

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

**BUKOPA DISTRICT REGISTRY**

**AT BUKOPA**

**MISC. LAND APPLICATION NO. 137 OF 2021**

*(Originating from Land Case No. 40 of 2019 at Bukoba District Land and Housing Tribunal and  
Misc. Land Application No. 3 of 2020 of the High Court of United  
Republic of Tanzania at Bukoba)*

**ELEMENCE CLEMENCE (Administrator of the Estate of the Late Leopord Kajuna)..APPLICANT**

**VERSUS**

**ENOCK KALUMUNA.....RESPONDENT**

**RULING**

*22/04/2022 & 21/06/2022  
E. L. NGIGWANA, J.*

This is an application for extension of time within which to appeal against the decision of the District Land and Housing Tribunal (DLHT) for Kagera at Bukoba in Land Application No. 40 of 2019, handed down on 10/11/2019. The application has been brought by way of chamber summons made under section 41(1) and (2) of the Land Disputes Courts Act [Cap. 216 R.E 2019]. The chamber summons is supported by an affidavit, sworn by the applicant, who is an administrator of the estate of the late Leopord Kajuna. In contrast, the application was opposed by the respondent through a counter affidavit by the respondent Enock Kalumuna.

As depicted from the affidavit the background which gave rise to this application may be recounted as follows: Leopord Kajuna sued the respondent for encroachment to a piece of land located at Kibitego "D"

Bushasha village, Ward of Kishanje within Bukoba Rural District in Kagera Region.

The respondent raised two preliminary objections on point of law that, **one** that application was filed out of time, and **two**, the application was bad in law for being an abuse of court process.

Indeed, the objections were argued by way of written submissions, and were sustained after being found meritorious by the DLHT. Consequently, application No. 40 of 2019 was dismissed with costs.

Leopord Kajuna was aggrieved by the decision of the DLHT but did not file an appeal within 45 days. As a result, he filed an application for extension of time in this court to wit; Application No. 3 of 2020 and the reason stated for the delay being sickness. Eventually, the same was struck out for being supported by an incurably defective affidavit.

The said sickness finally took the life of the said Leopord Kajuna. Still believing that the matter was not time barred, the applicant has filed instant application for extension of time within which to lodge an appeal to this court. In his affidavit, sickness and technical delay were stated as the reasons for delay.

When the matter was called on for hearing, both parties appeared in person and unrepresented.

Submitting in support of the application, the applicant stated that the deceased could not appeal within 45 after the decision of the DLHT because he became sick, the sickness which finally eliminated his life. He

also stated that application No. 3 of 2020 was struck out on 15/10/2021, but the copy of the ruling was supplied to him after two weeks, and then he took another two weeks seeking for legal assistance owing to the reason that he is a lay person and that is why he filed the present application on 19/11/2021.

On his side, the respondent admitted that the deceased was sick as an outpatient and finally passed away, but insisted that, he had the duty to lodge an appeal within the prescribed appeal time because he was an outpatient. He also said that the applicant has not accounted for each day of day. He ended his submission urging the court to dismiss the application with costs.

Having heard the submissions by both parties, there is no gainsaying that the issue for determination is whether the applicant has demonstrated good cause of delay for this court to grant him extension of time.

The chamber summons is very clear that this application was made under section 41 (1) and (2) of the Land Disputes Act Cap. 216 R: E 2019.

Section 41(1) of the Act provides that;

***"Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceedings from or in respect any proceedings in the District Land and Housing Tribunal in exercise of its original jurisdiction shall be heard by the High court".***

Section 41(2) of Act provides that;

*"An appeal under subsection (1) may be lodged within forty five (45) days after the date of the decision or order;*

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

The law does not define what amounts to good cause. However, case law has established factors to be considered in determining whether good cause has been established or not, and this depends on case to case basis. The court of appeal of Tanzania in the case of **Masalu versus Tanzania Processing Ltd**, Civil Application No. 13 of 2020 held that-

*"What constitute good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one, is dependent upon a party seeking extension to prove the relevant material in order to move the court to exercise its discretion".*

It was also held in the case of **Mumello versus Bank of Tanzania** [2006] EA227 that

*"An application for extension of time is entirely in the discretion of the court to grant or refuse, and that extension of time may only be granted when it has been sufficiently established that the delay was due to sufficient cause"*

In the matter at hand, the DLHT delivered its decision on 11/10/2019. When still within the prescribed appeal time, Leopord Kajuna became seriously sick, the fact which was admitted by the respondent. There is no

dispute that later on, that is to say on 27/01/2020, Application No. 3 of 2020 for extension of time was filed by the said Leopord Kajuna, but it was struck out on 15/10/2021 for incompetency.

Following the death of the said Leopord Kajuna, the applicant sought and obtained letters of administration of his estate, and still believing that Land Application No.40 of 2019 was wrongly dismissed on the ground that it was time barred, he lodged the instant application on 19/11/2021. The applicant has stated that the necessary documents were delayed to be supplied to him by the court for two (2) weeks and after being supplied, he took another two weeks seeking the legal assistance because he is just the administrator of the estate of Leopord/Kajuna, but also a lay person.

The argument that Leopord Kajuna was an out-patient does not mean that he was not sick since sickness is a condition which is experienced by the person who is sick. It is not a shared experience.

Addressing the question of sickness, the Court of Appeal of Tanzania in the case of **John David Kashankya versus the Attorney General**, Civil Application No. 1 of 2012 (unreported) had this to say;

*"Sickness is a condition which is experienced by the person who is sick. It is not shared. Except for children who are not yet in position to express their feelings, it is the sick person who can express his/her condition whether he/she has **strength to move, work and do whatever kind of work he is required to do.** In this regard, it is the applicant who says he was sick and he produced medical charts to show that he responded to a doctor for checkup for one year. There is no evidence from the respondent*

*to show that after the period, his condition immediately became better and he was able to come to court to pursue his case. Under such circumstances I do not see reasons from doubting his health condition. I find the reason of sickness given by the applicant sufficient reason for granting the application for the extension of time."*

Being guided by the herein above Court of Appeal decision, it is the finding of this court that in the matter at hand the respondent did not dispute the fact that Leopord Kajuna was sick, the sickness which finally eliminated his life. Also, there is no evidence provided by the respondent to show that the Leopord being an out-patient for most of the time could move, work, and do whatever kind of work he was required to do.

The present applicant has sufficiently accounted for the days of the delay from the date when the Application No. 3 of 2020 was struck out. There was delay to supply him a copy of the ruling, and he used the other two weeks to seek for legal assistance and preparation of documents. Reasonable time spent seeking for legal assistance and preparation of documents to be filed in court has been considered to constitute good reason for delay. See Vodacom **Tanzania PLC versus Commission for TRA**, Civil application No. 101/20 of 2021 CAT (Unreported)

Considering this application as a whole, it is apparent that the respondent will not be prejudiced if the application is granted. In the upshot, I am satisfied that the demonstrated grounds of sickness, technical delay, and fourteen (14) days spent by the applicant looking for legal assistance and preparation of documents to be filed in court constitute sufficient cause to warrant me to exercise the discretion of granting extension of time. I

therefore proceed to allow the application. The applicant to file the intended appeal within 14 days from the date of this ruling. No order as to costs. It is so ordered.

Dated at Bukoba this 21<sup>st</sup> June 2022.



  
E. L. NGIGWANA

JUDGE

21/06/2022

Ruling delivered this 21<sup>st</sup> day of June 2022 in the presence of both parties in person, Hon. E .M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C.



  
E.L. NGIGWANA

JUDGE

21/06/2022