

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**MISC. LAND CASE APPLICATION NO. 31 OF 2021**

*(Arising from District Land and Housing Tribunal for Muleba at Muleba In Misc. Land Application No. 20/2019, and Land Case Appeal No. 249/2018 and Original Land Case No. 2 of 2017 at Rulanda Ward Tribunal.)*

**SWED YUSTAS..... APPLICANT**

**VERSUS**

**ISSIAKA MFURUKI..... RESPONDENT**

**RULING**

***Date of Ruling: 24.09.2021***

***Mwenda, J***

By a chamber Application brought under Section 5(1)(c) and 11(1) of the Appellate Jurisdiction Act [CAP141 R.E 2019] and Section 47(2) and (3) and Section 48(2) of the Land Disputes Courts Act [CAP 216 R. E 2019] read together with Rule 45(2) of the Tanzania Court of Appeal Rules 2009 as Amended by GN. No. 344 of 2019, the applicant has filed this application seeking for extension of time under which to apply for leave to appeal against the ruling of this court dated 17<sup>th</sup> of February 2021 and to certify that there are points of Law in the intended appeal worth for consideration before the Court of Appeal.

This application is supported by an affidavit sworn by the applicants and in counter thereof, the respondent swore a counter affidavit.

When this application was due for hearing the applicant was represented by Mr. Abbas Swed under the power of attorney duly signed and registered. The respondent on his part enjoyed the services of Mr. Danstan Mutagahywa, learned Advocate.

When invited to submit in support of his application Mr. Abbas Swed acting under the power of attorney for the applicant had nothing of significance to say other than praying before this court to adopt the contents of chamber summons and affidavit and consider them in making its findings. He said the applicant's delay was caused by his sickness and he supported his argument by medical treatment chits annexed to the applicant's affidavit.

In reply to the applicant's submission, Mr. Danstan Mutagahywa, learned advocate started by submitting that, they are praying for this court to adopt the contents of their counter affidavit in making findings .The learned advocate stated that they are objecting their prayer for extension of time. He said under Rule 45 of the Court of Appeal rules, GN. No. 344 OF 2019, applications for leave are required to be filed within 14 days from the date of judgment. He said from 17/2/2021 when the decision was announced, 14 days expired on 02/03/2021 and from that date to 14/4/2021 when this application was filed almost 58 days passed and there is no

sufficient explanation as to whether the applicant was sick during all that time. He said, from exhibits annexed to the affidavit (medical treatment chit), it is clear that all 58 days are not covered and he concluded in this point by stating that the applicant failed to account for each and every day of delay especially on the days when he was not sick.

With regard to the applicant's prayer to be granted certificate on a point of law, Mr. Mutagahywa submitted that in order to be granted certificate on the point of law the applicant ought to have listed the said points in the chamber application. The learned advocate said in the chamber application there are no points of law listed for determination and therefore it is not clear which points are to be certified. He added further that this matter originated from the ward tribunal but the decisions he is trying to refer to the Court of Appeal is the dismissal order made by this court following his failure to account for each and every day of delay. He concluded by praying this application to be dismissed with costs.

In his rejoinder Mr. Abbas Swed for the applicant submitted that the impugned decision was delivered on 17/2/2021 and on 16/4/2021 he filed his grounds of appeal and on 18/4/2021 the applicant fell sick. According to him the relevant documents were filed in time and he concluded by praying for this court to grant their prayers.

This court went through the applicant's chamber application, affidavit, the respondent's counter affidavit and the submissions of the parties during hearing.

There are two issues for determination to wit;

1) Whether the applicant advanced sufficient reasons for delay to file leave to appeal to the Court of appeal and;

2) Whether there are points of law worth to be certified.

With regard to the first issued, the impugned decision was delivered on 17/2/2021 where the applicant's application for leave to appeal out of time was dismissed for failure to register sufficient reasons. From the date of the ruling to the date when the applicant filed this application i.e 16/05/2015, he was already time barred for about 60 days. The applicant registered sickness as the reason for his delay and in support thereof he annexed hospital treatment cards.

This court went through the said hospital cards annexed to the affidavit and noted that the applicant was undergoing treatment on various occasions. The first hospital cards shows he was treated at Muleba Government Hospital on 19/02/2021, 20/02/2021, 21/02/ 2021, 22/02/ 2021, 24/2/2021 and 10/03/2021. Another Hospital Card shows he was admitted at Muleba Government Hospital from 18/03/2021 to 13/04/2021 when he was discharged.

After a perusal to the Hospital Cards, this court is of the view that the applicant's

sickness as indicated in the first Hospital Cards did not preclude him from filing his application in time. Even if he was precluded to do so due to sickness, there are gaps of days which are not accounted for. These are 23/02/2021; from 25/2/2021 to 9/3/ 2021 and from 11/03/2021 to 17/03/2021 when he was admitted.

In the case of ***SWED YUSTAS V. ISIAKA MFURUKI, Misc. Land Appliacation No. 20 of 2019 (unreported)*** citing the case of ***Sebastian Ndaula V. Grace Rwamafa, Civil Application No. 4/2014*** this Court held ***inter alia that ;***

***"The applicable law in this Court is that the  
applicant for extension of time must accountable  
on every day of delay"***

With regard to the applicant's prayer for leave to certify points of law, this court noted that this application emanates from this court's ruling where the applicant's application for extension of time to file appeal was dismissed. The reasons which were advanced by this court is that the applicant failed to account for each and every day of delay.

From the said reasoning, this court failed to see any point of law worth to be certified and that the applicant failed to account for each and every day of delay.

From the above analysis this court finds the applicant's application without merit

and it is hereby dismissed with costs.

It is so ordered.



A.Y. Mwenda

**Judge**

24.09.2021

Ruling delivered in chamber under the seal of this court in the presence of Mr. Abbas Swed (under the power of attorney) for the applicant and in the presence of the learned counsel Mr. Dastan Mutagahywa for the respondent.



A.Y. Mwenda

**Judge**

24.09.2021