

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

**AT BUKOBA**

**LAND APPLICATION NO. 104 OF 2021**

*(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 31 of 2013)*

**RICHARD ERNEST KAZAULA..... APPLICANT**

**VERSUS**

**BUHEMBE PRIMARY COOPERATIVE SOCIETY..... RESPONDENT**

**RULING**

*Date of Ruling: 11.03.2022*

*Mwenda J,*

This is an application for extension of time to register an appeal before this court to contest the decision of the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 31 of 2013 delivered on 30<sup>th</sup> January 2020.

The applicant was represented by Mr. Lameck John, the Learned counsel while the respondent hired the legal services of Mr. Frank Kalori, learned counsel.

During submission in chief, the learned counsel for the Applicant started by praying the applicant's affidavit and the chamber application to be adopted to form part of his submissions. He went on to submit that following the decision of the District Land and Housing Tribunal in Land Application No. 31/2013, the applicant engaged an Advocate to file an appeal and as a result on 13/4/2021 Appeal No. 15 of 2020 was marked withdrawn. He said, during the hearing of the said appeal, the court

Suo moto discovered that the same was filed out of time. Following that discovery, the applicant withdrew his appeal. He said, after that withdrawal the applicant through his advocate prepared a notice of appeal and then filed an application for leave to appeal to the Court of Appeal of Tanzania. Again, When the said application was fixed for hearing the advocate for the applicant prayed to withdraw it and it was marked withdrawn on 2/8/2021. As a result of that order the applicant engaged him [Mr. Lameck] for legal representation and immediately thereafter he filed the present application, the learned advocate remarked.

Mr. Lameck raised another point in his submissions in that there is an issue of irregularity. He said the judgment of the District Land and Housing Tribunal is silent as to whether there was involvement of assessors. To bolster his argument, he cited the case of ***Regional Manager, TANROADS Kagera vs. Ruaha Concerets Company Ltd, Civil Application No. 96 of 2007*** and the case of ***Bishop Roman Catholic Diocese of Tanga vs. Asmir Richard Semkai Civil Application No. 507/12 of 2017*** (unreported).

Another point raised by Mr. Lameck in his submission is that the applicant had actively been pursuing his rights and this is sufficient cause for a grant of extension of time. To cement his arguments, he cited the case of ***CRDB Bank Ltd vs. Gracious Mwanguya, (2017) TLS LR 361***. He then concluded his submission with a prayer beseeching this court to grant prayers in this application.

Responding to the submissions by the counsel for the applicant, Mr. Frank Kalori John, the learned counsel for the respondent said the filing of this application is an afterthought. He said although courts have discretion to grant extension of time, the said discretion should be exercised judiciously. He said it is trite principle that the applicant must demonstrate sufficient reasons for such delay. According to him, the case of ***Bishop of Roma Catholic Diocese of Tanga (supra)*** cited by the counsel for the applicant is a boomerang to the applicant's case because at page 7 of the judgment the court enlisted 4 principles which guide the court in applications of this kind.

He also submitted that the applicant had legal representation of the senior advocates who showed gross negligence. According to him if this court grant this application with the said negligence, it will be opening pandora's box. To bolster his argument, he cited the case of ***Issack Sebegele vs. Tanzania Portland Cement Co. Ltd Civil Application No. 25/2002*** (unreported). He then concluded by submitting that to him illegality cannot constitute a good cause for extension of time although he did not clarify in a detailed submission. He thus prayed this court to dismiss this application with costs.

In rejoinder to the submission by the counsel for the respondent, the learned counsel for the applicant submitted that the judgment of District Land and Housing Tribunal was certified on 14/2/2020 and that is the time when counting of days commenced. According to him the applicant filed the appeal in time and it was an

oversight on the part of court to think that the appeal was filed out of time. On the issue of the applicant being represented by senior advocate, the learned counsel for the applicant submitted that it is true that the applicant was represented by a senior advocate but that fact should not justify punishing the applicant as he was just misled by the advocate. With regard to the case of ***Issack Sebegele (supra)***, cited by the counsel for the respondent, the learned counsel for the applicant submitted that it is distinguishable with the present application.

With regard to the issue of illegality, counsel for applicant submitted that since the respondent's advocate kept silent with regard to that fact, this means therefore that he concedes that there was illegality which is a sufficient cause for extension of time. He then repeated to his previous prayers that this application be granted.

Having summarized the submissions by the counsels for both parties it is my duty to determine the fate of this application. To do so the issue for determination is whether the applicant have advanced sufficient cause for his delay.

As 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 such 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; negligence on the part of the applicant's advocate where firstly, the applicant being aggrieved by the impugned decision filed Land Appeal No. 15 of 2020 which was withdrawn following the court's discovery that it was filed out of time, thereafter the advocate filed application for leave to appeal to Court of appeal instead of seeking leave to appeal out of time. To him this negligence pushed the applicant to engage the present counsel. According to the learned counsel for the applicant negligence by the advocate constitute sufficient cause for delay. With due respect to the submissions by the

learned counsel this court differs with his line of argument because that is not the current legal position. In the case of case of ***Yudes Rwaswa Vs. Alodia Lazaro and 3 Others, Misc. Land Application No. 20 of 2021***, this court while citing the case of ***Transport Equipment Limited Vs. BP Valambhia*** [1993] TLR,91 p.101, held inter alia that

***"Negligence of the advocate is not a good cause  
for extension of time"***

Guided by the above position this court finds no merits with this ground.

Two; the learned counsel for the applicant raised illegality as a ground for extension of time. He said that, the judgment of the District Land and Housing Tribunal in Application No. 31 of 2013, is silent on the involvement of assessors. On his part the counsel for the respondent submitted by passing that illegality does not constitute sufficient reason. His argument was not supported by any authority. This went through the copy of judgment and noted that it is silent on the involvement of assessors. it is trite Law that a claim of illegality is the sufficient reason/good cause for extension of time. This position was stated in the case of ***Attorney General v. Tanzania Ports Authority & Another, Civil Application No. 87 of 2016***, where Court of Appeal held inter alia that:

***"It is a settled law that a claim of illegality of the  
challenged decision constitutes sufficient reason"***

***for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay”.***

Similarly, in the case of ***VIP Engineering and Marketing Limited Vs. Citibank Tanzania Limited, Consolidated Civil references No. 6, 7 and 8 of 2006***, the court held as follows:

***“We have already accepted it as established Law in the Country that where the point of Law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes “sufficient reasons” within the meaning of rule 8 of the Rules for extending time”.*** (Emphasis supplied).


Guided by the above proposition, although the applicant failed to advance sufficient reasons for his delay, since the applicant intends to challenge the judgment of the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 31 of 2013 on the ground of illegality, this court therefore find this ground good cause for extension of time.

He is thus ordered to file his appeal within fourteen (14) days from the date of this ruling.

Each party shall bear its own costs.

It is so ordered.




  
A.Y. Mwenda

**Judge**

11.03.2022

This Ruling is delivered in chamber under the seal of this court in the presence of Mr. Geoffrey the learned counsel for applicant and in the presence of Mr. Frank Karoli learned counsel for the respondent.



  
A.Y. Mwenda

**Judge**

11.03.2022



