

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

MISC. LAND APPLICATION No. 53 OF 2022

*(Originating from Application 29/2014 of the District Land and Housing Tribunal at Bukoba and
arising from Land Case Appeal 07/2021 of the High Court at Bukoba)*

LEOCARDIA EUSTAD.....APPLICANT

VERSUS

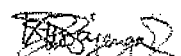
CLAVERY BUYOMBO.....RESPONDENT

RULING

16th August & 16th August 2022

Kilekamajenga, J.

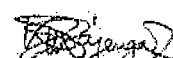
The applicant has been in the corridors of this Court for over four years seeking for justice. In 2017, she filed Misc. Land Case Application No. 15/2017 seeking extension of time to file an appeal. On 2nd October 2018, the application was struck out for being filed under a wrong provision of the law. On 17th December 2018, she filed another application for extension of time which again was struck out on 17th February, 2020 for being made under a wrong provision of the law. On 05th March 2020, she filed another application for extension of time; the order to allow her file the appeal out of time was granted on 08th February 2021. On 14th February 2021, the applicant lodged her appeal. However, the Court noticed that there was discrepancy between the judgment and the decree being appealed against. The Court struck out the appeal to allow the applicant correct the decree. She applied for the corrected decree which was issued on



22/04/2022. She received it on 06/05/2022 and filed another application for extension of time on 06/05/2022 which is the instant application.

This application was made under **Section 41 (2) of the Land Disputes Courts Act, Cap. 216 RE 2019**. The same is supported with an affidavit deposed by the applicant. Before this Court, the parties appeared for hearing. The applicant hired the legal services of the learned advocate, Mr. Joseph Bitakwate whereas the learned Advocate, Mr. Zeddy Ally appeared for the respondent. The counsel for the applicant informed the Court on the two reasons to warrant extension of time. **First**, he argued that the applicant filed an appeal which was later struck out due to the discrepancies between the decree and the judgment being appealed against. For that reason therefore the applicant needs an extension of time to file another appeal. **Second**, Mr. Bitakwate alleged the existence of illegality in the proceedings and decision of the trial tribunal. He averred that, the trial tribunal did not solicit the assessors' opinions. This illegality should warrant an extension of time.

Mr. Zeddy Ally for the respondent resisted the application. He blamed the applicant for causing the delay because the decree was issued on 22nd April 2022 but she filed the instant application on 06th May 2022. There is no evidence to show whether the applicant received the decree on 2nd May 2022. Mr. Zeddy Ally further rejected the allegation of illegality arguing that, the assessors' opinion



feature in the judgment of the trial tribunal. He further blamed the applicant, who was so far represented in the previous cases, for being negligent because she ought to know the discrepancies earlier on.

The rejoinder from Mr. Bitakwate stressed on the submission in chief. In this application, I am alive of the fact that an extension of time is the discretion exercised by the Court. However, the Court must exercise this discretion judiciously upon the applicant advancing sufficient cause for the delay. There are other many authorities to fortify this position such as the case of **Sospter Lulenga v. Republic, Criminal Appeal No. 107 of 2006**, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. Republic, Criminal Appeal No. 130 of 2003**, Court of Appeal of Tanzania at Mbeya (unreported) and **Shanti v. Hindochi and Others [1973] EA 207**. Also, in the case of **Tanga Cement Co. v. Jummanne Masangwa and Another**, Civil Appeal No. 6 of 2001 (unreported) the Court of Appeal stated that:

'This unfettered discretion of the court, however, has to be exercised judicially, and the overriding consideration is that there must be 'sufficient cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly: the absence of any valid explanation for the delay: lack of diligence on the part of the applicant.'

In the instant case the applicant has raised two reasons for the delay. First, the previous appeal was struck out; she went back seeking for the corrected decree. Hence, she cannot approach the Court by way of an appeal without seeking an extension of time. Second, she alleged illegality in the proceedings of the trial tribunal. It is already an established principle of the law that an allegation of illegality is a sufficient ground or good cause for extension of time. In the case of **Principal Secretary, Ministry of Defence and National Service Versus Devram P. Valambli** [1992] TLR 185 the court stated that:-

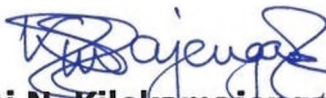
'We think that where, as here, the point of law at issue is the illegality of or otherwise of the decision being challenged, that is of sufficient reason' Within the meaning of Rule 8 of the Rules for extension of time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand...in our view when the point at issue is one challenging illegality of the decision being challenged, the court has a duty even if it means extending the time for the purpose, to ascertain the point and, if the alleged be established, to take appropriate measures to put the matter and the record right.'

The rationale behind the above principle of the law is that, the alleged illegality should not be left to remain in the court record, hence extension of time should be granted to allow correction of the Court record. For reasons stated above, I

find the applicant advanced sufficient cause for extension of time, I hereby allow the application and order the applicant file the appeal within 14 days from the date of this order. The costs of the case shall follow in the course of prosecution of the case. Order accordingly.

Dated at Bukoba this 16th Day of August 2022.




Ntemi N. Kilekamajenga
JUDGE
16/08/2022

Court:

Judgment delivered this 16th August 2022 in the presence of the counsel for the respondent, Mr. Zeddy Ally and the counsel for the applicant, Mr. Joseph Bitakwate. The parties were also present. Right of appeal explained.




Ntemi N. Kilekamajenga
JUDGE
16/08/2022

