

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

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

**AT BUKOBA**

**MISC. LAND APPLICATION NO. 12 OF 2022**

*(Arising from District Land and Housing Tribunal for Muleba at Muleba in Land Application No. 56 of 2017)*

**BISORE VILLAGE COUNCIL..... APPLICANT**

**VERSUS**

**IGNATIUS SHUMBUSHO..... RESPONDENT**

**RULING**

***Date of Ruling: 31.03.2022***

***A.Y. Mwenda, J.***

This is an application for extension of time to register an appeal in this court to contest the decision of the District Land and Housing Tribunal for Muleba at Muleba in Land Application No. 56 of 2017 delivered on 8<sup>th</sup> September 2020.

The respondent was represented by Mr. Lameck John, the Learned counsel while the applicant was represented by Mr. Muyengi Muyengi, learned state attorney.

During his submission in chief the learned state attorney submitted that he is seeking extension of time to lodge an appeal against the judgment of the District Land and Housing Tribunal for Muleba at Muleba delivered on 8/9/2020. He submitted that immediately after the said decision was read they prayed to be

supplied with a copy of judgment and decree on the same date. Later on 13/10/2020 they were supplied with the copy of judgment and decree and he lodged an appeal to this court i.e Land Case Appeal No. 104 of 2020. He said the respondent raised a preliminary objection on point of law that the appeal has been filed out of time. He submitted that on the raised preliminary objection, the respondent started to count the days from the date of judgment and not the date when they were given certified copies of judgment and decree. He said during the hearing of the said preliminary objection Hon. Judge counted 45 days from the date of judgment instead of counting from the date when they were supplied with certified copies of judgment and decree. He said he then conceded to the preliminary objection and the said appeal was struck out.

He further submitted that, thereafter he went to do research and he decided to file a memorandum of review and it was placed before Hon. Kilekamajenga J. He submitted that it was discovered that it was not proper for Hon. Judge to review the order of his fellow Judge and therefore he was advised to withdraw the application and to file an application for extension of time in which he conceded and as such the said application was marked withdrawn.

He submitted further that, in the cause of preparing an application he got into family problems which pushed him to travel to his hometown (Musoma) from 3/11/2021 to 16/11/2021. He stated that after he came back, he prepared the present application and filed it on 14/1/2022.

He submitted that they are praying for leave for extension of time to file appeal out of time against the judgment and decree of District Land and Housing Tribunal for Muleba because their appeal has overwhelming chances of success in that the trial tribunal did not determine some issues decisively. He referred this court to ***Constitution United Republic of Tanzania at Article 107 A 2(a)*** which provides that courts should not be tied with technicalities rather by merits. To cement his arguments he also cited the case of ***Fredrick Sevenge and another vs. Agnes Masele (1983) TLR 99***, and ***Article 13 (6) (a) of the Constitution of United Republic of Tanzania***.

He concluded by submitting that, having been supplied with the said documents they filed their appeal in time which shows they were not negligent and the present application is not intended to disturb the respondent but seeking justice.

In reply to the submission by the learned State Attorney, the learned counsel for the respondent submitted that, he prays for the contents of counter affidavit to be adopted to form part of his submission. He submitted that Land Case Appeal No. 104 of 2020 was filed out of time because by then the time started to run from the date of judgment and not on the date of certification of the documents. He said when they appeared before Kairo J, the appellant voluntarily conceded to the preliminary objection and the said appeal was struck out. He submitted that, from 14/4/2021 to 14/01/2022 when the present application was filed it is quite a very long time that is almost 9 months.

He submitted that, the learned State Attorney said he filed memorandum of view but he failed to state when it was decided and he did not attach the ruling on the memorandum of review. He thus prayed this court to draw adverse inference against the applicant.

The learned counsel for the respondent further submitted that, the learned State Attorney was given 14days leave to travel to Musoma that is from 03/11/2021 to 17/11/2021 to solve his family problems and on 17/11/2021 he was required to be in the office. He submitted that the present application was filed on 14/01/2022 that is almost 43 days from date when he returned. The learned counsel said this shows negligence on the part of the applicant to pursue this matter. To support his argument he cited the case of ***DP Valambia vs. Transport Equipment (1992) TLR [242]***.

