

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOBWA DISTRICT REGISTRY**

**AT BUKOBWA**

**MISC. LAND APPLICATION NO. 118 OF 2021**

*(Arising from Misc. Land appeal No. 6 of 2015 of the High Court-Bukoba and Land appeal No. 126 of 2013 of Bukoba District Land and Housing Tribunal, Originating from Application No.7 of 2013 at Ihanda Ward Tribunal)*

**GERVAS KASHEKO .....APPLICANT**

**VERSUS**

**GEORGINA BIZIMA.....RESPONDENT**

**RULING.**

*30/08/2022 & 09/09/2022  
E. L. NGIGWANA, J.*

The calling issue for determination on the applicant's prayers is whether the applicant in this omnibus application has demonstrated sufficient cause to enable the court to grant him extension of time to file Notice of Appeal to the Court of Appeal, and extension of time to apply for certificate on point of law against the decision of this court (Matogolo, J.) in Misc. Land Case appeal No. 6 of 2015.

This application was brought by way of chamber summons made under section 11(1) of the Appellate Court Jurisdiction Act Cap. 141 R.E 2019, and supported by an affidavit of Alli Chamani, applicant's learned counsel. The respondent was unsuccessfully served in an ordinary way, as a result, he was served by way publication vide Nipashe News Paper dated 19/08/2022. When the matter came for hearing, the respondent entered no appearance but also

she filed no counter affidavit in this court. In that respect, the matter proceeded in her absence.

Briefly, the material facts gathered from the affidavit and the available records are as follows; the applicant, Gervas Kasheko was successfully sued by the respondent Georgina Bisima at Ihanda Ward Tribunal for a piece of land valued at Tshs. 3,000,000/=. The applicant unsuccessfully appealed to the DLHT for Kagera at Bukoba, Land Appeal No. 126 of 2013. In other words, his appeal was dismissed for want of merit.

Aggrieved by the decision of the DLHT, the applicant appealed to this court vide Misc. Land case Appeal No. 6 of 2015 which ended being dismissed with costs for want of merit.

On 04/01/2016, Mr. Joseph Bitakwate, learned advocate who represented the applicant in Appeal No 6 of 2015 drew and filed a Notice of Appeal vide ERV No. 191448. It is alleged that, thereafter, the applicant became sick and lost sense of making follow-up of his case but later on, the applicant in his endeavor to pursue his rights, had filed in this court's registry Misc. Land Application No. 47 of 2021 which was withdrawn on 06/10/2021 on the ground of technicality, hence this application.

When this application was called on for hearing, the applicant was represented by Mr. Alli Chamani, learned advocate. The learned counsel adopted his affidavit to form part of his submission. He submitted that, the reasons for this application have been stated in paragraph 5, 7 and 8 of his affidavit. sickness, technical delay and illegality.

On the issue of sickness, the learned counsel submitted that, the Medical report attached to the affidavit as "A" recorded that the applicant was attended at Rweye Community Based Mental Health-Karagwe on 14/12/2015, where it was found that he had mental problems which started three (3) days before the date in which he was sent to hospital.

As regard the issue of technical delay, the learned counsel relied on the days spent by the applicant prosecuting Misc. Land Application No. 47 of 2021 which was filed, in court on 25/05/2021 and ended being withdrawn on 06/10/2021 with leave to re-file and 15/10/2021, the present application was filed.

As regard, the issue of illegality, Chamani submitted, that the trial tribunal had no jurisdiction to determine the suit for want of recording the members per every sitting and disclosing their genders, and that the 1<sup>st</sup> appellate tribunal did not properly involve assessors in the determination of the appeal for failure to record the opinion in the proceedings apart from referring them in the judgment. To support his argument, he referred this court to the case of **Mariam Madadi versus Hadja Kihemba**, Misc. Land Case appeal No. 16 of 2019.

Having considered submission and affidavit in support of the application, it is now pertinent to address main issue in this application as it appears in first page of this ruling. Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R: E 2019 which provides that;

*"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time** for giving notice of intention to appeal*

*from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired"*

It is settled that an application for extension of time can only be granted upon the applicant adducing good cause or sufficient reason(s) for delay. This principle was clearly stated in **Mumello v. Bank of Tanzania** [2006] E.A. 227 that,

*"... an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause"*

In **Regional Manager TANROAD Kagera versus Ruaha Concrete Company Ltd**, Civil application No. 96 of 2007 CAT (unreported) the court held that;

*"The test for determining an application for extension of time is whether the applicant has established some material amounting sufficient or good cause as to why the sought application is to be granted.*

What amounts to sufficient cause or good cause is not defined in the statutes. However, in the case of **Lyamuya Construction versus Board of Registered Trustees**, Civil Application No.2 of 2010 CAT (Unreported), factors to be considered before granting or refusing extension of time are; whether the applicant has accounted all days delayed, whether the delay is inordinate or not, whether the applicant has shown diligence, and not apathy negligence or sloppiness in prosecution of the action that he intends to be

taken. Last but not least, if the court feels that there is any point of law of sufficient importance such as the illegality involved in the decision sought to be challenged.

Furthermore, the court of appeal of Tanzania in the case of **Masalu versus Tanzania Processing Ltd**, Civil Application No. 13 of 2020 held that-

*"What constitute good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one, is dependent upon a party seeking extension to prove the relevant material in order to move the court to exercise its discretion".*

Generally, from the herein above Court of Appeal authorities, it can be learnt that extension of time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the court. That, the law does not set any minimum or maximum period of delay. The applicant must give valid, clear and sufficient reasons upon which the discretion can be favorably exercised.

