

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

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**MISC. LAND APPEAL NO. 8 OF 2022**

*(Arising from Misc. Land Application No. 44 of 2020 at the District land and Housing Tribunal for Karagwe at Kayanga)*

**GENEVIVA NTIMA.....APPELLANT**

**VERSUS**

**JEREMIA KAMUGISHA .....RESPONDENT**

**JUDGMENT**

*29/08/2022 & 16/09/2022*

**E. L. NGIGWANA, J.**

The appellant herein seeks to challenge the decision of the District land and Housing Tribunal (DLHT) for Karagwe at Kayanga in Land Application No. 44 of 2020 delivered on 16/09/2021; refusing him an extension of time to appeal against the decision of Rutunguru Ward Tribunal in Civil Case No. 20 of 2015 handed down on 19/05/2015.

The record has it that, sometimes in 2015 the respondent Jeremia Kamugisha instituted Civil case No. 20 of 2015 against the appellant Geneviva Ntima before Rutunguru Ward Tribunal claiming the land in dispute under the pretext that he inherited the same from his deceased father namely Thomas Ruhindi.

Following non-appearance of the appellant, the matter proceeded ex parte and eventually decided in favour of the respondent (Jeremia Kamugisha).

The decision was not challenged by the appellant (Geneviva Ntima), instead, she filed a fresh matter in the District Land and Housing Tribunal. The matter was registered as Land application No. 7 of 2015. The matter

The matter was registered as Land application No. 7 of 2015. The matter was over the same piece of land whose dispute was resolved exparte at Rutunguru Ward Tribunal vide Civil Case No. 20 of 2015. The said fresh suit ended being dismissed on 03/08/2015 after being found that it was res-judicata to Civil Case No. 10 of 2015.

In 2016, the Respondent Jeremia Kamugisha lodged an application for execution of unchallenged exparte decision in Civil Case No. 20 of 2015. The application was registered as Misc. Application No. 111 of 2016. It is unfortunate that the same DLHT which dismissed the appellant's suit No. 7 of 2015 on the ground that it was res-judicata to Civil Case No. 20 of 2015 nullified the Ward tribunal's decision on the ground that it was irregular.

Aggrieved by the decision of the DLHT which nullified the Ward tribunal's decision, the respondent Jeremia Kamugisha preferred an appeal to this court which was registered as Misc. Land Case Appeal No. 52 of 2017.

After hearing of the appeal, this court (B.S. Masoud, J) in its ruling handed down on 31/03/2020, quashed and set aside the decision of the DLHT. The court further directed the Hon. Chairman of the DLHT to proceed with application for execution in accordance with the law.

Few days later, that is to say: on 17/04/2020, the Appellant Geneviva Ntima lodged an application for extension of time within which to appeal out of time against the decision of Rutunguru Ward Tribunal in Application No. 20 of 2015. She raised the grounds of **sickness, technical delay and illegality** for extension of time.

After hearing the Application, the DLHT dismissed the application for being unfounded and time barred.

Part of the ruling reads.

*"Ni maoni ya Baraza hili kuwa maombi haya nimatumizi mabaya ya mchakato wa mahakama (abuse of court process). Yalitakiwa yafunguliwe miaka mitano iliyopita badala ya kuleta maombi Na. 07/2015. Aidha sio kila mara mdaawa anaweza kufungua maombi katika muda wowote anaojisikia. Ni maoni ya Baraza hili kuwa maombi haya yameletwa nje ya muda wa kisheria wa siku 60 kinyume na aya ya sura ya 89 iliyoboreshwa 2019. Mwisho, **maombi haya yamefukuzwa kwa sababu hayana msingi, na yako nje ya muda kisheria.**"*

*J.Y. C. Banturaki,*

*MWENYEKITI*

*16/09/2021*

Aggrieved by the decision of the DLHT, the appellant has knocked the doors of this court clothed with four (4) grounds of appeal which were coached as follows:-

- 1. That, the Honorable Chairperson erred in law for failure to take into account the fact that the respondent being a biological child of the appellant, he was claiming the land which forms part of the estates of the husband of the appellant, and for that case, there was a serious legal issue on the locus standi of the respondent and that among other reasons advanced by the appellant, such legal issue in itself, constituted a valid reason on part of the appellant in granting her an extension of time to appeal against the judgment of the ward tribunal which was issued without her knowledge.*

2. *That, the Honourable Chairman erred in law for not allowing the application on the basis that it was out time while the said application was brought under leave for extension of time.*
3. *That, the honourable chairperson erred in law for failure to take into consideration the fact that the appellant had accounted for each and every day of delay leave in filing the said intended appeal.*
4. *That, the Honourable Chairman erred in law for not taking into consideration the fact that among other things, the appellant delayed in filing the appeal in time due to the fact that she was sick for a long time and she had also been prosecuting in good faith another civil proceedings against the respondent in the same District Land and Housing Tribunal for Karagwe and later in the High court of Tanzania at Bukoba though the said proceedings were not entertained by the courts due to want of jurisdiction.*

Wherefore, the appellant is praying that the orders of the DLHT for Karagwe in Misc. Land application be set aside, the appellant be granted leave to file the appeal out of time against the judgment in Civil Case No. 20 of 2015 of Rutunguru Ward Tribunal, costs of this appeal and any other relief the Hon. Court may deem fit and just to grant.

