

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

MISC. LAND APPLICATION NO. 81 OF 2020

*(Originating from the Bukoba District Land and Housing Tribunal,
Application No. 182 of 2019)*

1. SAVERINA NGIMBWA-----1ST APPLICANT

2. AURELIA NGIMBWA-----2ND APPLICANT

VRS

RENATUS NGIMBWA-----RESPONDENT

RULING

26/7/2021 & 30/7/2021

NGIGWANA, J.

In this application the applicants Severina Ngimbwa and Aurelia Ngimbwa are seeking for the following orders:-

- (i) That, this honorable court may be pleased to extent time within which to file appeal out of time.
- (ii) Cost of the application to abide with the results.
- (iii) Any other order of the court may deem first and just to grant.

This application by way of chamber summons was made under **Section 14(1) of the Law of Limitation Act Cap. 89 R.E 2019 and Section 95 and Order XLIII of the Civil Procedure Code Cap. 33 R:E 2019.** The same is supported by the affidavit sworn by Gerace Reuben, learned counsel for the applicants. The respondent was duly served on 07/06/2021

but has never entered appearance as a result, the application was heard ex parte.

At the hearing, the applicants had the service of Mr. Gerase Reuben, learned advocate. The learned counsel adopted his affidavit to form part of his submission. Submitting in support of the application, the learned counsel argued that the applicants instituted Application No. 7 of 2019 before the District Land and Housing Tribunal for Kagera at Bukoba, but the same was never heard on merit since it was dismissed on 17/06/2019 for non-appearance. He added that, from there the applicants filed application No. 182 of 2019 seeking for an order to set aside the dismissal order issued on 17/06/2019, but the same was also dismissed for the non-appearance. The learned counsel further argued that the only remedy available to the applicants was an appeal against the dismissal order. Mr. Gerase further said, unfortunately the 1st applicant became very sick, and the only person who was attending her was the 2nd applicant, and was treated by the Native doctors, thus they could not lodge an appeal within time, wherefore he ended his submission praying for the grant of the application so that Application No. 7 of 2019 can be heard on merit.

It is trite that in this kind of application the grant or refusal of the extension of time is the discretion of the court but such discretion must be exercised judicially. This position was emphasized by the Court of Appeal of Tanzania in the case of **Blue Line Enterprises Ltd Versus East African Development Bank, Misc. Application No. 135 of 1995** (unreported). Where the court held that,

"It is trite law that extension of time must be for sufficient cause and that the extension of time cannot be claimed as a right. The power to grant this concession is discretionary which discretion is to be exercised judicially upon sufficient cause be shown which has to be objectively assessed by the court"

Also it is a principle of law that the applicant in order to be granted the extension of time within which to appeal out of time, must show sufficient cause. However what constitute "sufficient cause" depends on the circumstances of each case

In the present of application the ground relied upon by the applicants is that, right after the dismissal of **Application No. 182 of 2019**, the 1st applicant because sick and was attended by the 2nd applicant who took her to several native doctors up to November 2020, when the 1st applicant regained her health.

I do agree that there are circumstances in which sickness becomes a ground for extension of time see. **Kapapa Kumpindi versus the Plant Manager Tanzania Breweries; Civil Appeal No. 2 of 2010.**

However it must be noted that not every time that the reason of illness is cited, then the court must extent time. Sickness/illness becomes a ground for extension of time when it is proved that indeed it is the sickness that caused the delay see **Mgabo Yusuph versus Chamriho Yusuph; Civil Appeal No. 22 of 2019 HC (unreported).**

In this application it has been argued that immediately after the dismissal order the 1st applicant became sick. The date was not mentioned, likewise the month. No medical proof that the 1st applicant was sick. Just mentioning that she was being attended by the Native Doctor is not enough to prove that she was sick and that the sickness delayed them. In **Karibu Textile Mills versus Commission TRA; Civil Application No. 192 of 2016** it was emphasized that delay of even a single day has to be accounted for otherwise there would be no proof of having rules periods within which certain steps have to be taken.

In the upshot, I am of the decided view that the applicants have failed to show sufficient cause warranting grant of the application. Consequently, the same is hereby dismissed. Taking into account that the respondent entered no appearance, I enter no order as to costs.




E. L. NGIGWANA

JUDGE

30/7/2021

Date: 30/07/2020

Coram: Hon. Emmanuel Ngigwana, J.

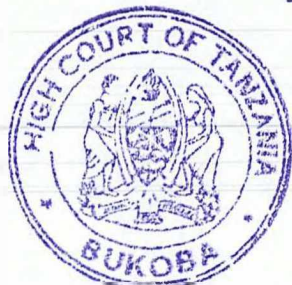
1st Applicant: Absent

2nd Applicant: Absent

Respondent: Absent

B/C: Gosbert Rugaika

Ruling delivered this 30th day of July, 2021 in the absence of all parties.

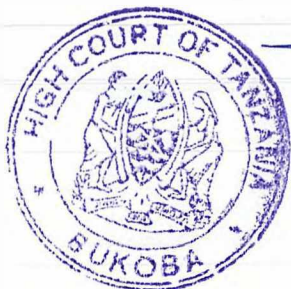



E. L. NGIGWANA

JUDGE

30/7/2021

Court: Right of Appeal explained.




E. L. NGIGWANA

JUDGE

30/7/2021