

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC. LAND APPLICATION NO. 66 OF 2020

(Arising from District Land and Housing Tribunal, Appeal No. 4/2020 Original Nyakato Ward Tribunal Case No. 13/2019)

LEONIDAS BINAMUNGU..... APPLICANT

VERSUS

ELICK MUGANYIZI..... RESPONDENT

RULING

Date of Ruling: 28/03/2022

A.Y. Mwenda, J

In the present application, the applicant is seeking extension of time to file his appeal out of time. It is in respect of Decision of the District Land and Housing Tribunal's Appeal No. 04 of 2020 Dated 05/08/2020. It is brought under Section 41(2) of the Land Disputes Court Act, [Cap 216 RE 2019] and Section 14(1) of The Law of Limitation Act, [Cap. 89 R.E. 2019]. Accompanied with this application is also an affidavit sworn by the applicant. When served with the application papers the respondent files a counter affidavit.

In his affidavit, the applicant stated that after the judgment of the District Land and Housing Tribunal was pronounced on 05/08/2020 he immediately applied for a copy of judgment for appeal purposes. The said the judgment was not supplied

to him until 17th of Sept. 2020 following two reminders to the tribunal's registry which are 7th September 2020 and 14th September 2020. He said, having received the said copy of judgment he approached a lawyer for legal advice on 18 September 2020. He was told that he was already time barred. He went home confused and then fell sick until 27th September when he recovered. On 28th of September he again went back to see his lawyer for further steps hence this application.

When this application was called for hearing the applicant was represented by Mr. Josephat Rweyemamu, learned counsel and the respondent was represented by Mr. Assey, learned counsel.

In the cause of introducing himself before the Court, Mr. Assey went on informing this Court that they are not objecting this application. He said in the cause of going through the records of the District Land and Housing Tribunal, he noted that there was material irregularity in the proceedings of the District Land and Housing Tribunal. He said in the said records there was no opinion of assessors and to him this irregularity alone is a sufficient reason for extension of time. He prayed this application to be granted.

In support to Mr. Assey's submissions, Mr. Rweyemamu, learned counsel for applicant submitted that on top of what Mr. Assey stated, the respondent was not supplied with a copy of judgment in time. He thus prayed this application to be granted and costs be in event.

Having summarized the submissions by the learned Counsels for applicant and the respondent, the issue for determination is whether the applicant advanced sufficient cause for extension of time.

Both counsels for the applicant and respondent pointed out that the trial tribunal's proceedings are tainted with irregularities for want of assessors' opinion. This court having gone through the proceedings is in agreement with the both counsels that the proceeding are tainted with illegalities. The records show that on 11.06.2020 the tribunal fixed 25/06/2020 for assessors' opinion. On 20/07/2020 the Hon. Chairman fixed the date of judgment because parties failed to appear without notice. The judgment was then pronounced without according assessors opportunity to give their opinion. This anomaly is illegality in the eye of the Law which nullify proceedings. In the case of ***The Principal Secretary, Ministry of Defence and National Service V. Devram Valambia (1992) TLR*** 182 it was held that:

"In our view when the point at issue is one alleging illegality of the decision being challenged, the court has the 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 record right."

In the present application, parties having pointed out illegalities in the impugned decision this is therefore a sufficient cause for delay.

The application for extension of time is hereby granted. The applicant should file his appeal within 14 days from the day of this order. Costs shall be in event.



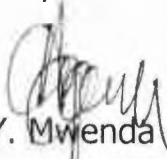

A.Y. Mwenda

Judge

28.03.2022

This Ruling is delivered in chamber under the seal of this court in the presence of Mr. Josephat Rweyemamu learned counsel for the applicant and in the presence of Mr. Assey learned counsel for the respondent.




A.Y. Mwenda

Judge

28.03.2022

