson, he filed Petition of Appeal on 22/11/ 2019 out of time without leave of the Court.*

*6. That, when the appeal come before the court on 27/10/2020 the Appeal was struck out as it was filed out of time without leave of the court to do so.*

*7. That, unfortunately shortly after the delivery of the ruling on 27/10/2020, he was involved in a fatal accident and have first to*

*attend medical treatment. He attached hospital shit showing he was admitted at ELCT – Bukoba Town Heath Centre on 02/11/2020 and discharged on 14/11/2020.*

*9. That, it is in the interest of justice to order and grant extension of time so as he could exercise his constitutional and statutory rights.*

When the application was called on for hearing, Miss Erieth Barnabas, the learned advocate appeared for the applicant; while, Mr. Eliphazi Bengesi, the learned advocate, appeared for the respondent.

Relying on the content of the affidavit, Ms. Erieth pressed that the court be pleased to grant extension of time to the applicant to enable him exercise his constitutional right. It was not his fault to delay, but rather due to his ignorance and circumstances beyond his control. Mr. Eliphazi Bengesi strongly opposed the application. While relying on the contents of the counter affidavit, he stated that the application has no merits and should be dismissed with cost.

Ms. Erieth stated that the applicant was aggrieved by the decision handed down by the district tribunal on 23/9/2019. On his own, he lodged petition of appeal on 22/11/2019. This court struck it out on 27/10/2020 and he was advised to file appropriate application. Unfortunately, before

filing this application, he was involved in accident which made him admitted in ELCT Bukoba Town Health Centre on 02/11/2020 and he was discharged on 14/11/2020. Then, he started to look for an advocate and was able to engage a lawyer who finally filed this application on 23/12/2020 seeking for extension of time. To fortify her argument, Miss Erieth referred me to the decision in the case of **CRDB Bank LTD versus Gracious Mwanguga**; Civil Application No. 14 of 2013. Basing on CRDB Bank LTD (supra), she stated that by filing Land Appeal No. 67 of 2019 which was struck out as he filed it late, being a layman and by exerting efforts to look and engage advocate after he was discharged from hospital and finally caused this application be filed, all these demonstrate that the applicant was serious struggling to find what he considered to be his right to appeal.

On his part, Mr. Eliphazi emphasized that the time within which the applicant was supposed to lodge an appeal expired long time, but he did not make efforts to seek for extension of time. He added that the applicant has failed to account for his delay. Supporting his argument, he cited the case of **Ramadhan J. Kihwani versus TAZARA**; Civil Application No. 401/18 of 2018 (CA) (DSM) (unreported) where his Lordship Mwambegele,

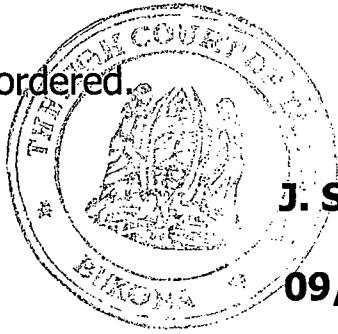
JA quoting with approval the finding in the case of **Bushiri Hassan versus Latifa Lukio Mashayo**; Civil Application No. 3 of 2007 (CA) that:

*"Delay, of even a single day has to be accounted for otherwise there would be no point of having order prescribing periods within which certain steps have to be taken"*

Agreeing with the findings of the Court of Appeal as well of some decisions of this court on the subject matter that each single day must be accounted for, but in this case that is the contrary. Looking at the reasons that caused the applicant to lodge an appeal, one finds that they are not substantiated. It is difficult to believe that indeed he was admitted at the Hospital in Bukoba. Assuming he was admitted in Bukoba, still after he was discharged from hospital, it took him more time to lodge this application for extension of time. Likewise, being a layman could not exonerate him from blameworthiness. In the circumstances of this application, I find that the applicant negligently failed to take essential steps in pursuing his right of appeal.

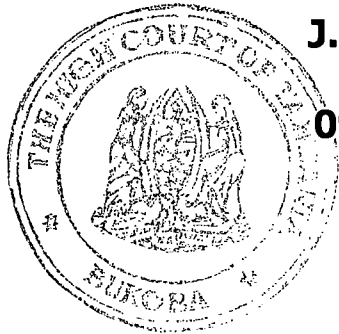
In the upshot, it is for the above reasons I find the application without merit. It is thus dismissed with cost.

It is so ordered.



**J. S. MGETTA**  
**JUDGE**  
**09/07/2021**

**COURT:** This ruling is delivered today this 9<sup>th</sup> July, 2021 in the presence of Ms. Erieth Barnabas, learned advocate for the applicant and in the presence of Ms Joanitha Jonathan, the learned advocate for the respondent.



**J. S. MGETTA**  
**JUDGE**  
**09/07/2021**