

**IN THE HIGH COURT OF TANZANIA**  
**BUKOB A DISTRICT REGISTRY**  
**AT BUKOB A**

**MISC. LAND CASE APPLICATION NO. 88 OF 2020**

**LONGINO KALANGANWA..... APPLICANT**

**Versus**

**BUKOB A MUNICIPAL COUNCIL.....RESPONDENT**

*(Application for extension of time to lodge appeal from  
the decision of District Land and Housing Tribunal  
at Bukoba in Application no. 255 of 2011)*

**RULING**

**22 & 23 July, 2021**

**MGETTA, J:**

Before me is an application for extension of time within which to file an appeal against the decree and judgment issued by District land and Housing Tribunal at Bukoba (hereinafter referred to as the trial tribunal). This application is brought by way of chamber summons supported by an affidavit sworn by one Longino Kalanganwa (henceforth the applicant). The application is opposed by counter affidavit sworn by Athumani Msosole, the solicitor for Bukoba Municipal Council (henceforth the respondent).

The facts constituting the reason for delay can be discerned from paragraph 3 – 8 of the applicant's affidavit and also being elaborated in his submission in chief after adopting the same. That On 21/2/2020 the trial

tribunal gave its judgment and immediately on 27/2/2020 the applicant applied for necessary documents for appeal before but he could not be supplied the same in time. Until on 1/4/2020 when he was supplied after several follow ups in the trial tribunal. Amplifying on the said reason for delay, the applicant narrated that he was told that the typist was on maternity leave, he had therefore to wait for the incoming one and when another typist came, he was told that the office had no papers to print the documents but despite the all disturbances, he later on managed to obtain the relevant documents for appeal purpose on 1/4/2020.

He stated further that from 2/4/2020 to 25/4/2020 he was sick and bedridden to hospital thus he could not manage to apply for extension of time until on 27/4/2020 when he recovered and applied for extension of time to appeal to High court via Misc Land Application No. 26/2020. But due to being a lay person he found himself to have filed incompetent application and therefore prayed to withdraw the same on 7/12/2020 where he was ordered to refile if after 14 days.

The applicant further averred that he promptly refiled the current application for extension of time on 12/12/2020. He therefore prays to this

court to consider that he had sufficient cause for delay and therefore grant the application.

When it came for the respondent's turn to reply, Mr. Msosole, Bukoba Municipal Solicitor prayed to adopt his counter affidavit and elaborated more that it is true that appealing from district tribunal the period provided is 45 days and that the decree and judgment are necessary documents for appeal purpose but he turns back that the applicant has not demonstrated sufficient cause for delay. He substantiated that from 1/4/2020 when the necessary documents were supplied to him, he didn't apply for extension of time in time until on 27/4/2020. He wondered the applicant to come for the reason that he was sick. He argues that the sick sheet was not even attached to the applicant's affidavit.

It was Mr. Msosole's conviction that in order for the court to exercise its discretion to grant extension of time, there must be sufficient cause and not sympathy to the applicant. He cited **Meis Industries Limited and 2 Others V. Twiga Bancorp**; Misc. Commercial Cause No. 243 of 2015, (HC Commercial Division) (Dar es salaam) (unreported).

It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. It is also trite law that such

discretion of the court should be exercised judiciously. Conversely, extension of time is granted after the applicant has demonstrated sufficient cause. See: **Benedict Mumello V. Bank of Tanzania**; Civil Appeal No. 12 of 2002 (CAT) (DSM) (unreported) and **Meis Industries Limited and 2 Others V. Twiga Bankcorp** (Supra). However, what amounts to sufficient cause finds no definition yet but would depend on a number of factors which the court has to take into account when exercising its discretion to extend time. Vide: **Tanga Cement Company LTD V. Jumanne D Msangwa and Another**; Civil Application No. 61 of 2020 (unreported), where Nsekela JA as he was, had this to say:

*"What amounts to sufficient cause has not been defined, from decided cases a number of factors has to be taken into amount, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant"*

Coming back to the case at hand, the time is counted from the date the necessary documents for appeal purpose (judgment and decree) were certified and ready for collection, which is on 1/4/2020. See the Court of Appeal stance in **Alex Senkoro and 3 Others V. Eliambuya Lymo**

**(administrator of the estate of Frederick Lymo, the deceased);** Civil Appeal No. 16 of 2017 (CAT) (DSM) (unreported). Therefore, from on 21/2/2020 when the judgment and decree were certified ready for collection up to the time, he received them on 1/4/2020, the Applicant should not be condemned of any negligence or lack of diligence because the necessary documents were in the domain of the trial tribunal. There is undisputed evidence that he wrote a letter to request the necessary documents until when they were supplied to him on 1/4/2020. The only gap which the applicant is supposed to account for delay is from 1/4/2020 after getting necessary documents up to on 27/4/2020 when he filed an application for extension of time. This gap brings a total of 26 days delay.

