

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB- REGISTRY OF MWANZA  
AT MWANZA**

**MISCELLANEOUS LAND APPLICATION NO.101 OF 2021**

*(Arising from the decision of the District Land and Housing Tribunal of Geita Land case Appeal No.14 of 2020, original Ward Tribunal of Karangalala ward in Application No. 55 of 2019)*

**LYAKI BUNZALI.....APPELLANT**

**Versus**

**HOJA LUKABA.....RESPONDENT**

**RULING**

*14<sup>th</sup> July & 17<sup>th</sup> August, 2022.*

**Kahyoza, J.**

This is a ruling in respect of an application for extension of time to apply to set aside an ex-parte judgement. There is only one issue whether the applicant was adduced sufficient reason for delay.

There is only one issue whether the applicant has adduced sufficient reason for delay.

A brief background is that Hoja Lukuba successfully sued Lyaki Bunzali before the ward tribunal. Lyaki Bunzali appealed to the District Land and Housing Tribunal (the DLHT) which reversed the decision of the ward Tribunal and decided in his favor. Hoja Lukuba appealed to this

court. The High court (Tinganga, J.) in its *ex-parte* judgment decided in favour of Hoja Lukuba. Lyaki Bunzali wishes to be heard. He instituted the application under consideration for extension of time to apply to this court to set aside its *ex-parte* judgment.

Lyaki Bunzali's grounds for extension of time as deponed in his affidavit and submitted by his advocate are basically two; **one**, that he was not served to appear to defend the appeal or to appear on the date the Court delivered the *ex-parte* judgement. He described this ground as illegality; **Two**, that he delayed to apply for extension of time because he was prosecuting Misc. Application No. 69 of 2021 which this Court struck out because it contained omnibus prayers.

Hoja Lukaba replied that Lyaki Bunzali, the applicant's lied that he was not served. He submitted that he served Lyaki Bunzali through the hamlet chairman. Lyaki Bunzali refused to receive the summons.

As already stated, the issue is whether the applicant has adduced sufficient reasons for delay. It is on record that the applicant is seeking for extension of time to apply to set aside the *ex-parte* judgment of this court, which was delivered on 10<sup>th</sup> December, 2020.

It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time

may only be granted where it has been sufficiently established that the delay was with sufficient cause. See **Benedicto Mumello v. Bank of Tanzania** [2006] E.A. 227, where the Court of Appeal recapitulated its position in its earlier case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported) held that-

*"What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant."*

Lyaki Bunzali filed the application under consideration on 3<sup>rd</sup> November, 2021. He is therefore duty bound to account all period of delay from 10<sup>th</sup> November, 2021. It is trite law that a person applying for extension of time must account for all period of delay. See the decision in **Hassan Bushiri v. Latifa lukio Mashayo**, CAT Civil Application No. 3 of 2007 (unreported), where the Court imposed a duty on litigants who seek to extend time in taking actions to account for every day of delay. It stated that-

*"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

Lyaki Bunzali has a duty to account all the period of delay. One of Lyaki Bunzali's good ground of delay was that he was not served to appear on the date the Court heard the appeal. On his part, Hoja Lukaba deposed that he served Lyaki Bunzali with the summons to appear on 25<sup>th</sup> September, 2020 and 19<sup>th</sup> June, 2020. I find that Lyaki Bunzali was served with a summons to appear for hearing the appeal. However, there is no evidence to prove that Hoja Lukaba notified Lyaki Bunzali to appear on the date the judgment was delivered. The Court delivered the *ex-parte* judgment on 10<sup>th</sup> December, 2020.

The law is not uncertain, it requires parties to be notified the date of the *ex-parte* judgment. Lyaki Bunzali was notified of the date of delivering the *ex-parte* judgment. For that reason, time from 10<sup>th</sup> December, 2020 when the *ex-parte* judgment was delivered is excluded from calculation of the time within which to file an application for setting aside an *ex-parte* judgement.

In addition, Lyaki Bunzali and his advocate sought to contend that it was illegal to decide an appeal *ex-parte* without serving Lyaki Bunzali with a notice to appear to defend the appeal. They prayed the Court to allow the application for extension of time on account of illegality. The court has found it established that if the decision being challenged is

alleged to be illegal the court may grant extension of time to appeal against it. However, I hold that Lyaki Bunzali and his advocate misdirected on what is meant by illegality as a ground to support an application for extension of time. Illegality to amount to ground for delay; the alleged illegality must be that of sufficient importance and must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process. See the holding in **Ngolo Godwin Losero v Julius Mwarabu** Civil Application No. 10/2015 CAT at Arusha (unreported), where the Court of Appeal reiterated its decision in **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application 2/2010 that-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, **it cannot in my view, be said that in Valambia's case, the court meant to draw a general principle that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one.** The Court there emphasized that such point of law must be that of sufficient importance and I, would add that it must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process. The Court in the case Certainly, it will take*

*a long-drawn process to decipher from the impugned decision the alleged misdirection or non-directions on the points of law."*

In the instant case the illegality is not apparent in the judgment Lyaki Bunzali intends to impugn. The illegality if any, is procedural illegality. Not only that but also, the illegality is not that one which, can be discerned without long submissions. In short, failure to serve Lyaki Bunzali to appear and defend the appeal, if at all, he was not served, is not an illegality that may support the application for extension of time.

