

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA**

LAND CASE APPLICATION NO. 35 OF 2021

(Arising from the High Court of Tanzania at Bukoba Land Application No. 48 of 2019 originated from the District Land and Housing Tribunal of Bukoba in Misc. Application No. 196 of 2018 and which Originateu from Civil Case No. 6 of 2015 of Kagondo Ward Tribunal)

ZAINABU VIVEROUS..... APPLICANT

VERSUS

ERNEST KATO ELISA..... RESPONDENT

RULING

Date of last order: 28/09/2021

Date of Ruling: 30/09/2021

This is application for extension of time within which to file an appeal. It is brought under **Section 38(1) of the Land Disputes Court's Act, [CAP 216 RE 2019]** and **Section 14(1) of the Law of Limitation Act, [CAP 89 R.E 2019]** and supported by affidavit sworn by the applicant. In reply to the present application the respondent filed a counter affidavit which is sworn by the Mr. Frank Kalori John, Learned advocate for the respondent.

During hearing of this application the applicant appeared in person without legal representation and the respondent was represented by Mr. Kalori John, Learned advocate. Submitting in support of the application the applicant briefly stated that she is seeking for leave to file appeal out of time as she was sick for long time.

She referred this court to her medical treatment chits she annexed to her affidavit. She concluded by praying her application to be granted.

In reply to the submissions by the applicant, Mr. Frank Kalori John, Learned advocate for the respondent stated that the impugned decision in Application No. 196/2018 was delivered on 22/2/2019. This application for extension was filed on 21/4/2021, and this is almost two years from date of decision.

He said, by looking at the applicant's medical chits annexed to the affidavit she said she was sick but there are gaps of days which are not accounted for. For example, the last date when she went to Bukoba referral Hospital was 15/4/2019 that is she was admitted on 26/3/2019 and discharged on 15/04/2019. The decision in Application No. 196 of 2018 was issued on 22/2/2019. Meaning her sickness did not affect her and she has not explained the reasons for delay from 22/2/2019. He said it is trite law that the applicant ought to have explained for each and every day of delay.

He concluded by submitting that, the applicant has failed to account for each and every day of delay and this application is brought following execution process which is underway before Kagondo Ward Tribunal. He prayed this application to be dismissed with costs.

In rejoinder to the submission by the learned advocate for the respondent, the applicant said the judgment of Kairo, J, i.e. Land Application No. 48 of 2019 was

filed in time but having noted anomalies she prayed to correct the same and that is why she came with this application.

Having heard the submissions by both parties, the issues is whether this application is meritorious.

The record shows that the applicant, before this court, filed Land application No. 48 of 2019 seeking leave to file appeal out of time. The said application was withdrawn on 17/2/2021 with a prayer for leave to refile. The said application was then marked withdrawn with leave to refile. The court however did not specify the timeline within which to refile the said application. It is also important to note here that the said application originated from the decision of the District Land and Housing Tribunal for Kagera at Bukoba dated 22/02/2019.

On 21/04/2021 the applicant filed this application alleging sickness as a ground in support thereof. She also annexed medical chits to that effect. This court went through the said chits and are dated as follows; 14/3/2016; 16/3/2016; 19/7/2016; 13/08/2018; 29/8/2016; 11/9/2014/ 07/04/2017; 9/05/2018; 29/3/2019 and 26/3/2019. Looking at the dates appearing in the said chits it is clear save for the chit dated 26/3/2019 that they do not cover the period she alleges she was sick. Now therefore since the chit dated 26/3/2019 shows she was admitted on 26/3/2019 and discharged on 15/04/2019 then the applicant ought to have also accounted for delay from the date of decision of the District Land and Housing Tribunal which is 22/2/2019 to a date of admission in Hospital which is 26/3/2019,

and from a date of discharge which is 26/3/2019 to the filing date of this application which is 21/04/2021.

It is trite law that in application for extension of time the applicant has to account for each and every day of delay. In the case of **Swed Yustas vs Issiaka Mafuruki Misc. Land Case Application No. 31 of 2021** this court citing the case of **Swed Yustas vs Isihaka Mafuruki Misc. Land Application No.20 of 2019 (unreported)** held inter alia that:

"The applicable law in this court is that the applicant for extension of time must account on every day of delay"

Since the applicant failed to account for each and every day of delay this court therefore, find no merits in this application and it is hereby dismissed with costs.

It is so ordered.



A.Y. Mwenda

Judge

30.09.2021

Ruling delivered in chamber under the seal of this court in the presence of the Applicant Ms. Zainabu Viverous and in the absence of the Respondent.



A.Y. Mwenda

Judge

30.09.2021