Para 6 of the affidavit, the applicant has offered explanation why he delayed. He felt sick and was bedridden until 25/4/2020. The respondent's counsel opposed that the sick sheet was not attached. Since the respondent's counsel does not dispute that the applicant wasn't sick but he only faulted him for not attaching the sick sheet, the applicant evidence in his affidavit that he was sick remains undisputed. He supplied the sick sheet to this court during hearing for verification, but it couldn't be admitted as evidence as it was not attached to his affidavit. However, since

he had averred in his affidavit that he felt sick for all that time, that remains as sworn evidence regardless of not attaching sick sheet and this court has no any reason whatsoever for not believing him.

Moreover, given the holding of the Court of Appeal in **Alex Senkoro's** case (supra) which interpreted **section 19 (1) of Law of Limitation**, Cap 89 that the days taken to apply and be supplied the necessary document for appeal are excluded in the calculation of 45 days to appeal. Therefore, the dates from when the judgment and decree were delivered to the dates when the necessary documents were certified ready for collection have to be excluded automatically from the calculation of 45 days.

On account of the proved sickness reason for delay through the applicant's affidavit, even the date the applicant received the necessary documents on 1/4/2020 to the date of filing application for extension of time, this court excludes them after finding that the applicant in this application has demonstrated sufficient cause by offering valid and lucid explanations, hence they have been accounted for.

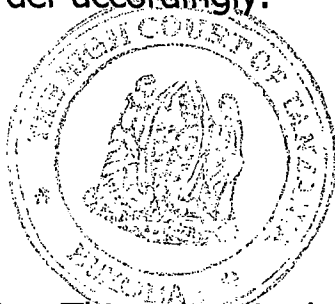
The application for extension of time which was filed to this Court as Application No. 26 of 2020 was found incompetent and therefore the

applicant withdrew it on 7/12/2020 and he was given 14 days to refile as per the record. The applicant promptly filed this current application on 12/12/2021. The act of an applicant to file the current application for extension of time promptly acts as a ground for this court to extend him time to appeal. See the holding in **Tanga Cement** case (supra).

In my view, I find a valid explanation of the applicant's delay and there was no any lack of diligence on his party, rather he was diligent in prosecuting his case and he acted so promptly to refile his withdrawn application for extension at time. The applicant has therefore demonstrated sufficient cause for delay.

In the event, I judiciously exercise my discretion and grant him extension of time to file his appeal. He should file his appeal within 14 days from today. Costs to follow the event.

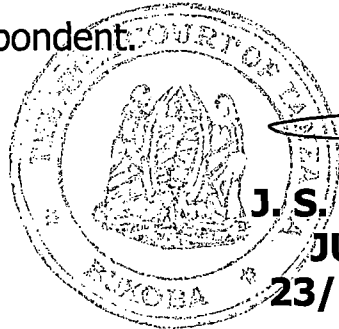
Order accordingly.




  
**J. S. MGETTA**  
**JUDGE**  
**23/7/2021**

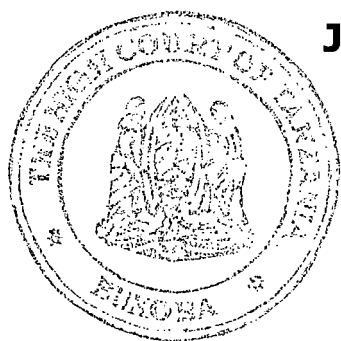
**COURT:** This ruling is delivered today this 23<sup>rd</sup> day of July, 2021 in the presence of the applicant in person and in the presence of Mr.


Athuman Msosola, the learned Municipal Solicitor for the respondent.



  
**J. S. MGETTA**  
**JUDGE**  
**23/7/2021**

**COURT:** Right of appeal to the Court of Appeal is fully explained.



  
**J. S. MGETTA**  
**JUDGE**  
**23/7/2021**