

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC LAND APPLICATION NO. 109 OF 2021

(Arising from High Court of Tanzania Land Case No. 10 of 2019 and Muleba District Land and Housing Tribunal in Misc. Application No. 108 of 2019 and Application No. 49 of 2019 as well as Muhutwe Primary Court in Civil Case No. 11 of 1994 and Muleba District Court in Civil Appeal No. 123 of 1996)

EDWIN KATO ELIEZA.....APPLICANT

(Administrator of estate of Estone Elieza)

VERSUS

NASON RUGEMALIRA..... RESPONDENT

RULING

Date of Ruling: 08.07.2022

A.Y. Mwenda, J

In the present application, the applicant is seeking extension of time within which to file an application to certify points of Law. It is brought under Section 11(1) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019] and supported by an Affidavit Sworn by himself. Opposing the same, the respondent filed a counter affidavit also sworn by himself.

When this matter was set for hearing, both parties were legally represented. The Applicant was represented by Mr. Fahad, learned Counsel and the respondent enjoyed the services of Mr. Bengesi, learned Counsel.

Submitting in support of this application, Mr. Fahad, learned counsel for the Applicant begun by praying the applicant's affidavit to be adopted to form part of his submission. The learned counsel then submitted that the applicant lost in Land Case Revision No. 10/2019 which was delivered on 12/3/2021. After that, he said, the applicant issued a notice of appeal on 31/3/2021 and then filed an application seeking leave to appeal on 03/5/2021. His application was however dismissed on 8/9/2021 on the ground that he was required to apply for certification of points of law and not seeking leave to appeal.

The learned counsel submitted further that on 09/09/2021 the applicant applied for an order dated 8/9/2021 which dismissed his application. He was then issued with the same on 16/9/2021 and on 17/9/2021 he filed the present application.

The learned Counsel submitted that the applicant's delay was a technical one because during all that time from when he lost in Land Case Revision No. 10/2019 he has been in the court's premises trying to seek justice. To support his argument the learned counsel cited the case of *FORTUNATUS MASHE VS. WILLIAM SHIJA AND ANOTHER* [1997] TLR 154 CAT.

To conclude his submission the learned Counsel submitted that the applicant's leave to appeal was filed in time but was struck out for being incompetent and to him, this is sufficient reason for extension of time. He then prayed this application to be granted.

Responding to the submission by the learned Counsel for the applicant, Mr. Bengesi, learned Counsel for the respondent submitted that the learned counsel for the applicant failed to state the actual delay and instead he capitalized in narrating the technical delay. He said, in the present application, the learned Counsel for the applicant did not state the length of actual delay.

Secondly, he said, extension of time is granted where there is good cause shown. He said in the present application the applicant failed to advance good cause. To support his argument, he cited the case *ZAWADI MSEMAKWELI VS. NMB PLC, CIVIL APPLICATION NO. 22/18/2018*, (unreported). Further to that the learned counsel for the respondent averred that the degree of prejudice for which respondents stands to suffer if time is extended is not stated. He said, in this case, the respondent is likely to be prejudiced due to the applicant's failure to align with the ruling of Hon. MTULYA, J in the case of *ESTONE ELIEZA VS. NASON RUGEMALIRA, Land Case Revision No. 10/2019*. Lastly, he stated that the present application is tainted with illegality and this is an abuse of court process as the applicant failed to advance good cause. He then concluded his submission with a prayer for this Court's pleasure to dismiss this application with costs.

In his rejoinder, Mr. Fahad, the learned Counsel for the respondent briefly stated that the applicant's delay is technical one that is why he focused his submission on it and not on actual delay. With regard to the argument by the learned counsel for the respondent that the respondent will be prejudiced if this application is

granted he said, this application will not prejudice the respondent as the applicant stated in para 10 of his affidavit. On top of that he submitted that this application is not illegal as they intend to challenge the Court's findings that the respondent was allocated the land in dispute. He thus concluded by repeating to his previous prayer beseeching this court allow this application as the applicant advanced good cause.

Having summarized the rival submissions by the learned Counsels for both parties, this court is now bound to deliberate this matter. To do so the issue raised is whether the applicant have advanced good cause for delay.

In reaching to its findings this court went through various authorities where principles regarding conditions for extension of time are propounded. It is trite principle that in applications such as the present one, the applicant is bound to account for each and every day of delay by advancing sufficient reasons and/or good cause. Please see *SWED YUSTAS V. ISSIAKA MAFURUKI*, Misc. Land Case Application No. 31 of 2021 and *LEON KATAMBI V. DEOGRATIAS DONATUS KAIJAGE*, Misc. Civil Application No. 35 of 2021(unreported). In the case of *BASHIRI HASSAN V. LATIFA LUKIO MASHAYO*, Civil Application No. 03 of 2007(unreported) it was held inter alia that:

"a delay of even a single day has to be accounted for"

In the present application, the applicant raised various reasons as a source of delay. He said, after Land Case Revision No. 10/2019 was struck out in the ruling

dated 12/3/2021 he issued a notice of appeal on 31/3/2021 and then filed an application seeking leave to appeal on 03/5/2021. His application was however dismissed on 8/9/2021 on the ground that he was required to apply for certification of points of law and not seeking leave. Shortly thereafter i.e. on 09/09/2021 the applicant applied for an order dated 8/9/2021 which was issued on 16/9/2021 and on 17/9/2021 he filed the present application.

By looking at the efforts by the applicant immediately after he lost in Land Case Revision No. 10/2019 it is crystal clear that he acted diligently and without undue delay. From the moment when the impugned decision was pronounced he has been, tirelessly struggling to pursue his rights before the court. With these efforts, this court is of the view that they suffice to constitute sufficient reasons for delay. Encountered with similar scenario, this court in the case of TANZANIA POSTS CORPORATION V. MARY NSAGILA, MISC. LABOR APPLICATION NO. 08 of 2021 while citing the case of REGIONAL MANAGER TANROADS KAGERA V. RUAHA CONCRETE COMPANY LTD, CIVIL APPLICATION NO. 96 OF 2017 (unreported) held:

"What constitute sufficient reasons cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the court material which will move the court to exercise its

judicial discretion in order to extend the time limited by rule.”

From the foregoing observations, this court is satisfied that the reasons for delay advanced by the applicant suffice to warrant this court to exercise its judicial discretion to grant extension of time. This application therefore succeeds by allowing the applicant to file application for certification of points of law within 14 days from the date of this ruling.

Each party shall bear its own costs.

It is so ordered.



A.Y. Mwenda

Judge

08.07.2022

Ruling delivered in chamber under the seal of this court in the presence of Mr. Fahad learned Advocate for the Applicant and in the presence of Mr. Nason Rugemalira the Respondent.



A.Y. Mwenda

Judge

08.07.2022