

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. LAND CASE APPLICATION No. 50 OF 2020

(Originating from Land application No. 47/2018 of Bukoba DLH7)

MZAMIRU HASSAN..... APPLICANT

VERSUS

MARYNES MPANJU RESPONDENT

RULING

04th October & 08th October, 2021

Kilekamajenga, J.

The applicant approached this Honourable Court seeking leave to appeal out of time. The application- was made under **Order XLII Rule 2 of the Civil procedure Code, Cap. 33 RE 2002** and **Section 41 (2) of the Land Disputes Courts Act, Cap. 216 RE 2002**. The application was supported with an affidavit deposed by the applicant. On the other hand, the respondent filed a counter affidavit resisting the application.

When invited to argue the application, the applicant through the legal services of the learned advocate, Mr. Dunstan Mutagahywa informed the Court on the reasons for the delay in filing the appeal. He argued that, the decision of the District Land and Housing Tribunal was delivered in absence of the applicant. Even when the applicant became aware about the case, the copy of judgment was delayed. The applicant was given the copy of judgment on

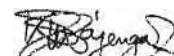
04/06/2020 and he filed the instant application on 22/06/2020 while the judgment was delivered on 14/04/2020. He invited the Court to exclude the time spent looking for the

copy of judgment. He supported his argument with **Section 19 (10 of the Law of Limitation Act.** He finally urged the Court to allow the application.

The respondent who enjoyed the legal services of the learned advocate, Miss Erieth Barnabas informed the Court that the applicant willfully failed to attend to the case which was finally decided exparte. She supported the argument with the case of **Amina Rashid v. Mahimba Singh and another 1986 TLR 196.** Miss Erieth further argued that the applicant failed to provide proof on whether he did efforts to secure the copy of judgment. Even when the applicant got the copy of judgment, he delayed for other 18 days which have not been accounted for. She insisted that, time begins to run from the date of the decision and not otherwise. As the applicant brought the application after the expiry of 69 days, he was already late for almost 25 days which have not been accounted for.

When rejoining, the counsel for the applicant argued that, the applicant spent 18 days for arrangement and other necessary steps before filing the instant application.

In determining the instant application, it is pertinent to understand that an order for extension of time is the discretion of the Court which is always granted after the applicant has advanced sufficient cause for the delay. Sufficient cause or good cause for the delay is always measured according to the circumstances of the case because the list of what amounts to good cause is non-exhaustive. In the instant case, the major reason for the delay advanced by the applicant is

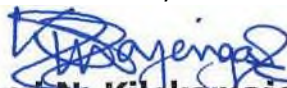


that, the judgment was delivered in absence of the applicant because he was not aware about the case. Even when he became aware of it, the copy of judgment was delayed and he was not able to appeal on time.

I have carefully considered the application and it is evident that the case proceeded in absence of the applicant and there is no proof on whether the summons was duly served to the applicant. It is therefore clear that the applicant was not aware about the case and the judgment too. He became aware about the case at the execution stage. For that lucid reason, the applicant cannot be blamed for laxity or negligent because the matter seemed to proceed without his knowledge. I find the applicant has advanced sufficient cause for the delay and I hereby allow the application. The applicant should file the appeal within 14 days from the date of his order. No order as to costs. It is s ordered.


DATED at **BUKOBA** this 08th day of October, 2021.




Ntemi N. Kilekamajenga.
JUDGE
08/10/2021

Ruling delivered this 08th October 2021 in the presence of the applicant and respondent. Right of appeal explained.




Ntemi N. Kilekamajenga.
JUDGE
08/10/2021

