

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

**MISC. LAND APPLICATION NO. 45 OF 2021**

*(Arising from the Application No. 122 of 2019 in the District Land and Housing Tribunal of Kagera at Bukoba)*

**FINCA MICROFINANCE BANK LTD----- APPLICANT**

**VERSUS**

**RENATHA PAUL KANJAGAILE-----1<sup>ST</sup> RESPONDENT**  
**JOHANSEN LAURENT RUTASELWE -----2<sup>ND</sup> RESPONDENT**

**RULING**

Date of the last Order: 06/10/2021

Date of Ruling: 11/11/2021

**Hon. A.E. Mwipopo, J.**

FINCA Microfinance Bank LTD, the Applicant herein, filed the present application for extension of time to file Appeal out of time. The Applicant is praying for the following orders of the Court:-

- i. That, this Honourable Court be pleased to extend time within which the Applicant to file the appeal against the entire judgment and decree of the District Land and Housing Tribunal for Kagera at Bukoba,*

*pronounced by Hon. R. Mtei, Chairman in Application No. 122 of 2019 out of time.*

- ii. Cost of this application be in the cause.*
- iii. Hearing of this application be expedited.*
- iv. Any other relief(s) this honourable Court may deem fit and just to grant.*

The application is made by Chamber Summons supported by the affidavit sworn by Stephen Kaswahili, Applicant's Advocate. Respondents namely Renatha Paul Kanjagaile and Johansen Laurent Rutaselwe opposed the application through their joint counter affidavit.

The brief background of the application is that the 1<sup>st</sup> Respondent instituted Application No. 122 of 2019 in the District Land and Housing Tribunal for Kagera at Bukoba against the Applicant and the 2<sup>nd</sup> Respondent challenging attachment and sale of the land located at Kanazi Kitendaguro within Bukoba Municipality on ground that being a spouse of the 1<sup>st</sup> Respondent she did not consent its mortgage when he took the loan. The Tribunal delivered its judgment on 19<sup>th</sup> November, 2020 in favour of the 2<sup>nd</sup> Respondent. The Applicant was not satisfied with the decision of the Tribunal and he filed the present application on 17<sup>th</sup> May, 2021.

The Appellant who was represented by Mr. Sileo Mazura, Advocate, submitted that the reason for the delay to file an appeal against the judgment of

the District Land and Housing Tribunal for Kagera at Bukoba is that he was served late with the decree of the Tribunal. He said that the Civil Procedure Code Act, Cap. 33 R.E 2019 in order XXXIX (1) provides that every appeal shall be referred in the form and memorandum of appeal accompanied by a copy of the decree appealed against. The Applicant claimed to have obtained the decree after the time to file the appeal has already expired. He made reference to the case of **Mariam Abdallah V. Kassim Abdallah Fasi [1991] TLR196**, where the Court of Appeal held that it is mandatory for the Memorandum of Appeal to be accompanied by a copy of decree and where the appeal is not accompanied by a copy of decree the appeal has to be dismissed. He said that this is a reasonable cause for the court to allow the application for extension of time as it was held in the case of **Benedict Mumello V. Bank of Tanzania, Civil Appeal No. 12 of 2002**, Court of Appeal of Tanzania, (unreported). The position was supported by this court in the case of **NIC (T) Ltd V. Emrod Salewi Mosi, Misc. Civil Application No. 97 of 2019**, High Court, Arusha District Registry at Arusha. He added that the same circumstances occurred in the presence case.

In response, the 1<sup>st</sup> Respondent, who is not represented, submitted that the Applicant is using delay tactics in this matter. The judgment of the Tribunal was delivered on 19<sup>th</sup> November, 2020 and applied for the copy of the judgment.

and decree on the same date but they delay to pay for the same which they did on 21<sup>st</sup> January, 2021. That, the Applicant requested to be supplied with a copy of a decree on 11<sup>th</sup> March, 2021 and reminded the tribunal of their request on 06<sup>th</sup> May, 2021. She said that the Applicant filed this application for execution of time in this court on 17<sup>th</sup> May, 2021. The Respondent was of the view that there was negligence on the part of the Applicant.

