

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOB A DISTRICT REGISTRY
AT BUKOBA

MISC. LAND APPLICATION NO. 17 OF 2021

(Arising from Misc. Land Application No. 98 of 2020 of the HC - Bukoba and in the Land Case Appeal No.26 of 2018 and Original Application No.145 of 2012 of the DLHT for Kagera at Bukoba)

REV. WILSON KYAKAJUMBAAPPLICANT

VERSUS

ELIAS ICHWEKELEZA RESPONDENT

RULING

13/08/2021 & 27/08/2021

NGIGWANA, J

This omnibus application is expressed to be made under Section 47(1) of the Land Disputes Courts Act Cap 216 R: E 2019 and section 11(1) of the Appellate Jurisdiction Act, Cap 141 R: E 2019. The application is supported by an affidavit sworn by Alli Chamani, learned advocate for the applicant. The applicant is praying for the following orders;

1. Leave to extend time to file an application for leave to appeal to the Court of Appeal
2. Leave to appeal to the Court of Appeal
3. Any other and further relief this Court may deem just to grant

Though no objection specifically raised by the respondent, 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. See also the case of **THE PROJECT MANAGER ES-KO-INTERNATIONAL INC KIGOMA VERSUS VICENT NDUGUMBI**, CIVIL APPEAL NO.22 OF 2009 CAT (Unreported)

The decision giving rise to the application arose from Land Appeal case No. 26 of 2018 which was determined on 06/11/2020 in which the applicant was the respondent while the present respondent was the appellant.

Before DLHT for Kagera at Bukoba (the Trial Tribunal), the applicant Rev. Wilson Kyakajumba vide Land Application No.145 of 2012 sued the respondent Elias Ichwekeleza (Administrator of the Estate of Constancia Tega) claiming ownership of a piece of land located at Kihumulo Village, Biiirabo Ward in Muleba District. After, full trial, the Applicant was declared the lawful owner of the Suitland.

Aggrieved, the respondent Elias Ichwekeleza successfully appealed to the High Court vide the herein above stated case that is to say Land Appeal Case No.26 of 2018.

The appellant (The present applicant) was aggrieved and desired to appeal against that decision of the High Court to the Court of Appeal but time to the court to apply for leave for was not in his favor, and since an Appeal to the Court of Appeal case 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 to file an application for leave to appeal to the Court of Appeal and subject to the grant of the first prayer, leave to appeal to the Court of Appeal of Tanzania.

At the hearing of this application the applicant had the services of Mr. Alli Chamani learned advocate while the respondent had the services of Mr. Eliphasi Bengesi. Mr. Chamani adopted his affidavit to form part of his submission and stated that the applicant was dissatisfied with the decision of this court delivered on 06/11/2020 and therefore on 1st day December 2020, he filed a notice of appeal to the Court of Appeal of Tanzania vide ERV No. 24641027.

Arguing the issue of extension of time, Chamani relied on paragraph 4,5,6 and 7 of the affidavit sworn by him and submitted that on 17/12/2020 the applicant filed but the same was struck out for being filed out of time, whereas, on 25/02/2021 the applicant applied before this court to be supplied with the copy of the said ruling but was received on 08/03/2021. He added that the delay to file the application for leave to appeal was not inordinate nor deliberate.

Mr. Chamani went on submitting that illegality is one of the grounds for the grant of the application, as the High Court noted the existence of

irregularities one of them being; the trial tribunal was not properly constituted, but the Court proceeded to determine the appeal on merit, but also this Court used double standard in evaluating the parties' evidence especially the sales agreements. The learned counsel referred this court to these cases; British **Broad Casting Corporation versus Erick Sikujua, Ng'maryo** Civil Application No.138 of 2004 (CAT), **Joseph Ndyamukama versus NIC Bank and 2 Others**, Misc. Land Application No.10 of 2014 (HC) and **MIC Tanzania Ltd versus Minister for Labour and Another**, Civil Appeal No.103 of 2004 (CAT) (All unreported)

Opposing the application for extension of time, Mr. Eliphazi Benges learned counsel for the respondent adopted his affidavit and submitted that the applicant has not given good and sufficient reasons for each and every day of delay from 06/11/2020 until 10th March 2021 when this application was filed. He also argued that, there is nothing like illegality in this case since the vendor had no title to pass, and judgment of the court cannot be faulted, thus prays for the dismissal of the application for being vexatious and frivolous.

This application was brought under section 47 (1) and (2) of the Land Courts Disputes Act Cap 216 which 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.***

And section 11(1) of the Appellate Jurisdiction Act, Cap 141 R: E 2019 which provides;

*"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time** for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, **for making an application for leave to appeal** or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired"*

Now, 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.

It is settled that an application for extension of time can only be granted upon the applicant adducing good cause or sufficient reason(s) for delay. This principle was clearly stated in **Mumello v. Bank of Tanzania** [2006] E.A. 227 that,

"... an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause"

Though the law does not define what amounts to sufficient cause or good cause, 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 of law of sufficient importance such as the illegality of the decisions ought to be challenged.

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;

"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 current application, as intimated earlier on, the impugned decision was delivered on 06/11/2020 whereas on 01/12/2020 the applicant lodged the notice to appeal to the Court of Appeal, the notice and Exchequer receipt No,24641027.

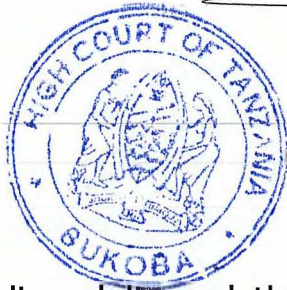
Application for leave was filed on 17/12/2020, and on 25/02/2021 it was struck out after being found that it was filed out of time. As correctly stated by Mr. Benges, the applicant had the duty to account for each and every day of delay starting from, the 06/11/2020, and not from the date of filing the notice or the date when Application No. 98/2020 was filed or when the same was struck out.

The applicant ought to have filed an application for leave to this court within 30days from the date of the decision. See rule 44 of The Tanzania Court of Appeals Rules made under section 12 of the Appellate Jurisdiction Act, CAP 141 R: E 2019.**There was a delay of 16days which has never accounted for by the applicant neither in the affidavit nor during the hearing.**

Now, being guided by the fore going cited authorities, I find that the applicant has not advanced good cause for the failure to appeal within prescribed period of time. He has not shown diligence rather there be seems to be apathy, negligence or sloppiness in the prosecution of the action that he intended to take. Furthermore, reading the judgment of this court as a whole, I do not feel that there is existence of any illegality.

In the event, application for Leave to extend time to file an application for leave to appeal to the Court of Appeal is hereby dismissed. Since application for leave to appeal to the Court of Appeal was subject to the grant of the first application, the 2nd application is now rendered superfluous thus dealing with it is a mere wastage of time. Consequently, it is hereby struck out. In view of the circumstances of this matter I order each party to bear its own costs.

It is so ordered



E.L. NGIGWANA

JUDGE

27/08/2021

Court: Ruling delivered this 27th day of August 2021 in the presence of both Applicant and Respondent in person, and in the presence of E. M. Kamaleki, Judges' Law Assistant.



E.L. NGIGWANA

JUDGE

27/08/2021