

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOBIA DISTRICT REGISTRY**

~~**AT BUKOBIA**~~

MISC. LAND APPLICATION NO. 12 OF 2021

*(Arising from Misc. Land Appeal No. 66 of 2018 of the HC -Bukoba, Land Appeal No.150 of 2016 of the
DLHT for Kagera at Bukoba, and Original Civil Case No.5 of 2016 of Kyaka Ward Tribunal)*

ABDU ATHUMANI KINUMIAPPLICANT

VERSUS

SOFIA HASSAN RESPONDENT

RULING

24/08/2021 & 31 /08 /2021

NGIGWANA, J

This application for leave to appeal to the Court of Appeal, is filed under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and section 47(1), (2) of the Land Disputes Courts Act [Cap 216 R: E 2019] The applicant is seeking for two main orders that;

One, extension of time to file an application for leave to appeal to the Court of Appeal.

Two, subject to the granting of extension of time, to be granted leave to appeal to the Court of Appeal be granted.

The application is supported by an affidavit sworn by the applicant, Abdu Athumani Kinumi.

Though no objection raised by the respondent, at this juncture, I found it prudent to address the issue as to whether it is fatal or proper to combine more than one prayer in one chamber summons. The answer to this issue is found in the case of **MIC TANZANIA LTD VERSUS MINISTER FOR LABOUR AND YOUTH DEVELOPMENT AND ANOTHER**, Civil Appeal No. 103 of 2004 CAT (Unreported) where the Court held that, the combination of two applications is not bad in law otherwise the parties would find themselves wasting more money and time on avoidable applications which would have been conveniently combined. The Court of Appeal went on stating that unless there is a specific law barring the combination of more than one prayer in one chamber summons, the court should encourage this procedure rather than thwart it for fanciful reasons. That being the position, the two prayers in this application were rightly combined.

The decision giving rise to the application arose from Land case No. 66 of 2018 in which the applicant was the respondent while the present applicant was the appellant. Before Kyaka Ward Tribunal, the respondent Sofia Hassan successfully sued the applicant Abdul Athumani Kinumi for trespass to a piece of land located at Kashasha area vide Civil case No.05/2016. Aggrieved, the applicant appealed to the Bukoba District Land and Housing Tribunal (The appellate Tribunal) in Land Appeal No. 150 of 2016. The Appellate Tribunal reversed the decision of the Ward Tribunal, as a result, the present applicant was declared the lawful owner of the Suitland. On appeal to the High Court vide the herein above stated appeal, the decision of the Appellate Tribunal was reversed, whereas, the decision of the Ward

Tribunal confirmed in which the present respondent was declared the lawful owner of the disputed land.

The appellant was aggrieved and desired to appeal against that decision of the High Court, but time was not in his favor, and since an Appeal to the Court of Appeal in Land cases is subject to leave of the High Court under section 47(1) of the Land Disputes Courts Act, Cap 216 R: E 2019, the applicant has filed in this court the present application seeking for extension of time, and leave to appeal to the Court of Appeal of Tanzania.

At the hearing of this application the applicant was represented by Mr. Ibrahim Mswadicki learned advocate while the respondent appeared in person and unrepresented. Mr. Mswadicki adopted the applicant's affidavit to form part of his submission and stated that the applicant was dissatisfied with the decision of this court delivered on 18/12/2020 and therefore on 23rd day of December, 2020 he filed a notice of appeal to the Court of Appeal of Tanzania. He further submitted that the applicant ought to have sought leave and certificate on point of law immediately after filing the notice but he failed because he became seriously sick from 24/12/2020 until 24/01/2021 when got some improvements and acted promptly by filing the present application. The learned counsel argued that the delay was therefore not caused by negligence but reasons beyond the applicant's control as evidenced by the medical report. The learned counsel referred this court to the case of **Elius Mwakalinga , versus Dominick Kagaruki, and 5 Others**, Civil Application No.120/17 of 2018 in which the Court of Appeal referred to its decision in **Tanzania Revenue Authority**

versus Tanga Transport Co. Ltd, Consolidated Civil Appeal No.4 of 2009 which laid down the following factors worthy of consideration in determining applications for extension of time; the length of the delay, the reasons for the delay, whether there is an arguable case such as whether there is a point of law on the illegality or otherwise of the decision sought to be challenged and the degree of prejudice to the defendant if the application is granted.

The learned counsel further submitted that, in our case the judgment which is sought to be challenged was delivered on 18/12/2020, and on 23/12/2020 the applicant lodged the notice to appeal to the Court of Appeal, and from there as shown under paragraph 7 his affidavit, he became seriously sick as a result, he was admitted at Bunazi Health Centre from 29/12/2020 and discharged on 3/01/2021, the re-admitted on 20/12/2021 and discharged on 24/01/2021, and on 03/2/2021 he filed this application Mr. Mswadicki urged the Court to find that the applicant has been able to show good cause grant this application.

