

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

LAND APPLICATION NO. 25 OF 2021

(Originated from Kabanga Ward Tribunal Land Case No.2/2019 and Appeal No.15 of 2019 of the DLHT for Ngara at Ngara)

08/07/2021 & 13/08 /2021

NGIGWANA, J

INNOCENT BASITA.....APPLICANT

VERSUS

GODFREY BASITA RESPONDENT

RULING

This court is called upon to enlarge time within which to lodge an appeal out of time against the decisions of Kabanga Ward Tribunal in Land case No.02 of 2019 and Land Appeal No.15 of the DLHT for Ngara at Ngara. The application is by way of Chamber summons made under the provisions of Section 14 (1) of the Law of Limitation Act Cap 89 R: E 2019 and Section 38(1) of the Land Disputes Courts Act Cap 216 R: E 2019.

The chamber summons is supported by an affidavit duly sworn by the applicant.

A brief background of this matter is to the effect that, the respondent Godfrey Basita successfully sued the appellant Innocent Basita before Kabanga Ward Tribunal for entering the Suitland, uprooting the boundary marks that were installed by clan members.

Kabanga Ward Tribunal for entering the Suitland, uprooting the boundary marks that were installed by clan members.

Dissatisfied by the decision of the Ward Tribunal, the appellant lodged an appeal to the DLHT for Ngara at Ngara, but the same was dismissed with costs for want of merit. The appellant was still aggrieved, but delayed to appeal to this court within time hence this application.

When the application was called on for hearing, the applicant had the services of Mr. Dustan Mujaki, learned counsel who adopted the applicant's affidavit as part of his submission.

In his submission in support of the application, Mr. Mujaki relied on paragraphs 3,4, and 6 of the affidavit and argued that the reason for the delay was beyond the applicant's control since the judgment of the DLHT was pronounced on 16/12/2019, and on the same date the applicant wrote a letter asking for a copy of judgment for appeal purposes but the same was not availed to him within time, as result, he wrote a complaint letter on 18/02/2021 to the DLHT and made several follow ups until 26/02/2021 when the copy of judgment was availed to him.

The learned counsel went on submitting, right after being availed with the copy of the judgment on 26/12/2019, the applicant went on struggling for more than 21 days in order to get transport costs from Ngara to Bukoba, filing and advocate fees. To emphasize on this point Mr. Mujaki referred this court the to the case of **Nyandangaro Baganda versus Kwizera Martine**, Miscellaneous Application No.24 of 2012 HC at Bukoba (Unreported) where the court considered the issue of fund raising to cater

where there is no proof to the contrary. The learned counsel ended his submission praying for the grant of the application.

The respondent in his counter affidavit opposed the application, but during the hearing he could not offer any explanation apart from admitting that he is a layperson hence not aware of the law and the court procedures. Paragraph 5 of the counter affidavit is to the effect that the copy of the judgment is not mandatory for an aggrieved party to file an appeal, while paragraph 7 is to the effect that right after being supplied with the copy of judgment, the applicant ought to have lodged this application immediately. As per his counter affidavit, the applicant has not adduced sufficient cause for delay warranting the grant of this application. Now, the question for determination is whether the applicant has been able to advance sufficient reasons for the delay. This application was brought under herein under section 38(1) of the Land Disputes Courts Act Cap 216 R: E 2019 which provides;

“Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:

Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired”

Section 14 (1) of the Law of Limitation Cap 89 R: E 2019 provides;

Section 14 (1) of the Law of Limitation Cap 89 R: E 2019 provides;

*“Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application”***

It is therefore a cardinal principle that where extension of time is sought, the applicant will be granted upon demonstrating sufficient cause for the delay.

The Court of Appeal of Tanzania in the case of **Lyamuya Construction versus Board of Registered Trustees**, Civil Application No.2 of 2010 (Unreported) has provided the following guidelines for the grant of extension of time;

- (a) The applicant must account for all the period of delay.
- (b) The delay should not be inordinate
- (c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intended to take.
- (d) If the court feels that there are sufficient reasons/such as the existence of a point law of sufficient importance such as the illegality of the decisions ought to be challenged.

Generally, the law does not set any minimum or maximum period of delay. What is needed is a plausible and satisfactory explanation for the delay. The applicant must give valid and clear reasons upon which the discretion can be favorably exercised.

In the case of **LEO SILA MUTISO VERSUS HELLEN WANGARI MWANGI [1999]2EA 231** the court held that, it is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also settled that, that general matters which the court has to take into account in deciding whether to grant an extension of time are; first, the length of the delay, secondly, the reason for the delay, thirdly, the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.