In the instant application, it is apparent that the decision of this court in Misc. Land case Appeal No. 6 of 2015 was delivered on 03/12/2015. The copy of judgment was annexed to the affidavit as **"A"**. It is also true that the date of filing the Notice of Appeal expired on 3/01/2016 but the applicant through Advocate Bitakwate filed the Notice of Appeal, on 04/01/2016, which means, the same was filed out of time.

The records show that, from there, the applicant remained silent until 25/05/2021 when Application No.47 of 2021 was filed. In other words, he

remained silent for a period of five (5) years, four (4) months and three (3) weeks.

It is common knowledge that, time bar limits the right to seek judicial redress. It serves an important purpose in that it prevents inordinate delays which may be detrimental to the interest of justice. It is the submission of the learned advocate for the applicant that the applicant was sick. The report which was attached to the affidavit of the learned counsel was dated 07/05/2021. There is always a principle that each case has to be looked its circumstances and facts. In the present application, it goes without saying that the medical report is dated 07/05/2021 and few days later, application No.47/2021 was filed, and later on, the present application. In absence of the medical attendance chart showing the date in which the applicant was sent to hospital, and his continuance attendance to Hospital from, 14/12/2015, it is not easy to rule out that the applicant was sick for the whole period of time, and that he was really prevented by the said sickness from taking the necessary action promptly.

It is settled that in the application for extension of time, the Applicant is required to account for every day of delay. In the case of **Bushiri Hassan versus Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, Court of Appeal, (unreported), the Court held that:

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

Furthermore, the medical report does not show whether the applicant was an out-patient or otherwise. Also there was neither affidavit of the relative who

was alleged to have escorted the applicant to hospital on 14/12/2015 nor an affidavit of the Medical Practitioner who attended the applicant in alleged period of time.

As regard the issue of technical delay, it is a position of law that the same constitute a ground for extension of time. See **Fortunatus Masha versus William Shija and Another** [1997] TLR 154, **Vodacom Tanzania Public Co. Ltd versus Commission General (TRA)**, Civil Application 465 /20 of 2019, **Hamis Mohamed** (As administrator of the estate of the late Risasi Ngawe) **versus Mtumwa Moshi** (As the Administratrix of the estates of the late Moshi Mdale), Civil Application No.107/17 of 2019, **Director General LAPF Pensions Fund versus Pascal Ngalo**, Civil Application No. 76/08 of 2018, and **Emmanuel R. Maira versus The District Executive Director of Bunda District Council**, Civil application No. 66 of 2010. In the case at hand, technical delay covers the period from 25/05/2021 when Miscellaneous Application No. 47 of 2021 was filed and 06/10/2021 when the same was withdrawn. The present application as per court record was filed on 15/10/2021, that is to say; 8 days from the date in which the former application was withdrawn. In other words, the present application was promptly filed. However owing to the reason that each day of delay prior to the filing Application No. 47 of 2021 was not accounted for, technical delay in this case, cannot in itself justify grant of extension of time.

The last ground rose for extension of time is illegality. There is no doubt illegality is sufficient reason for extension of time as it was held in **Principal Secretary Ministry of Defence and National Service V. Devram Valambai** [1992] TLR. 185 at page 189.

However, it should be noted that, illegality is not a reason constituting delay in filing an appeal, but rather a legal mistake which ought to be corrected by an Appellate Court for purposes of putting right and rectify the position of the law. See **Stade Mwaseba versus Edward Mwakatundu**, Misc. Land Application No. 19 of 2019, HC- Mbeya, (Unreported).

Another thing to be noted about illegality as a ground for extension of time is that, it must be apparent on the face of record that need not to be discovered by long drawn argument. See **Efrasia Mfugile versus Andrew J. Ndimbo and Another**, Civil Application No. 38/10 of 2017, CAT (Unreported).

Paragraph 8 of the affidavit reads;

*"That, the proceedings and judgment of the lower tribunals which are annexed here under, had illegality to be rectified by the Supreme Court..."*

The judgment of the Ward Trial tribunal was signed four members namely; **Julius Bwama, Selestina Justinian, Leticia Justinian and Samwel Msambazi**, as members who heard the matter. In the District Land and Housing Tribunal, The Hon. Chairman in his judgment at page 8 indicated that he sat with members as required by the law though he differed with their opinion for the reasons stated in the judgment of the DLHT. Upon careful perusal of the proceedings and judgment of the trial tribunal and, as well as the judgment of the appellate Tribunal. I am convinced that the alleged illegalities are not apparent on the face of record (if any) they can be discovered by a long drawn argument or process. That is a reason why the alleged illegalities were not part of the grounds of appeal both in the 1<sup>st</sup>



appellate court and the High Court. It is common understanding that it is in the interest of justice that litigation should come to an end.

From what I have endeavoured to discuss above, this application is dismissed in its entirety for want of merit. Considering, the fact that the same was heard exparte. I give no order as to costs.

Dated at Bukoba this 9<sup>th</sup> day of September, 2022.



E. L. NGIGWANA

JUDGE

09/09/2022

Ruling delivered in Chamber this 9<sup>th</sup> day of September, 2022, in the presence of the Hon. E. M. Kamaleki, Judges' Law Assistant, and Ms. Tumaini Hamidu, B/C, but in the absence of both parties including Mr. Alli Chamani, learned advocate for the applicant, though the advocate was aware of the ruling date.



E. L. NGIGWANA

JUDGE

09/09/2022