

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC. LAND APPLICATION No. 20 OF 2021

(Arising from High Court (Bukoba Registry) at Bukoba in Land Case Appeal no 58 of 2016 & Misc. Land Application No. 70 of 2020 and original Application No. 104 of 2014 from the District Land and Housing Tribunal for Kagera at Bukoba)

YUDES RWASA----- APPLICANT

Versus

1)ALODIA LAZARO

2)SYLVIA LAZARO

3)ENID LAZARO

4)BLANDINA LAZARO

----- RESPONDENTS

RULING

Date of Ruling: 03/08/2021

Mwenda, J.:

The applicant Yudes Rwsa being aggrieved by the *decision of the District Land and Housing tribunal in Application No.104 of 2014*, preferred an appeal before this court *in Land Appeal No.58 of 2016* which was struck out for being incompetent. Thereafter he filed *Misc. Land Case Application No. 70 of 2020* before this court which was again struck out for want of competence hence this application for extension of time.

When this application was scheduled for hearing the applicant was represented by the Learned counsel Mr. Pauline Michael while the respondent hired the legal service of Miss Pilly Hussein.

During his submission the learned counsel for the Applicant stated that, this application is brought under ***section 41(2) of the Land Dispute Court Act [CAP 216 R.E 2019]***. The learned Counsel went further by submitting that, they are praying for extension of time to file an appeal which was previous brought as ***Land Appeal No. 58 of 2016*** before this court but was struck out for want of decree and judgment which had different filing numbers. According to him the decree shows ***land Application no. 104 of 2014*** while the judgment shows ***Land Application no. 10 of 2014***.

In his submission, Mr. Pauline prayed his affidavit to be adopted as part of his submission. In addition to his affidavit, he submitted that the deference between the Judgment and the Decrees was due to typing errors from the District Land and Housing Tribunal and the typist forgot to write no.4 in the judgment and instead he wrote Application No. 10 of 2014 while the main case was Application No. 104 of 2014. So according to him this is not their mistake but it was the tribunal's mistake.

Mr Pauline went further by submitting that, after the application was stuck out they have been in court seeking an extension of time to file an

appeal out of time and if granted their appeal have overwhelming chances of success since the judgment has a lot of irregularities.

Learned counsel for the applicant concluded by saying that he is praying for this court to grant the prayed orders so that their appeal can be determined on merit.

In reply to the submission by the learned counsel for the applicant, Miss. Pilly Hussein, protested the application by first praying the respondent counter affidavit to be adopted as part of her submissions.

According to Miss Pilly the application has no sufficient cause for extension of time as the advocate for the applicant has been negligent as depicted in para. 4 of the applicant's affidavit. She also submitted that, negligence of the advocate is not a good and sufficient cause for extension of time. She went further by saying that in the applicant's submission he agrees that he did not act with due diligence to see if the records are correct and in support of his arguments she cited the case of ***Transport equipment ltd vs DP Valambia [1993] TLR 91*** at page 101 where the court held that:-

"negligence of the advocate or applicant is not a good cause for extension of time".

On the issue of accounting for each and every day of the delay Miss Pilly submitted that the applicant had failed to account on each day of the delay since Misc. Land Case Application No. 70 of 2020 was struck out on 9/

3/ 2021 and the present application was filed on 22/3/2021 so there is a delay of almost 13 days as such this application lacks merits.

Miss. Pilly conclude by submitting that, reasons raised by the applicant are baseless and the proposed grounds of appeal are not in the affidavit and therefore it is an afterthought. She thus prayed for this application to be struck out.

In a brief rejoinder the counsel for the applicant submitted that he was not negligent as anomalies in the record was caused by the District Land and Housing Tribunal and it was just a technical fault. And on the case of Transport Equipment Ltd (supra) he submitted that this case is distinguishable from this case as in this case the advocate failed to file the application in time.

On the issue to account for each day of delay the counsel for the applicant submitted that, after striking out the previous applications on 9/03/2021 he was waiting for a copy of ruling so as to see what the Judge wrote before preparing this application. According to him from 09/03/2021 to 22/03/2021 it is quite a short period of time for that matter and that he did not waste time as he filed this application in time. On the issue of the grounds of appeal he submitted that the grounds are apprehended in the affidavit.

The learned counsel for the applicant concluded by saying that he is praying for extension of time so as to appeal out of time.

I have gone through the submission of both parties and it is clear that this court has discretionary powers to grant or refuse an application of extension of time. But such discretion has to be exercised judiciously according to rule and principle of justice. The guiding principle in granting an application for extension of time is that the applicant must demonstrate sufficient cause or reasons for the delay.

In the case of ***Lyamuya Construction Company Ltd vs Board of Trustee of Young Women Christian Association of Tanzania***, four principles which guide the court before exercising its discretion were laid down, these are

- 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 intends to take and*
- d) *If the court feels that there are other sufficient reasons such as existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.*

That being the legal position the issue in this application is whether the applicant have advanced sufficient cause for the delay.

From the applicant's side two grounds for the delay were tabled and discussed. One is that the applicant filed his memorandum of appeal in time

but when it was tabled for hearing it was struck out due to discrepancy in date on the Judgment and the Decree. The applicant during submissions in this court was of the view that what happened is a technical fact which was caused by the Tribunal although it was an oversight on his part for failure to note the said discrepancies.

The respondent's advocate during submission contented that what happened in this ground was negligence on the applicants advocate which is not sufficient cause for extension of time. She cited the case of ***Transport equipment(supra)*** in support thereof. This court has gone through this ground and reasons advanced and came up with a conclusion that under these circumstances, the discrepancy on copy of the dates on the Decree and the copy of the Judgment was partly caused by the tribunal and partly by the applicant's negligence. Had it been that this is the only cause of delay this court would have ruled otherwise. But since there are other matters for consideration, this court finds it prudent to dwell on them and make its findings.

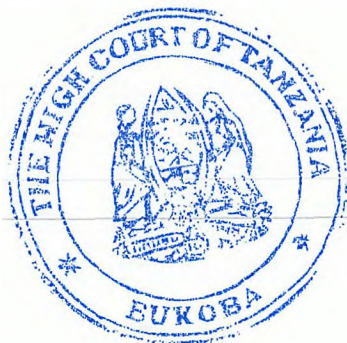
Also, the counsel for the applicant submitted that, they have appended a copy of judgment which contain many errors and thus this court should consider in making decision to this matter. But the respondent's side opposed this argument in that the records are silent on the said matter as they ought to have clearly stated in their affidavit. This court considered this submission

and is of the view that mere making reference to grounds of appeal is not enough. The applicant's advocate ought to have raised and avail the said grounds of appeal highlighting the purported errors.

Another issue is that the learned Advocate for the respondent contended that the applicant has failed to account on each and every day of delay. From the date when the final application, that is Misc. Land Application No. 70 of 2020 was struck out to the filing date of this application the applicant has failed to account on each and every day of delay. In his rejoinder the counsel for the applicant replied that the delay was due to time spent waiting for a copy of Ruling. He however did not state as to when the said ruling was received. This court find substance on the respondent's arguments as the applicant have failed to account for each and every day of delay from the date they received the corrected copies of decree and judgement to the date of filing this application. In the case of ***Lyamuya Construction Company (Supra)*** it was held that the applicant must account for all the period of delay.

Basing on the above analysis I hereby dismiss this application with costs.

It is so ordered





A.Y. Mwenda

Judge

03/08/2021

This Ruling was delivered in chamber under the Seal of this Court in the absence of the Applicant and the Respondent.




A.Y. Mwenda
Judge
03/08/2021