

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. LAND APPLICATION NO. 147 OF 2021

(From High Court (Bukoba District Registry) Misc. Land Application No. 20 of 2021, Land Case Appeal No. 58 of 2016 and Misc. Land Application No. 70 of 2020 and original application No. 104 of 2014 of Kagera District Land and Housing Tribunal at Bukoba)

YUDES RWASA..... APPLICANT

VERSUS

- 1. ALODIA LAZARO1ST RESPONDENT**
2. SILIVIA LAZARO.....2ND RESPONDENT
3. ENID LAZARO.....3RD RESPONDENT
4. BLANDINA LAZARO.....4TH RESPONDENT

RULING

22/06/2022 & 29/06/2022

E. L. NGIGWANA, J.

This ruling emanates from the Notice of Preliminary Objection raised by the respondents through their advocate.

The applicant Yudes Rwesa being aggrieved by the decision of this court (Mwenda, J) in Misc. Land Application No. 20 of 2021 handed down on 03/08/2021 preferred this application for leave to appeal to the Court of Appeal of the United Republic of Tanzania.

The application was brought under section 47(2) of the Land Disputes Courts Act Cap. 216 R: E 2019 read together with section 5 (1) (c) of the Appellate Jurisdiction Act Cap. 141 R: E 2019 and Rule 45 (a) of the

Tanzania Court of Appeal Rules G.N. No. 344 of 2019. The prayer sought was coached as follows;

"That this Hon. Court be pleased to grant leave to the Applicant within which to Appeal to the Court of appeal of Tanzania against the decision of the High Court of Tanzania at Bukoba in Misc. Land Application No. 20 of 2021 (Hon. A. Y. Mwenda, J) delivered on 03/03/2021.

In order to have a clear understanding of this matter, I find myself indebted to give a brief background giving rise to this application as follows; Sometimes in 2014, the respondents successfully sued the applicant herein in the DLHT for Kagera at Bukoba vide Application No. 104 of 2014 for trespass into their land located at Rwagati Village, Ward of Kemonondo, Muleba District whose value is estimated to be Tshs. 9,000,000/=.

The Applicant was aggrieved, therefore lodged Appeal No. 58 of 2016 before this court but the same ended being struck out on 30/04/2019 (Hon. Kilekamajenga, J) for incompetence as the memorandum of appeal was accompanied by a decree which was at variance with the judgment.

The applicant did not end there, and since he was already out of time, he lodged Application No. 70 of 2020 for extension of time within which to appeal out of time but on 09/03/2021, the same was struck out (Mtulya, J) for incompetence.

From there, the applicant lodged another application for extension top wit; Application No. 20 of 2021. The same was heard and finally dismissed (Mwenda, J,) on the ground that applicant had failed to demonstrate good

cause for the delay. The applicant was aggrieved by the dismissal order, hence this application.

Upon being served with the chamber summons, the respondents vide their advocate, Mr. Zedy ally from Haki Attorneys filed a counter affidavit together with a notice of preliminary objection that;

"The application is incurably defective, incompetent and bad in law for being hopelessly filed out of time".

When the P.o is not called on for hearing, the applicant nor his advocate Mr. Pauline Michael entered appearance, and no notice of absence or reason for their absence given in court despite the fact that they were aware of the hearing date. In that premise, the court allowed the P.o to be argued ex-parte.

Submitting in support of the P.o, Ms. Pilly Husein from Haki Attorneys submitted that according to Rule 45(a) of the Court of Appeal Rules of 2019, application for leave to the Court of Appeal of Tanzania must be filed within 30 days from the date of the decision or order. She further submitted that the ruling of this court in Misc. Land application No. 20 of 2021 was delivered on 03/08/2021 but the instant application was filed on 3/09/2021, and therefore, the same was filed out of time. She referred the court to the case of **Tumaini Nikodemu versus Olam Tanzania Ltd**, Civil Application No. 32 of 2021 HC- Bukoba at Bukoba. She ended her submission urging the court to dismiss the application with costs.

Upon considering the submissions by the learned advocate for the respondents, the issue for determination is whether the Po raised has merit.

Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 as amended read;
"In Civil matters-

*(a) Notwithstanding the provisions of rule 46(1), where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court **within thirty days of the decision**".*

It is not disputed that the ruling in Misc. Land Application No. 20 of 2021 in which the applicant herein is applying for leave to appeal was delivered on 03/08/2021. It is again undisputed that an affidavit supporting the application reveals that it was signed by the Court Registry officer and duly indicated therein that the instant application was filed on 3/09/2021. The prescribed time of 30days expired on 3/09/2021, hence looking the dates; it is not difficult to note that there was delay **of a single day**.

However, it has to be noted that, in a matter where filing fee is required to be paid, the date of filing is the date of paying the required fees. This was the holding of this court at Musoma Registry in the case **of Matoto Matoto versus Makuru Irega**, Misc. Land Appeal No. 8 of 2021 where Kisanya J held that;

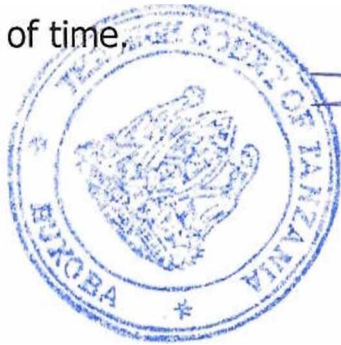
"The date of filing a document in a court is a day of paying court fees and not receiving documents".

See also **Mustapha Boay Akunaay versus Mosses Meimar Laizer and Two others**, Land Reference No. 06 of 2020. In the instant application, court fee was paid on 06/09/2021 vide Bill Reference

No.921249067197186 and payment Control No. **991400501077**, and finally, Exchequer Receipt No. **EC101035906152** was issued by the court clerk namely; Jasinther Rugambwa.

Reading the herein above facts, it is apparent that the instant application was filed out of thirty (30) days owing to the reason that there was a delay of 4 days, and prior to the filing of this application, no application for extension of time was sought and obtained. In that premise, the preliminary objection raised by the defendants is meritorious, hence sustained.

In the event, I proceed to dismiss this application with costs for being filed out of time.

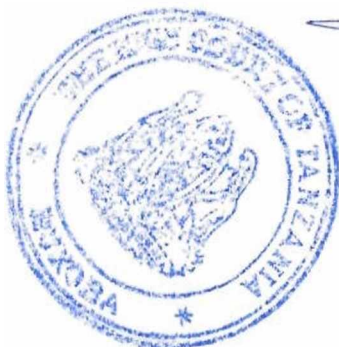



E. L. NGIGWANA

JUDGE

29/06/2022

Ruling delivered this 29th day June 2022 in the presence of Mr. Pauline Michael, learned advocate for the Applicant, 1st and 3rd respondents, Ms. Pilly Hussein, learned advocate for the Respondents, Hon. E .M. Kamaleki, Judges' Law Assistant and Tumaini Hamidu, B/C.




E. L. NGIGWANA

JUDGE

29/06/2022