

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

**MISC. LAND APPLICATION NO. 138 OF 2021**

*(Originating from the Application No. 103 of 2019 in the District Land and Housing Tribunal for Kagera at Bukoba)*

**CHARLES BUCHWA----- APPLICANT**

**VERSUS**

**ALLY ABDU MABARAZA-----1<sup>ST</sup> RESPONDENT**

**JONAS CHARLES -----2<sup>ND</sup> RESPONDENT**

**RULING**

**Date of last Order: 16/08/2022**

**Date of Ruling: 16/08/2022**

**A.E. Mwipopo, J.**

Charles Buchwa, who is the appellant herein, sued Ally Abdu Mabaraza and Jonas Charles, the respondents herein, in Application No. 103 of 2019 at the District Land and Housing Tribunal for Kagera Region at Bukoba (the DLHT) for trespassing in the suit land situated at Mafumbo Street, within Kashai Ward in Bukoba Municipal. The applicant prayed for the DLHT to declare him the lawful owner of the suit land, order immediate vacant possession to the suit land and permanent injunction restraining respondents and their agents from the suit land.

The DLHT dismissed the application and declared the 1<sup>st</sup> respondent to be the rightful owner of the suit land and ordered the applicant to vacate from the suit land.

The applicant was aggrieved by the decision of the DLHT and filed Land Appeal No. 65 of 2021 in this Court. The said appeal was struck out on 05.11.2021, with leave to refile within 14 days, for incompetence following failure to attach copy of the decree appealed against. The applicant failed to file the appeal within time granted by this Court and filed the present application for extension of time to file an appeal against the decision of the DLH out of time on 29.11.2021 and paid for filing fees on 01.12.2021. The said application was filed by Chamber Summons supported by applicant's affidavit.

On the hearing date, the applicant was present and was represented by Mr. Geraz Ruben, advocate, and the 1<sup>st</sup> respondent was present in person, without representation. The 2<sup>nd</sup> respondent was absent. The Court ordered hearing to proceed in absence of the 2<sup>nd</sup> respondent as the 2<sup>nd</sup> respondent was properly served through publication in Nipashe Newspaper dated 2503/2022 at page 19 following the order of this Court.

The counsel for the applicant submitted that the applicant sued the respondents in Bukoba District Land and Housing Tribunal without success. The applicant appealed in this court in Land Appeal No. 65 of 2021 which was struck

out for failure to attach the decree of the court with leave to refile the proper appeal within 14 days. The applicant made follow thereafter to the trial DLHT, but unfortunately the trial Chairman was not available as he went to attend burial ceremony of his father. The said decree was issued on 24.11.2021 which means that the time granted by this Court had already expired. The applicant filed the present application for extension of time on 29.11.2021.

He further stated that in the main application at DLHT there are irregularities such as failure of the Tribunal to adhere to regulation 12 of Land Disputes Courts [DLHT] Regulations, 2003.

In his response, the 1<sup>st</sup> respondent said that he has nothing to say on the reason for the delay since it speaks for itself. That ,the decree of the trial Tribunal was ready to be picked up on 24.11.2021, hence it was not possible for the applicant to file the appeal within the time to refile the appeal granted by this court without obtaining and attaching the said decree.

From the submission, the only issue for determination is whether the applicant has provided sufficient reason for the Court to grant the application for extension of time.

This Court may for good and sufficient cause extend the time for filing an appeal before or after the expiry of the prescribed time. This is provided by section

41 (2) of the Land Disputes Courts Act, CAP. 216 R.E. 2019. The said section reads as follows:-

*"41.- (1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.*

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

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

The above cited section clearly states the discretion of the Court to grant an application for extension of time where there is a good cause. The word "good cause" is relative one dependent upon party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion and it is determined by reference to all the circumstances of each particular case. See. **Oswald Masatu Mwizarubi vs. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania.

In this application, the applicant grounds for his application for extension of time is that the decree was yet to be issued by the trial DLHT at the time for leave to refile the appeal granted by this Court in Land Appeal No. 65 of 2021 expired. The applicant said that the decree was issued on 24.11.2021 and they filed this

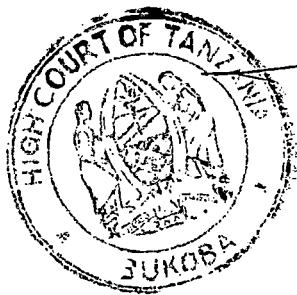
application for extension of time on 29.11.2021 which is reasonable time. The 1<sup>st</sup> respondent in his reply submission said that he has nothing to submit on the reason for the delay to file the appeal, despite filing the counter affidavit which was against the application.

The available record of this Court in Land Appeal No. 65 of 2021 reveal that the said appeal instituted by the applicant against the respondents was stuck out for incompetence on 05.11.2021 following preliminary objection raised by the 1<sup>st</sup> respondent that the memorandum of appeal was not annexed with the decree. The applicant conceded to the preliminary objection. The Court struck out the appeal and it granted the applicant 14 days leave to refile the proper appeal from the date of the order which means that the proper appeal was supposed to be filed by 19.11.2021. Unfortunately, by that time the trial DLHT has not issued the decree as the trial Chairman was attending burial of his demised father. The DLHT issued the decree on 24.11.2021 when the time to file appeal granted by this Court has already expired. As result, the applicant filed the present appeal for extension of time to file an appeal out of time on 29.11.2021 and paid the filing fees on 01.12.2021.

I find that the reason stated by the applicant is sufficient and it is a good cause since it would be absurd for the applicant to file the appeal within time granted by this Court in Land Appeal No. 65 of 2021 without attaching the decree

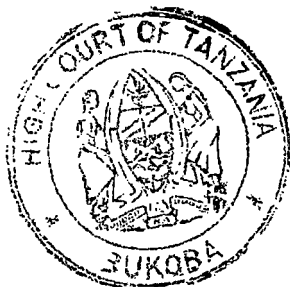
of the trial DLHT. The said decree was issued on 24.11.2021 and this application was properly filed on 01.12.2021 which is the date of payment of the Court's filing fees. This application was filed just 7 days from the date of issuing of the decree of the trial DLHT. The time used to file this application after obtaining the decree of the trial DLHT is reasonable and I find that the applicant was diligent in pursuing his case. For that reason, the Court is satisfied that the applicant has provided sufficient and good cause for the Court to grant the application.

Therefore, the application is allowed and the applicant has to file his appeal within 30 days which start to count today. Each party has to take care of its own cost of the suit.



**A.E. Mwipopo**  
**Judge**  
**16.08.2022**

**Court:** The ruling was delivered today in the presence of applicant and the 1<sup>st</sup> respondent



**A.E. Mwipopo**  
**Judge**  
**16.08.2022**