On his side, the 2<sup>nd</sup> Respondent, who also was not represented, contested the Application. He said that the judgment of the tribunal was delivered on 19/11/2020 and it was signed 12/12/2020 by the Chairman. The Applicant alleged that they did send the letter requesting for the judgment on the date of judgment and decree. But, the applicant delayed to pay for the copy of Judgment and decree where he paid it on 21<sup>st</sup> January, 2021. The Applicant made request for a decree on 11<sup>th</sup> March, 2021 and at the time the Chairman had already signed the decree since 09<sup>th</sup> March, 2021. On 17<sup>th</sup> May, 2021 the Applicant filed this application for extension of time. He is of opinion that from the date when he applied for a copy any judgment and decree to the time of filing the letter requesting for a decree it was more than 60 days.

In his rejoinder, the Counsel for the Applicant submitted that they are not delaying them to enjoy the judgment of the Tribunal as they are pursuing their right of appeal. He said that the Applicant is not negligent has requested

several time for the copy of decree to the Tribunal, but they were given the judgment. He said that they have waited for more than 60 days before the copy of the decree was supplied. Soon after a copy of decree was supplied they filed the present application.

From the submissions, the only issue for determination is whether the Applicant has provided sufficient reason for the Court to use its discretionary powers to grant the application for Extension of time.

The Land Disputes Courts Act, CAP. 216 R.E. 2019, provides in section 41(2) that the Court may for good and sufficient cause extend the time for filing an appeal within 45 days after the decision or order. The section reads as follows:-

*"41.- (1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.*

*(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:*

*Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."*

From above section, this Court has discretion to grant an application for extension of time for a good cause. The word "good cause" has been interpreted in several decisions of the Court to be a relative one dependent upon party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion [see. **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania]. The good cause must be determined by reference to all the circumstances of each particular case.

The Court of Appeal when discussing what amount to sufficient cause observed in **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), that:

*"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly. The absence of any explanation for delay lack of diligence on the part of the applicant."*

The Court of Appeal had similar position in the case of **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, at Tanga, (Unreported), where it held that:

*".....an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however*

*has to be exercised judicially, and overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."*

In the application at hand, the Applicant's affidavit contains two grounds for his application for extension of time. The first ground is that the Appellate Tribunal delayed to supply him with copy of decree which was supplied to him on 05<sup>th</sup> May, 2021 and that the decree appears to have been certified by the Chairman of the Tribunal on 09<sup>th</sup> March, 2021. The second ground found in paragraph 11 of the Applicant's affidavit is the presence of illegalities in the judgment of the District Land and Housing Tribunal of Kagera Region at Bukoba. Unfortunately, the said illegality was never mentioned in the affidavit or in his submission. For that reason, the Court has no clue of what is the alleged illegality in the face of Tribunal's record. Thus, the Court is not in the position to determine it.

Now turning back to the reason for the delay submitted by the Applicant, the evidence in record shows that when the judgment of the Tribunal was delivered on 19<sup>th</sup> November, 2020 the Applicant was represented by Mr. Pascal Seleli who is legal officer from the Chamber of the Applicant's Advocate. The 45 days within which the Applicant was supposed to file his appeal to the High Court

expired on 3<sup>rd</sup> of January 2021 which was on Sunday. This means that on the next working day which is 04<sup>th</sup> January, 2021 the Applicant was supposed to file his appeal in this Court.

As it was rightly submitted by the Applicant's Counsel the law requires for every appeal to be referred in the form and memorandum of appeal accompanied by a copy of the decree appealed against. The Applicant claimed to be supplied with the decree on 05<sup>th</sup> May, 2021 after the time to file the appeal has already expired. Unfortunately, there is nothing in the record which shows that the decree was supplied to the Applicant on 05<sup>th</sup> May, 2021. The Applicant has attached his letter sent to the Court requesting for the judgment and decree dated 19<sup>th</sup> November, 2020 and the receipt for payment of the copy of judgment ~~dated 21<sup>st</sup> January, 2021, a letter dated 11<sup>th</sup> March, 2021 reminder requesting~~ for the copy of decree and another reminder dated 05<sup>th</sup> May, 2021 which was received by the Court of 06<sup>th</sup> May, 2021 and accompanied with receipt for payment of the decree dated 06<sup>th</sup> May, 2021.

