

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

MISC. LAND APPLICATION NO. 01 OF 2021
(Originating from DLHT at Bukoba Land Application No. 05/2013)

IDADI SUED.....APPLICANT

VERSUS

1. MANGADALENA PHILIPO1ST RESPONDENT
2. KARAGWE DISTRICT COUNCIL2ND RESPONDENT

RULING

06th June & 06th June 2022

Kilekamajenga, J.

The applicant moved this Honourable Court of justice by way of chamber summons praying for the following orders:

- a) That this Court be pleased to extend time within which to appeal this (sic) Court against the judgment and decree of the District Land Housing Tribunal of Kagera at Bukoba Application (sic) No. 05 of 2013 out of time.*
- b) Costs of this application be granted.*
- c) Any other relief this Court deems fit to grant.*

The application was made under **Section 41 (2) of the Land Dispute Court Act, Cap. 216 RE 2019** and other provision of the law. The same is supported with an affidavit deposed by the applicant. When the application came for hearing, the applicant was present and represented by the learned advocate, Mr. Mathias Rweyemamu (Advocate). The 1st respondent was absent but represented by the learned advocate, Mr. Lameck John Erasto. The second



respondent was absent. The case was ordered to proceed for hearing in absence of the 2nd respondent. In his oral submission, the counsel for the applicant raised an issue of illegality. He further argued that, the applicant's initial appeal was struck out for being accompanied with a defective decree. He urged the Court to allow the application.

In response, the counsel for the 1st respondent stated that, there was laxity in prosecuting the application for extension of time because the decision of the District Land and Housing Tribunal was delivered on 13/09/2016. The applicant filed an appeal in 2016 which was struck out on 10/05/2019. The applicant brought another appeal on 11/07/2019 which was also struck out on 04th January 2021 and the instant application was filed on 06th January 2021. The counsel invited the Court to consider the case of **Isaka Sebegele v. Tanzania Portland Cement Co. Ltd, Civil Application No. 25 of 2002, CAT at Dar es Salaam (unreported)**. He finally urged the court to dismiss the application.

When rejoining, Mr. Rweyemamu for the applicant insisted that the applicant was not negligent in pursuing his rights. He further stated that, he has accounted for every day of delay in the affidavit. The counsel insisted that there is an illegality in the proceedings of the Trial tribunal. To cement his argument,

he referred the Court to the case of **Principal Secretary, Ministry of Defence and National Services v. Duram Valambhia [1992] TLR 387.**

Having considered the submissions from the parties, it is apposite that I now determine the application at hand. The extension of time is the discretion of the Court which, however, must be exercised judiciously where the applicant advances good or sufficient cause for the delay. This position is clearly stated in the cases of **Tanga Cement Co. v. Jummanne Masangwa and Another** Civil Application No. 6 of 2001 (unreported); **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.**

In the case at hand, the applicant has alleged illegality in the decision of the trial tribunal. I am aware, where the applicant alleges illegality in the decision being challenged, the Court should extend time in order to allow the appellate Court to clear or correct the illegality alleged. In the case of **Valambhia (supra)**, the Court of Appeal 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 of ascertain the point and if the **alleged illegality***

be established, to take appropriate measures to put the matter and the record right.'

The same position of law was further emphasized in the case of **VIP Engineering and Marketing Limited v. Citibank Tanzania Limited, Consolidated Civil Reference No. 6, 7 and 8 of 2006** (unreported) thus:

We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes 'sufficient reasons within the meaning of Rule 8 of the Rules for extending time.'

However, this principle of law should be carefully applied otherwise it may be a hiding place for every negligent applicant. In my view, the illegality alleged should be apparent on the record and easily established before the court extends the time. Applying the principle of illegality without any sort of reasoning may be another misuse of legal processes. Where the court extends time, the rights of the other party are stalled until the case is determined. The law should be the two way traffic that takes on board the rights of both parties. In my view, not every allegation of illegality should warrant extension of time. The court should not extend time on mere allegation of illegality unless the alleged illegality is apparent or where the alleged illegality goes into the root of the rights of the parties. Where the illegality is used as a stratagem, the court should allow it otherwise it may cause injustice.

In this case, the decision of the trial tribunal was delivered on 08th September, 2016. On 20th October, 2016 the applicant lodged an appeal which was accompanied with a decree. On 10th May 2019, the appeal was struck out by this Court as the decree was found to be defective. On 11th July 2019, the applicant filed an application for extension of time before this Court. The application was again struck out on 15th October, 2020. The applicant went back to the District Land and Housing Tribunal and applied for the correct decree which was issued on 1st December 2020. Thereafter, the applicant filed the instant application on 06th January 2021. Despite all these negligence, the applicant failed to account for each day of delay. In the case of **Sebastian Ndaula v. Grace Rwamafa, Civil Application No. 4 of 2014**, CAT at Bukoba, the Court of Appeal of Tanzania stated that:

The position of this Court has consistently been to the effect that in application for extension of time, the applicant has to account for every day of delay.'

In this case, the applicant has failed to account the days from the date when he got the corrected (i.e. on 1st December 2020) until when he filed the instant application (i.e. on 06th January 2021). There are more than 30 days which have not been accounted for, I have also considered the whole case in general and I

do not find any merit in the application. I hereby dismiss the application with costs. It is so ordered.


Ntemi N. Kilekamajenga
JUDGE
06/06/2022

Court:

Ruling delivered this 06th May 2022 in the presence of the applicant and 1st respondent all present in person. Right of appeal explained.




Ntemi N. Kilekamajenga
JUDGE
06/06/2022

