

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

MISC. CIVIL APPLICATION NO. 12 OF 2021

(Arising from the High Court of Tanzania at Bukoba in Civil Appeal No. 6 of 2018 and Misc. Land Application No. 95/2020, and Original Civil Case No. 45 of 2016 of the Resident Magistrate Court of Bukoba, at Bukoba)

JOHNBOSCO RWABUTITI.....APPLICANT

VERSUS

SABITI KAINAMULA..... RESPONDENT

RULING

Date of Ruling: 01/10/2021

MWENDA, J.

In this application, the applicant is seeking extension of time to file application for leave to appeal to the Court of Appeal. It is brought under Section 5(1)(c) and 11(1) of the appellate jurisdiction Act [cap 141 R.E 2019] and Rule 45 (a) of the Court of Appeal Rules, 2019 and is supported by an affidavit sworn by the applicant.

Despite being served with the summons, the respondent neither filed his reply nor appeared in court to defend his case and as a result this court ordered for ex parte hearing of this application.

When this appeal was set for hearing the applicant was represented by Mr. Bitakwate, learned Advocate.

The learned counsel for the applicant informed this court that this application is for extension of time to file leave to appeal to the Court of Appeal and is supported by Affidavit sworn by the Applicant which he prayed to be adopted and form part to their submission.

The learned advocate stated that in 2016 the applicant filed Civil Case No. 45 of 2016 before the Resident Magistrate's Court of Bukoba against the respondent and it ended in favour of the applicant. Following that judgment, the respondent was aggrieved and filed Civil Appeal No. 6 of 2018 before High Court of Tanzania. This appeal ended in the respondent's favour by quashing the proceedings and judgment of Resident Magistrate's Court of Bukoba.

Aggrieved the applicant filed application for leave to appeal to Court of Appeal of Tanzania which is Misc. Land Application no. 95 of 2020. Before hearing of the said application commenced, it was discovered that the said application was filed as Land Application instead of Civil Application and it was thereafter truck out by the court.

He said that they have now filed the present application as during the hearing of Application No. 6 of 2018, the court misconstrued the facts which are in the records and the evidence adduced before Resident Magistrate's Court of Bukoba which led to a wrong decision. He thus prayed for leave to go to the Court of Appeal of Tanzania to challenge Civil Appeal No. 6/2016/8 as the judgment of the court was erroneously reached. To him, this alone suffice to be a ground for extension of

time. He supported his argument by citing a case of **MARY RWABIZI T/A AMUGA ENTERPRISES VS. NATIONAL MICROFINANCE PLC, CIV. APPLICATION NO. 378/01 OF 2019 (unreported)**.

He then concluded by stating that Since the time has passed from when he filed application No. 95 of 2020 which was struck out on technicalities, and since the appeal intends to challenge the legality of judgment in Civil Appeal 6 of 2018 then the appellant should be granted extension of time to appeal before the Court of Appeal of Tanzania and the costs be in due course.

In this matter, the issue is whether the applicant advanced good cause for extensions of time to appeal to the court of appeal.

In order to determine this application, it is pertinent to consider matters for consideration before granting leave to appeal to the Court of Appeal of Tanzania. There are a number of authorities which have laid guidelines guiding courts to consider before granting leave to appeal to the Court of Appeal of Tanzania. In the case of, **Ngao Godwin Losero vs. Julius Mwarab, Civil Application No. 10 of 2015, (unreported)** citing the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Christian Women Association of Tanzania, Civil Application No. 2 of 2010**, the following guidelines were highlighted:

- (a) The Applicant must account for all the period of delay;

- (b) The delay should not be inordinate;
- (c) The applicant must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take;
- (d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.

In the present application, the applicant allege that in Application No. 6 of 2018 the court misconstrued the facts which are on the records which led to a wrong decision as such he intends to challenge the legality of the said decision before the Court of Appeal.

This court considered the applicant's submission and is in agreement that the said illegality it is sufficient ground for extension of time.

In the case of ***The Principle Secretary Ministry of Defence and National Service vs. Devvan P. Valambia [1992] TLR 387*** (unreported) the court held inter alia that;

"...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 straight”.


Also, the Court of Appeal of Tanzania in Mary Rwabizi T/A Amuga Enterprises vs. National Microfinance PLC, Civil Application No. 378/01 of 2019 held inter alia that:

"It follows that although in the present application the applicant has not sufficiently explained the delay of twenty six days in lodging an application for review, which delay is not in ordinate, she deserves consideration of the court on the allegation of illegality..."


That being said therefore, although the applicant has not explained the delay, the allegation of illegality warrants extension of time to file his leave to appeal to the Court of Appeal.

The application is allowed and the applicant is required to file application for leave to appeal to Court of Appeal of Tanzania within 14 days from the date of this ruling. The orders for costs shall be in due course.


It is so ordered.


A.Y. Mwenda
Judge
01.10.2021

Ruling delivered in chamber under the seal of this court in the presence of Mr. Johnbosco Rwabutiti the applicant and in the absence of the respondent.



A.Y. Mwenda



Judge

01.10.2021

