

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

AT BUKOBA

MISC. LAND APPLICATION NO. 116 OF 2021

(Arising from the High Court of Tanzania (Bukoba District Registry) in Land Appeal No. 26 of 2016)

LEONIDA MPIGA LUGAMBAGE..... APPLICANT

VERSUS

THADEO KYARUZI & 4 OTHERS..... RESPONDENTS

RULING

Date of Ruling: 30.03.2022

A.Y. Mwenda, J

The applicant has lodged an application which is brought under ***section 14 (1) of the Law of Limitation Act, [Cap. 89 R.E 2019]***. The Order sought is for this Hon. Court to be pleased to extend time within which to file Review out of time. The application is supported by an affidavit deponed by Leonida Mpiga Lugambage.

When this application came for hearing on 29th November 2021 the parties appeared in person and the applicant prayed before this court to argue the application by the way of written submission. The respondents did not protest the said prayer and this court granted it and the scheduling order was fixed where the parties complied accordingly.

In her submission in chief, the applicant submitted that, she was the respondent in Land Appeal No. 26 of 2019 before this court in which its decision was delivered on 17th June 2019.

She submitted that the reason for the delay to file review in time is due to the respondents filing notice of appeal to the Court of Appeal. She said while awaiting for such an appeal to be lodged to the Court, she found herself out of time because the respondents failed to file that appeal within time.

She further submitted that the reasons for filing an application for review is because the judgment in Land Appeal No. 26 of 2016 has confusions. She said by looking at the last paragraph its reads as follows; **"As rightly found by the trial tribunal, the appellants failed to prove their case against the respondent on balance of probabilities."** And the judge proceeds by stating further that **"the appeal is therefore allowed with costs to the respondent"**

She submitted that on the above quoted words there are confusion because the judgment was read in her favour but she was condemned to pay cost and that is why she is seeking for extension of time to file review out of time.

In reply to the written submission by the applicant, the respondents submitted that, the applicant has not established good cause/reason for her delay. They further stated that time limit to file review is 30 days and this is in accordance to **section 3 of the law of Limitation Act [CAP 89 R.E 2019]**. They

submitted that extension of time which the applicant is seeking to file review, its judgment was delivered on 27th June 2019 and this application for extension of time was filed on 5th October 2021 almost 28 months thereafter.

They further submitted that the applicant submission that she was awaiting for the appeal before the Court of Appeal to them this is an afterthought because filing of a notice to appeal to the Court of Appeal did not hinder her to pursue her rights on review so to them this is not sufficient reason to grant extension of time. To cement their arguments they cited the case of ***Shanti vs Hindoche & Others [1973] E.A 207*** and the case of ***Tanzania Harbours Authority (THA) vs Mohamed [2003] TLR 76.***

They concluded by submitting that the prayer for extension of time to file review is baseless because the applicant had a right to appeal against the said decision and review is only a resort on exceptional circumstances. To bolster their argument the cited the case of ***Wambura Evarist & 6 Others vs Sadock Dotto Magai & Another (2016) TLS LR 142.***

Having gone through the submission by both parties the issue for determination before this court is whether this application is meritorious.

This court having perused the court records found out that, before this court the applicant filed Land Review No. 02 of 2019, the said application was marked withdraw on 11th November 2020 on the reason that the respondents have already filed notice of intention to appeal to the Court of Appeal against

the judgment on Land Case Appeal No. 26 of 2016. Again, the applicant filed Land Case Review No. 2 of 2021 before this court which was dismissed for being filed out of time. On the other hand the respondents filed Land Application No. 4 of 2021 applying for extension of time to file leave to appeal to the Court of Appeal in which on 17th August 2021 the prayer was granted.

Thereafter the applicant filed the present application seeking for extension of time so as to file review out of time against the same judgment which the respondents have been granted leave to appeal to the court of appeal.

That being said, since the applicant is praying for review on the decision in Land Case Appeal No. 26 of 2016 so as to correct errors on the said judgment and the respondents have already filed notice of intention to appeal to the Court of Appeal and leave to that effect is already granted, then what the applicant is intending to be reviewed will definitely be dealt in the Court of Appeal.

This court is of the view that, granting extension of time to file review out of time while there is notice to appeal to the Court of Appeal will be a futile exercise. It is trite law that review should be entertained as the last resort and this court is of the view that the application lacks merits. In the case of ***Wambura Evarist & 6 Others v Sadock Dotto Magai & Another Civil Application No. 127 of 2011*** Court of Appeal of Tanzania at Dar es salaam held inter Lia that;

"Several decisions of this Court made prior to the 2009 Court Rules and thereafter, have emphasized that, the objective of review is not to provide a mechanism of filing an appeal against a final decision of the Court of the land. Review should be resorted to only on exceptional circumstances."

From the foregoing observation this application is hereby dismissed for lack of merits. Each party shall bear its own costs.

It is so ordered.




A.Y. Mwenda
Judge
30.03.2022

This ruling is delivered in chamber under the seal of this court in the presence of the applicant and in the presence of the respondents.




A.Y. Mwenda
Judge
30.03.2022

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