

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

**MISC. LAND APPLICATION No. 72 OF 2022**

*(Originating from Misc. Land Application No. 123 of 2021 Land Appeal No. 21 of 2020 and  
Original Application No. 187 of 2012 Bukoba DLHT)*

**YUSTO EUSTACE** *(Administrator of the estate  
of Eustace Bashumika)*.....**APPLICANT**

**VERSUS**

**Josephina Kawegere** *(Administratrix of estate of the  
late Yuliana Kishura Kacholi)*.....**RESPONDENT**

**RULING**

*17<sup>th</sup> August & 17<sup>th</sup> August 2022*

***Kilekamajenga, J.***

This is the second application for extension of time lodged by the applicant. On 11<sup>th</sup> March 2022, the applicant was granted extension of time to file an appeal within 45 days but he did not do so within time. The applicant has now appeared again seeking an order to enlarge time to file an appeal. The application was made under **Section 41 (2) of the land Disputes Courts Act, Cap. 216, RE 2019** and supported with an affidavit of the counsel for the applicant. On the other hand, the respondent objected the application by filing a counter affidavit. Both in the affidavit in support of the application and oral submission, the counsel for the applicant, Mr. Alli Chamani argued that the delay was caused by his son falling sick. It was therefore impossible to lodge the appeal in time because he had to attend the sick child at the Hospital at Igabiro. He further



argued that there are illegalities in the proceedings of the trial tribunal. He stated that, during the trial of the case, the case was tried without the aid of assessors.

Mr. Lameck for the respondent objected the application arguing that, the applicant was granted extension of time but failed to file the appeal in time. The counsel for the applicant was negligent because even the documentary evidence showing that the counsel's child was sick is dated 25<sup>th</sup> April 2022 while the ruling to enlarge time was delivered on 11<sup>th</sup> March 2022. He supported his argument with the cases of **Issack Sebegele v. Tanzania Portland Cement Co. Ltd, Civil Application No. 25 of 2002** and **Nyanza Roads Works Limited v. Giovanni Guidon, Civil Appeal No. 75 of 2020, CAT at Dodoma.**

When submitting on the point of illegality, the counsel argued that, as there are no hand-written records of the trial tribunal, it is not easy to verify whether there was such illegality in the proceedings of the trial tribunal. Therefore, this argument might have been an afterthought. He further insisted that, the respondent will be prejudiced by the extension of time.

When rejoining, the counsel for the application did not raise any substantial information rather than insisting on the points stated in the submission in chief.

In the determination of the instant application, I wish to consider the reasons for the delay raised by the applicant's counsel. First, he argued that, his child fell sick necessitating the applicant's counsel to seek Medical attention. It was therefore impossible to file the appeal within time. However, as stated earlier, the applicant, who was represented by the same advocate, was granted extension of time and he was given 45 days to file the appeal. The order to enlarge time was delivered on 11/03/2022. The documentary evidence showing that, the applicant's counsel fell sick is dated 25/04/2022. In my view, the applicant's counsel had no better excuse not to file the appeal before 25/04/2022. I have no reservation to hold that the applicant's counsel was negligent. It is already an established principle of the law that inaction or negligence committed by the advocate's applicant is not a sufficient cause for delay. This position is stated in the case of **Transport Equipment Ltd Versus D.P. Valambhia [1993] TLR 91; Umoja Garage Versus National Bank of Commerce [1997] TLR 109; Inspector Sadiki and others Versus Gerald Nkya [1997] TLR 290**. Also, in the case of **Alison Xerox Sila v. Tanzania Harbours Authority, Civil reference No. 04 of 1998, which is quoted with approval in the case of Issack Sebegele (supra)**, the Court of Appeal of Tanzania observed that:

*"Lapses, inaction or negligence on the part of the applicant seeking extension of time does not constitute sufficient cause to warrant extension of time".*



Therefore, find the first reason for delay devoid of merit and hereby dismiss it.

On the second reason for delay, the counsel for the applicant raised an allegation of illegality on the records/proceedings of the trial tribunal. I understand, the allegation for illegality is sufficient cause for extension of time. In the case of **Principal Secretary Ministry of defence and National Services v. Divran P. Valamblia (1992) TLR 387**, the Court stated that:

*"In our view when the point at issue is one alleging 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 illegality be established, to take appropriate measures to put the matter and record right."*

I wish to emphasize the principle stated in the case of **VIP Engineering and Marketing Limited v. Citibank (T) LTD**, Consolidated Civil Reference Nos. 6,7 and 8 of 2006 (unreported), where the court stated that:

*'It is, therefore, settled law that a claim of illegality of the challenged decision constitutes reason for extension of time under Rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay.'*

Based on the above principle of the law, I find sufficient cause to warrant extension of time. I allow the application for the appellate court to clear the

alleged illegality. The applicant should file the appeal within 14 days from the date of this order. The costs of this application to follow in the course. It is so ordered.

Dated at Bukoba this 18<sup>th</sup> Day of August 2022.



**Ntemi N. Kilekamajenga**

**JUDGE**

**18/08/2022**

**Court:**

Ruling delivered this 17<sup>th</sup> August 2022 in the presence of the applicant and his counsel, Mr. Alli Chamani and the counsel for the respondent, Miss Erieth Barnabas. The respondent was absent. Right of appeal explained.



**Ntemi N. Kilekamajenga**

**JUDGE**

**18/08/2022**