Lyaki Bunzali averred and his advocate submitted that the applicant delayed to institute an application because he was not notified to appear on the date the *ex-parte* judgment as delivered. He deponed that he knew that there was an *ex-parte* judgment on 24<sup>th</sup> June, 2021 when he was required to appear before the DLHT for execution. Hoja Lukaba disputed the allegation generally without proving when Lyaki Bunzali got information of the *ex-parte* judgement. For that reason, I find it proved that Lyaki Bunzali got information of the existence of the *ex-parte* judgment on 24<sup>th</sup> June, 2021.

I therefore, exclude time from 20<sup>th</sup> December, 2020 to 24<sup>th</sup> June, 2021 from calculation of the period from which the applicant was required to file an application for extension of time.

Lyaki Bunzali disposed in his affidavit and his advocate submitted that Lyaki Bunzali delayed to apply for extension of time because he was prosecuting Misc. Land Application 75/2021. Hoja Lukaba did not refute the allegation that Lyaki delayed to apply for extension of time because he was prosecuting Misc. Land Application 75/2021. Even if, Hoja Lukaba refuted, the record would have bailed Lyaki Bunzali out. It is on record that Lyaki instituted Misc. Land Application No. 75/2021 to this Court on 2<sup>nd</sup> August, 2021 praying for two orders; **one**, an order for extension of time to apply to set aside *ex-parte* judgement; and **two**, an order for re-hearing of Misc. Land Appeal No. 14 of 2020. The Court struck out the application on 15<sup>th</sup> October, 2021. Lyaki Bunzali's advocate contended that this cause of delay was a technical delay.

Indeed, a technical delay is a good cause to support an application for extension of time. In **William Shija and another v. Fortunatus Masha** [1997] TLR 213, the Court of Appeal stated the following -

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court*

*striking out the first appeal. In these circumstances an extension of time ought to be granted."*

Lyaki Bunzali is not to be condemned for technical delay. Lyaki Bunzali, therefore, delayed for good cause from 2<sup>nd</sup> August, 2021 to 15<sup>th</sup> October, 2021 when he was prosecuting Misc. Land Application No. 75/2021. That period is also excluded from calculating the period within which he was required to apply for an order to set aside the *ex-parte* judgment.

It is on record that Lyaki Bunzali filed the instant application 25<sup>th</sup> October, 2021 after the court struck out Misc. Land Application No. 75/2021. Lyaki Bunzali instituted the application after 10 days after the Court struck out Misc. Land Application No. 75/2021. He did not account for the 10 days delay. All in all, I find to be a reasonable time for one to re-institute the application after the previous one was struck out.

I stated that it is the principle of law that the applicant has a duty to account for all period of delay. It is on record that the applicant got information of an existence of the *ex-parte* judgment on 24<sup>th</sup> June, 2021. He did not take any action or account for the period from 24<sup>th</sup> June, 2021 to 2<sup>nd</sup> August, 2021 when he instituted Misc. Land Application No.

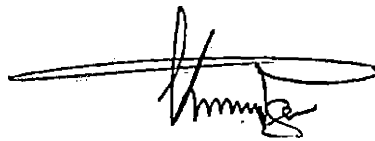


75/2021. I find that Lyaki Bunzali, the applicant, failed to account for 38 days of delay. Thus, he did not account for all period of delay.

In the upshot, I find that the applicant has not adduced sufficient reasons for delay. Consequently, I dismiss this application for extension of time for want of merit with costs.

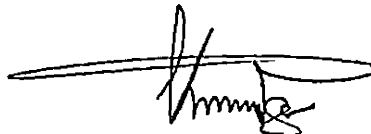
It is ordered accordingly.

**DATED at Mwanza, this 17<sup>th</sup> day of August, 2022**



**J. R. Kahyoza**  
**JUDGE**

**Court:** Ruling delivered in the presence of Mr. Mtete, advocate for the applicant and the respondent in person. The applicant is absent. Ms. Jackline (RMA) present.



**J. R. Kahyoza**  
**JUDGE**  
**17/8/2022**