Generally, from the herein above authorities, it can be learnt that the law does not set any minimum or maximum period of delay. The applicant must give valid, clear and sufficient reasons upon which the discretion can be favorably exercised.

Conversely, it is also well settled that the sufficient cause depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur. See decisions in the case of **Regional Manager TAN ROADS Kagera versus Rinaha Concrete Co. Ltd; Civil Application No. 96 of 2007 CAT, unreported and Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation**

**(1995) TLR 200 and Republic versus Yona Kaponda and 9 others
(1985) TLR 84.**

In the instant application, as correctly submitted by Mujaki, the judgment of the DLHT was delivered on 16/12/2020. On 20/01/2021 applicant wrote a letter requesting for the copy of judgment, and not on the date of judgment as stated in the affidavit and submitted by Mujaki. The letter reveals that it was written on 20/01/2021 and sealed by the DLHT on the same date to acknowledge receipt. The same was annexed to the applicant's affidavit as A2

Part of the letter dated 2 reads;

"ninaomba kupatiwa nakala ya hukumu iliyotolewa maamuzi leo tarehe 16/12/2020 kwa ajili ya hatua nyingine ikiwa ni pamoja na kukatia rufaa ndani ya muda"

The complaint letter dated 18/02/2021 jointly written by Innocent Basita (Applicant) and one Mnyandagalo Baganda which was annexed to the affidavit had this phrase;

*"Rejea barua ya Mnyagandalo Baganda iliyoandikwa 16/12/2020 na Barua **ya Innocent Basita ya 20/01/2021**. Barua zote ziliandikwa na kufikishwa kwako tukiomba kupatiwa nakala ya hukumu ili tuweze kukata rufaa"*

Reading the two letters carefully, it is easy to discover that the one who applied for the copy judgment on 16/12/2020 was Mnyandagalo Baganda who was not a party to the proceedings even though the said letter was not attached to the affidavit. The date inserted in the applicant's letter to

took immediate actions while not. From 16/12/2020 to 20/01/2021 we get good 36 days. However, the applicant cannot be blamed because he wrote the letter within 60 days from the date of judgment, meaning he had more 24 days before the expiry of the appeal time.

It is true that the appellant was not availed the copy of judgment before the expiry 60 days despite of the necessary steps he took. Right after, being availed with the same, he delayed to file this application for 21 days. The learned counsel for the applicant explained that the applicant in those 21 days was struggling to get filing and advocate fees, as well as transport costs from Ngara to Bukoba.

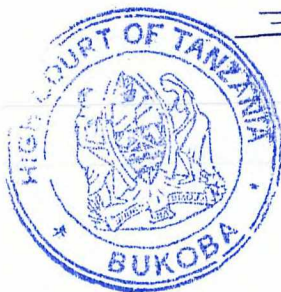
There is no doubt the Court of Appeal in a number of cases including **Bushiri Hassan versus Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 and **Karibu Textile Mills versus Commissioner** (TRA) Civil Application that 192 of 2016 (Both unreported) has emphasized on the duty imposed upon the applicant to account for the delay. The words of the court are as follows:

"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 this application, the applicant has managed to account for the delay and the delay was not inordinate, he has made the necessary steps before and after being availed with the copy of judgment. I have carefully considered the respondent's counter affidavit which was coached to the effect that no

sufficient cause has been advanced warranting the grant of the application but found it extremely weak to shake this application.

With that view, I find that the applicant has advanced good cause for the failure to appeal within the prescribed period of time. For that reason, and being guided by the provisions of the law under which this application was brought, and case law, I allow the application. The applicant is given a period of twenty-one (21) days from the date of this ruling within which to file an appeal to this court. I enter no order as to costs. It is so ordered.



E.L. NGIGWANA

JUDGE

13/08/2021

Date: 13/08/2021

Coram: Hon. Emmanuel Ngigwana, J.

Applicant: Mr. Dustan Mujaki, (Adv)

Respondent: Absent on notice

B/C: Lilian Paul

Mr. Dustan Mujaki (Adv):

My Lord, the matter is coming for ruling. The respondent is absent I am ready to receive it.

Court: Ruling delivered this 13th day of August, 2021 in the presence of Mr. Dustan Mujaki learned Advocate for the applicant, but in the absence

of the respondent, and in the presence of E. Kamaleki, Judge's Law Assistant.



HIGH COURT OF TANZANIA
E.L. NGIGWANA
JUDGE
13/08/2021