He further submitted that in extension of time courts have discretionary powers whether to grant or not but such powers shall be exercised judiciously by looking on sufficient cause. He submitted that negligence does not constitute sufficient reasons as stated in the case of ***Issack Sebecaze vs. Tanzania Port Land Cement Co. Ltd Civil Application No. 25/2002***, (unreported) and the case of ***AG vs. Twiga paper product Ltd [2011] VOL.1 EA, 16***.

The learned counsel for the respondent submitted that each and every day of delay must be accounted for, but in the applicant's affidavit there is no explanation on what transpired after he returned from Musoma.

In regard to Article 107 A (2) (a) of the Constitution on issues of technicalities, the learned counsel for the respondent submitted that this is not a legal technicality and the applicant is required to account for each day of delay. To bolster his argument, he cited the case of ***Tanzania herbors Authority (THA) vs. Mohamed R. Mohamed, [2003] TLR 76***

He concluded by praying before this court to see that the applicant has failed to advance good cause for the delay and this application should be dismissed with costs.

In a brief rejoinder the learned state attorney submitted that soon after the appeal was struck out they filed application for review and the respondent at para 7 and 8 of counter affidavit concedes that after it was struck out, they filed memorandum of review. He further submitted that soon after he came from the leave, he did not relax he started preparing the necessary documents for this application.

The learned state attorney submitted that in 2019, the law governing procedure to appeal was the Law of Limitation Act [Cap 89 R.E 2019] which excluded the days awaiting receipt of the necessary documents. He submitted that they received certified copies on 13/10/2020 and for that matter they were within time when the said appeal was struck out.

With regard to the case of ***Valambia (supra)*** and ***Ag vs. Twiga paper (supra)*** cited by the counsel for respondent the learned State Attorney submitted that these cases are distinguishable with the present application.

He concluded by submitting that in the affidavit it is shown that there are chances of success in the intended appeal and thus this application is not intended to prejudice the respondent. He prayed the costs to follow the event.

Having gone through the court's record as well as submission from both counsels the issue for determination before this court is whether the applicant have advanced sufficient reasons for the delay to justify extension of time.

As it was rightly submitted by the counsels for both parties, it is trite Law that this court has discretion to grant or refuse applications for extension of time. But such discretion has to be exercised judiciously. The guiding principle in granting an application for extension of time is that the applicant must demonstrate sufficient reasons or good cause for his delay. In the case of ***Lyamuya Construction Co. Ltd Vs Board of Registered of Young Women's Christian Association of Tanzania, Civil Application No.2/2010, CAT (unreported)*** four principles which guide the court before exercising its discretion were laid down, these are;

- 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 intends to take and

- d) If the court feels that there are other sufficient reasons such as existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.

In the present application the counsel for the applicant submitted that the delay to lodge his appeal was caused by one; striking out of appeal and review before this court. The applicant being aggrieved by the impugned decision filed Land Case Appeal No. 104 of 2020 which was marked withdrawn following the court's discovery that it was filed out of time, thereafter he filed application for review instead of seeking leave to appeal out of time. Two that he faced family problems hence he was given 14 days leave to travel to his hometown (Musoma), leave which ended on 14/01/2021. However neither, from his submissions nor his affidavit that the applicant advanced reasons for the delay in filing the present application from 16<sup>th</sup> November 2021 when he came back from leave to 14<sup>th</sup> January 2022 when this application was presented for filing. In his submission he said that upon his arrival from Musoma he was busy preparing this application but this courts is of the view that from 16/11/2021 up to 14/01/2022 is a considerable long time to spend just for preparing this application. After all during his submissions the learned State Attorney said he handled this matter after it was stuck out at the first time before this court and he later on researched and started other moves of the instituting a fresh matter. This entail the learned State Attorney

was already conversant with this matter and needed less time than that to prepare this application. Under S. 122 of Evidence Act [Cap 6 RE 2019] this court draws an inference that there was negligence on the part of the applicant and his reasons for delay are mere afterthought.

It is the position of the law that applicant should account for each and every day of delay. In the case of ***Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007*** where the Court held that;

***"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".***

Guided by the above position, the applicant failed to advance sufficient reasons for his delay, as he failed to account for each and every day of delay.

Basing on the above analysis I hereby dismiss this application with costs.

It is so ordered.



  
A.Y. Mwenda  
**Judge**  
31.03.2022



This Ruling was delivered in chamber under the Seal of this Court in the presence of the applicant and in the presence of Ms. Erieth Barnabas learned counsel for the Respondent.



A.Y. Mwenda  
**Judge**  
31.03.2022