At the hearing of this application, the applicant had the legal services of Mr. Samwel Angelo learned advocate while the respondent appeared in person, unrepresented.

Arguing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal, Mr. Angelo submitted that an affidavit supporting the application filed before the DLHT contained three grounds for extension time namely; sickness, illegality and technical

delay, but the Hon. Chairman instead of confining himself to determine whether the appellant had advanced sufficient cause for extension of time, he emerged with a different thing, and that he did not even consider submissions made before him.

He added that, there is no dispute that the Appellant was out of time that is why she filed application from extension within which to appeal out of time. He added that it was not justifiable for the Hon. Chairman to rule out that the application was out of time. Mr. Angel ended his submission urging this court to step into the shoes of the DLHT and consider the reasons advanced for extension of time together with submission made by the parties.

On his side, the respondent asked this court to dismiss this appeal with costs for want of merit. He added that his advocate has submitted in the DLHT why extension of time should not be granted.

Having heard both parties, and upon perusal of the record of the DLHT and the grounds of appeal, the issue before me for determination is whether this appeal has merit.

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".*

However, such discretion has to be exercised judicially. In the instant matter, the appellant before the DLHT raised three grounds for extension of time; **sickness, technical delay and illegality**. Mr. Danstan Mutagahywa, learned advocate who represented the applicant now appellant in the DLHT submitted on the grounds of technical delay, sickness and illegality. Mr. Raymond Laurent, learned advocate who appeared for the respondent in the DLHT made the reply on all three grounds. Page 7-12 of the typed proceedings contain submissions by the parties.

It is very unfortunate that the grounds advanced in applicant's founding affidavit supporting the application for extension of time were not addressed and considered as required by the law. The ruling which is the end product of the court proceedings does not reflect the grounds advanced in applicant's founding affidavit supporting the application as well as submissions made by the parties.

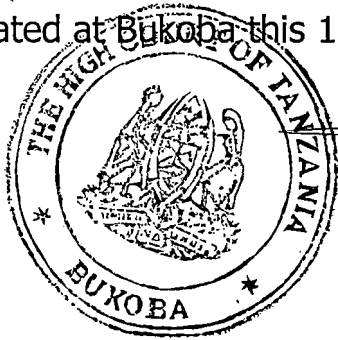
It should be noted that there are factors to be considered before granting or refusing extension of time as stated in the case of **Lyamuya Construction versus Board of Registered Trustees**, Civil Application No.2 of 2010 CAT (Unreported), whether the applicant has accounted all days delayed, whether 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.

The ruling of the DLHT was composed without considering the herein above factors. In other words, the DLHT did not discharge its duty according to law. Under the circumstances of this case, the ruling of the DLHT does not qualify to be termed a ruling. In the event, I have no other option but to nullify it as I hereby do. The ruling of the DLHT in Application No.44 of 2020 together with the drawn order both dated 16<sup>th</sup> day of September, 2021 are hereby quashed and set aside.

The case file is remitted back to the DLHT for a fresh Ruling to be recomposed by the Hon. Chairman who presided over the matter or his successor.

Dated at Bukoba this 16<sup>th</sup> day of September, 2022.

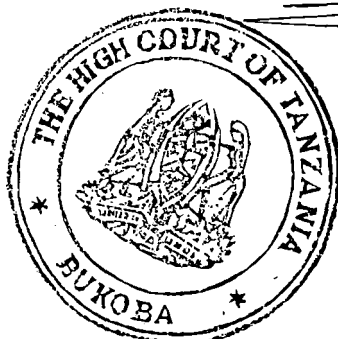


E.L. NGIGWANA

JUDGE

16/09/2022

Judgment delivered this 16<sup>th</sup> day of September, 2022 in the presence of the appellant and her advocate Mr. Samwel Angelo, Respondent in person, Hon. E.M. Kamaleki, Judges Law Assistant and Ms. Tumaini Hamidu, B/C.



E.L. NGIGWANA

JUDGE

16/09/2022