

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

LAND APPLICATION NO. 16 OF 2021

(Arising from Civil Case No.10/2016 of Mabunda Ward Tribunal and Land Application No.2 of 2016 of DLHT at Muleba.)

CHAMA CHA MSINGI
CHA MAZAO MUBUNDA..... **APPLICANT**

VRS

ABEL BAGUMA.....**RESPONDENT**

RULING

26/08/2021 & 10/09/2021

NGIGWANA J,

Before me is an application for enlarging time filed by the Applicant under section 38(1) Of the Land Disputes Courts Act (Cap 216 R.E 2019).

Advocate Peter Joseph Matete who stood for the applicant presented the reasons for delay in paragraph 2,3,4,5 and 6 in his sworn affidavit which he subsequently adopted in his submission. The reasons for delay touch on the brief history of this matter. That the applicant filed appeal No.32 of 2017 within time before this court but on 24/05/2019 it was struck out. The applicant further filed Application No. 52 of 2019 but it suffered the same fate on 16/2/2021 for being incompetently filed hence this current appeal. That in the DLHT, in the impugned decision, there is an irregularity of which after the DLHT had quashed the Mubunda Ward Tribunal decision for being filed out of time but he went on declaring the

owner of the disputed land, the anomaly which they intend to challenge. That he also intends to challenge when time starts to run.

~~Advocate Matete~~ further elaborated that the applicant has never been negligent to pursue her case as she took necessary steps to pursue justice. That the delay has been technical as the ruling was delivered on 16/2/2021 and the necessary documents for appeal were ready for collection on 26/2/2021 and the DLHT quashed the Ward Tribunal Decision on 27/4/2017 which from this date the applicant had been in court hence technical delay.

In reply, Mr. Chamani who represented the respondent had nothing to object than leaving the matter in the hands of the court to exercise its discretion and see if sufficient cause has been demonstrated or not.

Having considered the submissions from both parties and the record in this application, I have to determine whether the applicant has demonstrated sufficient cause to warrant this court to grant extension of time.

I am convinced that the reason for delay as par the applicant's counsel is technical one and hence sufficient as for the whole delayed time the applicant was in court struggling to pursue her case but due to technical issues he has encountered, all her attempts to have her matter determined have been bouncing. That being the case, the applicant has no other option than resorting in applying for extension of time so that she can pursue her intended appeal as the applicant has correctly now done. The respondent's counsel did not object the grant of this application. Accordingly, I see no reason to withhold granting the same because technical delays are excusable.

Confronted with similar situation in the case of **Fortunatus Masha vs William Shija and Another** [1997] TLR,154, the Court of Appeal of Tanzania had this to say:

"With regard to the second point, I am satisfied that a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalised by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact, in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal.

From the above quotation of the Court of Appeal case, it is vivid that technical delays are excusable and differentiated from real and actual delays.

Another ground which the applicant prayed this court to have his application granted is illegality/irregularity in the impugned decision. I subscribe the proposition advanced by the applicant's counsel that illegality in the impugned decision amounts to ground for extension of time. The applicant's counsel submitted that they intend to challenge the order of DLHT declaring the owner of the disputed land after it had quashed the entire proceedings of the trial Ward Tribunal.

Concerning the ground of illegality, the legal position is settled by the apex court in Tanzania. When there is an allegation of illegality will be a sufficient cause to extend time.

In the case of **The Principal Secretary, Ministry of Defence and National Service v. Devram Valambia** (1992) TLR 182 it was stated thus: -

"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right."

This position was reiterated in **VIP Engineering and Marketing Limited v. Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2006 (unreported) it was stated as follows: -

"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes "sufficient reasons" within the meaning of Rule 8 of the Rules for extending time."

Much being said, I am constrained to hold that the applicant has managed so sufficiently to demonstrate the sufficient cause for delay being that of technical delay and the exhibited illegalities in the impugned decision to warrant this court to have time extended for her to pursue her intended appeal.

The application for extension of time is hereby granted. The applicant should file the appeal within 14 days from the day of this order.

No order to costs.

Order accordingly.

Dated at Bukoba this 10th day of September, 2021.




E.L. NGIGWANA

JUDGE

10/09/2021

Ruling delivered this 10th day of September 2021 in the presence of Mr. Peter Matete, learned counsel for the Applicant, and Mr. E. M. Kamaleki, Judge's Law Assistant, but in the absence of the respondent.




E.L. NGIGWANA

JUDGE

10/09/2021