Looking at the copy of the decree in the record, it clearly shows that it was extracted and issued by the Chairman of the Tribunal on 09<sup>th</sup> March, 2021. The Applicant alleged in his affidavit that he did make follow up where he asked a Tribunal Clerk namely Mzee Mizambwa about the decree and was informed that the Chairman is on leave and he has to wait until his return. He asserted in the



affidavit that in early March, 2021 he asked the Tribunal Clerk about the decree and he was informed that the file was missing and could not be traced. Ineptly, the Applicant did not provide affidavit of the said Tribunal Clerk to prove the allegation.

It is a settled law that an affidavit which mentions another person is hearsay unless that other person swears as well. (See. **NBC V. Superdoll Trailer Manufacturer Co. LTD**, Civil Application No. 13 of 2002; and **John Chuwa V. Anthony Ciza [1992] TLR 233**). The Court of Appeal Court of Appeal Tanzania in **Benedict Kimwaga V. Principal Secretary Ministry Of Health**, Civil Application No. 31 of 2000, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), it was held that, I quote:-

*"If an Affidavit mentions another person, that other person has to swear an Affidavit. However, I would add that, is so where information of that other person is material evidence because without the other Affidavit it would be hearsay".*

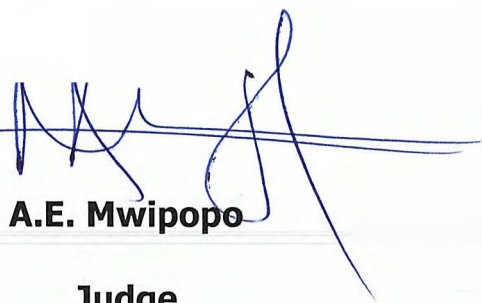
It is clear that the reason for the delay advanced by the Applicant is dependent on the information obtained from the Tribunal Clerk namely Mzee Mizambwa who did not swear evidence on the claims. As result what is stated in the affidavit is just a hearsay. The Applicant is duty bound to provide explanation for each day he delayed to file the appeal from 09<sup>th</sup> March, 2021 when the said

decree was extracted and issued by the Chairman of the Tribunal which means it was ready to be collected.

The Appellant alleged that the decree was supplied to him on 05<sup>th</sup> May, 2021 after he has filled another reminder letter to the Tribunal on the same date but the evidence show the reminder letter dated 05<sup>th</sup> May, 2021 was filed in Tribunal on 06<sup>th</sup> May, 2021 and the payment for the copy of the decree was made on the same date which is 06<sup>th</sup> May, 2021. Thus, if the decree was collected on 05<sup>th</sup> May, 2021 it means the reminder letter was written after receiving it. The Applicant was supposed to account for the delay from 19<sup>th</sup> March, 2021 when the copy of decree was ready for collection to 17<sup>th</sup> May, 2021 when this application was filed.

The duty of the Applicant to account for each and every day delayed in the application for extension of time was stated in several decisions of the Court of Appeal including the case of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another, Civil Application No. 278/15 of 2016, the Court of Appeal of Tanzania, (unreported)** and the cited case of **Ramadhani J. Kihwani V. TAZARA (Supra)**. In absence of such explanation, I find that the Applicant have failed to provide a good cause.

Therefore, I find the application is wanting merits and I hereby dismiss it with cost.



**A.E. Mwipopo**

**Judge**

**11.11.2021**

Date: 11/11/2021

Coram: Hon. J.M. Minde, DR

Applicant: Absent

~~Respondents: Absent~~

B/C: Lilian Paul

**Court:** This matter comes for ruling today. I deliver the ruling in absence of the parties. Let them supplied with ruling and drawn order.



  
**Sgd: J.M. Minde, DR**

**11/11/2021**