

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

**AT BUKOBA**

**LAND CASE APPLICATION NO. 78 OF 2020**

*(Arising the District Land and Housing Tribunal for Kagera at Bukoba in Misc. Application No. 236 of 2010 and original Civil Case No. 85 of 2010 at Kahororo Ward Tribunal)*

**GOSBERT KAHWA .....1<sup>ST</sup> APPLICANT**

**SULEIMAN BUGOHWE .....2<sup>ND</sup> APPLICANT**

**JACKEM AUCTION MART & COURT**

**BLOCKERS LTD.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**MSAFIRI M. MALANJA.....RESPONDENT**

**RULING**

*Date of Ruling: 08.10.2021*

*Mwenda, J*

This application is brought by the applicants seeking extension of time 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 Land of Limitation Act, [Cap 89 RE 2019]**. It is supported by affidavit sworn by the 1<sup>st</sup> applicant. When efforts to serve the respondent failed this court ordered publication of summons in the newspaper and the first applicant complied with the said order vide Nipashe newspaper dated 09.07.2021. Following publication of the summons to the



respondent, this court ordered ex parte hearing of this application. Also the second and third respondent despite being served with summons it was noted that they are nowhere to be found and as such this court ordered hearing to proceed in their absence.

When this application came for hearing, the applicant appeared without legal representation. Submitting in support to his application, the applicant did not have much to say as he prayed his application as appearing in the chamber application and affidavit be considered as part of his submission.

In his affidavit the applicant stated that he was the applicant in Civil Case No. 85 of 2010 of Kahororo Ward Tribunal and a first respondent in Misc. Land Application No. 236 of 2010. That on 13.09.2013, the District Land and Housing Tribunal entered ex parte judgment in Application No. 226 of 2010 for execution in his favour. He stated further that on his way to execute the decree, the respondent filed objection proceedings claiming interest on the land in question and on 13.08.2018 the Hon. Chairman of the District Land and Housing Tribunal ruled in favour of the respondent. On 15.08.2017, the Hon. Chairman, delivered a judgment different to the one dated 13.08.2018. That applicant applied for a copy of ruling and prepared a petition of appeal, but fell sick before filing the same and was admitted in Hospital from 12<sup>th</sup> October 2017 to 19<sup>th</sup> October 2017 plus 7 days ED for outpatient treatment. The applicant further stated that it took him a long

time to regain strength and even when he was fully recovered he faced economic hardship which disabled him from affording costs for legal services. When he managed to meet a lawyer for legal advice he was informed that he was already time barred. He concluded by stating that the proceedings of the trial tribunal is full of irregularities and his appeal have greater chances of success.

Having summarized the applicant's submission, the issue is whether applicant advanced sufficient reasons for extension of time.

In this application the ground for extension of time advanced by the applicant are that after he had prepared his grounds of appeal against the decision of District Land and Housing Tribunal delivered by the Hon. Chairman on 15.08.2021, he fell sick and was admitted in hospital from 12<sup>th</sup> August 2017 to 19<sup>th</sup> October 2017. He stated that after he had recovered it took him a considerable time to be fully recovered and that due to financial difficulties to cater for legal services he was time barred.

Looking at these reasons one may see that they are not sufficient to warrant granting him extension of time as he has failed to account for each and every day of delay from 19<sup>th</sup> October 2017 when he was discharged to the date he filed this application.

However, going through the record this court noted the following irregularities. That after the District Land and Housing Tribunal have pronounced *ex parte*

judgment on 15.08.2017 and following the applicant's attempt to execute the Decree, the respondent filed objection proceedings. In the said application the successor chairman, issued orders which contradicts with the orders of the same tribunal dated on 13.09.2013. This order was illegal in the eyes of law and as was stated in the case of *Sospeter Jamhuri Wambura and 3 others vs. Nyaboke Ryangaro Mongu (Administrator for the estate of the late Manyasi Mongu Jibwewa), Misc. Land Application No. 61 of 2020* (unreported) citing the case of **Principal Secretary, Ministry of Defence and National Service vs. Devran Valambhia [1992] TLR 182**, the court held inter alia that;

*"In our view when a 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."*

From the above analysis since the applicant have raised the ground of irregularity (illegality) in paragraph 9 of his affidavit worth of determination of this court and although he have not accounted for each day of delay, the above ground on illegality/irregularity is in itself a good cause for extension of time.

For the above stated reasons the application is granted. The appeal must be failed within fourteen (14) days period from the date of delivery of this ruling. Costs will be in due cause.

It is so ordered.



  
A.Y. Mwenda

**Judge**

8.10.2021

This Ruling is delivered in chamber under the seal of this court in the presence of Mr. Gosbert Kahwa the first Applicant and in the absence of the Mr. Suleiman Bugohwe 2<sup>nd</sup> Applicant and Jackem Auction Mart & Court Blockers Ltd the 3<sup>rd</sup> Applicant and in the absence of the respondent Mr. Msafiri M. Malanja.



  
A.Y. Mwenda

**Judge**

8.10.2021