In reply, the respondent Sofia Hassan stated that she is not aware whether the Applicant was sick or not. Since, she is a laywoman, she urged the court to administer justice according to law.

Having heard the parties, the question that follows is whether the applicant has been able to show good cause for the Court to exercise its discretionary powers to extend time for him to lodge his intended appeal out of time. **In Benedict Mumello v. Bank of Tanzania** [2006] 1 EA 227, three Justices of Appeal subscribed to the decision of the

single Justice of Appeal in the case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwandwa**, Civil Application No. 6 of 2001 (unreported) where it was stated that what amounts to sufficient cause has not been defined. However, in the case of **Oswald Masatu Mwizarubi versus Tanzania Processing Ltd**, Civil Application No.13 of 2010 the Court of Appeal had this to say;

"What constitutes good cause cannot be laid down by any hard and fast rules. The term is good cause is a relative one and is dependent upon party seeking extension of time to prove the relevant material in order to move the court to exercise its discretion"

In case of **Elius Mwakalinga , versus Dominick Kagaruki, and 5 Others**, Civil Application No.120/17 of 2018 in which the Court of Appeal referred to its decision in **Tanzania Revenue Authority versus Tanga Transport Co. Ltd**, Consolidated Civil Appeal No.4 of 2009 which laid down the following factors worthy of consideration in determining applications for extension of time; **the length of the delay ,the reasons for the delay, whether there is an arguable case such as whether there is a point of law on the illegality or otherwise of the decision sought to be challenged and the degree of prejudice to the defendant if the application is granted.**

In the current application, as intimated earlier on, the impugned decision was delivered on 18/12/2020 whereas on 23/12/2020 the applicant lodged the notice to appeal to the Court of Appeal, the notice and Exchequer receipt No,24641053 both dated 23/12/2020 were attached to

the applicant's affidavit as AAK-4. Thereafter, he became seriously sick as a result, he was admitted at Bunazi Health Centre from 29/12/2020 and discharged on 3/01/2021, then was re-admitted on 20/12/2021 and discharged on 24/01/2021. The admission forms were attached to the applicant's affidavit as AAK-5. On 03/2/2021 he filed this application.

It is evident from the sequence of events that the applicant had been diligent all the time taking steps immediately after the delivery of the impugned decision to pursue his right. But became seriously sick after filing the notice of appeal, hence delayed to file the appeal. The reasons for the delay as shown above constitute good cause since, the issue of sickness was out of his control, and after some improvement, he acted promptly.

Having addressed the 1st prayer, it now time to address the 2nd prayer.

Section 47 (1) and (2) of the Land Courts Disputes Act Cap 216 provides;

"A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act"

*(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, **with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.***

Prayer No.2 as per chamber summons is coached as follows;

"Leave to appeal to the court of Appeal of Tanzania"

The question to be resolved here is whether the court has been properly moved as regards to the 2nd application/prayer. It is a settled law that a

person intending to appeal to the Court of Appeal for matters originating from the Ward Tribunal has first to seek and obtain a certificate that there is a point of law involved in the intended appeal from the High Court. This position is clearly stipulated under Section 47 (3) of the Land Courts Disputes Act Cap 216. It stipulates that;

*“Where an appeal to the Court of Appeal originates from the **Ward Tribunal**, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal.”*

There is no doubt that, in this case, the matter originated from **KYAKA WARD TRIBUNAL, LAND CASE NO. 5 OF 2016**. It is therefore clear that the applicant was required to **apply for a certificate that there is a point of law involved in the intended appeal and not leave to appeal**. See the case of **Managing Director Kenya Commercial Bank(T) Ltd & Another Shedrack J. Ndege, Civil Application No.7 of 2009 (Un-reported)**. Section 47(3) of the Land Courts Disputes Act Cap 216 was not even among the provisions in which the application was brought, hence the situation cannot be cured by the Principle of Overriding Objective.

Since the parties are bound by their pleadings, the court is not entitled to grant the relief not asked for or pleaded. See the case **of Ibrahim Kadushi versus Magese Nilla Magessa**, Civil Application No.02 of 2020 HC Musoma (Unreported)

In the premise, as regards the 1st application, as pointed out earlier that the applicant has managed to demonstrate sufficient cause for the grant of the application, the same is hereby granted. Application for extension of time to file an application for leave to appeal to the Court of Appeal to be filed within 14 days from the date of this ruling.

As regards the second application, the same is hereby struck out for being inappropriate/incompetent. The applicant is at liberty to file an appropriate application subject to the Law of Limitation. No order as to costs.

It is so ordered



E.L. NGIGWANA

JUDGE

31/08/2021

Ruling delivered this 31st day of August 2021 in the presence of both parties in person and Mr. E. M. Kamaleki, Judges' Law Assistant.



E.L. NGIGWANA

JUDGE

31/08/2021