

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

MISC. LAND APPLICATION NO. 36/2022

*(Arising from the Judgment of the High Court in Land Case Appeal No.9/2020
Hon.Kilekamajenga J, and original Application No.9/2012 DLHT for Kagera at Bukoba)*

MAGONGO JUSTUS APPLICANT

VERSUS

PRISKILA MWAINUNU..... RESPONDENT

RULING

06/09/2022 & 22/09/2022

E.L. NGIGWANA J,

Before me is an application for extension of time filed by the Applicant under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] within which to file an application for leave to appeal to the Court of Appeal of Tanzania.

The accompanying Affidavit sworn by the applicant presents the reasons for delay of the applicant to file an application for leave to appeal to the Court of Appeal in time. The said affidavit which was also adopted by the applicant's counsel touched on the brief history of this matter. Paragraph 2 and 3 of the Applicant's affidavit which was not countered by the respondent, aver that the matter originates from Land case appeal No.9 of 2020 whose decision was delivered on 16th October,2020 in favour of the respondent. The record has it that the said appeal

sought to challenge the original Land Application No. 9 of 2012 delivered by the DLHT for Kagera at Bukoba.

When the applicant was aggrieved by the said High Court decision, he promptly filed the Notice of appeal to this court on 21st October, 2020 and applied for necessary documents for the purpose of preparation of record of appeal. The applicant had previously filed the applications of this nature but they were withdrawn on technical grounds.

When the matter came for hearing, Advocate Frank Karoli who stood for the applicant adopted the applicant affidavit by reiterating what was averred in paragraph 5 and 6 that the reason for delay is on technical delay which is the established sufficient ground/cause for delay to warrant extension of time. He buttressed his stance with the Court of Appeal case of **the Director General LAPF Pension Fund vs Pascal Ngalo**, Civil Application No. 76/08 of 2018, CAT at Mwanza.

Mr, Frank Karoli therefore concluded that the applicant lodged the Notice of appeal in time and the application has no any prejudice on the part of the respondent since the application for leave is the matter of procedure set by the statute and that an aggrieved party must seek leave first before lodging an Appeal to the Court of Appeal and since time requisite to file it had already elapsed, hence the current application.

In reply, Mr. Alli Chamani, advocate who represented the respondent had nothing to object the application given the circumstances that the respondent did not file a counter affidavit. He therefore supported the application.

Having considered the duo submissions from both parties and the record in this application, I have one task to determine of whether the applicant has demonstrated sufficient cause to warrant this court to grant extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania. Both parties' counsels are at one that the applicant has so demonstrated.

It is trite that the decision to grant or refuse extension of time hinges on the discretion of the court to do so and such discretion is controlled by the established principle that the decision should be exercised so judiciously after weighing whether the demonstrated reasons to have extension granted amounts to sufficient cause. However, the term sufficient cause is not defined by any statute save the attempts through various case law to propound it.

Sufficient cause as par the applicant's counsel in this case is technical one, I perused the record and found that, in this court before Kilekamajenga, J the decision which the applicant seeks to challenge was delivered on 16/10/2020 which is Land Case No.9/2020 and the applicant promptly filed the Notice of Appeal on 21/10/2020 thus it is apparently clear that the Notice of Appeal was filed within time to the Court of Appeal of Tanzania.

It is trite that after filing a Notice of Appeal to the Court of Appeal, one needs to obtain from this court leave to appeal to the Court of Appeal in the case like the current one. It is also undisputed fact that the applicant had previously attempted to file three applications seeking extension of time to file application for leave to appeal to the Court of Appeal but all

were withdrawn on diverse dates on 27th, July 2021, 13th December, 2021 and 8th March, 2022 due to technical grounds.

The glaring issue now is whether the time spent by the applicant prosecuting the applications which were withdrawn under the guise of technical grounds is the sufficient cause to warrant extension of time?

The applicant proposes that technical delay constitutes sufficient cause for delay and has referred this court by the Court of Appeal case in **the Director General LAPF Pension Fund versus Pascal Ngalo** (Supra). The respondent also supports the applicant's position.

Just like in the referred case by the applicant, the same Court of Appeal of Tanzania confronted with similar situation in the case of **Fortunatus Masha versus William Shija and Another** [1997] TLR, 154, the Court had had this to say:

"With regard to the second point, I am satisfied that a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalised by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact, in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal.

I am alive that the above quoted case concerned the striking out the appeal and not application for leave to appeal like in our case but both cases boil down on time spent to prosecute suits/cases withdrawn or struck out under technical grounds.

Equally too, I am also alive that in the instant case, the applications were withdrawn but the authority I have referred and quoted above and fortified with; the appeal was struck out. Nonetheless, both orders are the same in the aspect that they intended the applicants/appellants to come afresh and taking necessary steps to pursue their intended goal. I am therefore of the respected view that technical delays are excusable and differentiated from real and actual delays.

Much being said, I now hold that the applicant has managed so sufficiently to demonstrate sufficient cause for delay to warrant this court to have time extended for him to file an application for leave to appeal to the Court of Appeal of Tanzania.

The application for extension of time to file an application to appeal to the Court of Appeal of Tanzania is hereby granted. The applicant should file such application within 14 days from the day of this order. No orders to costs.

Order accordingly.

Dated at Bukoba this 22nd day of September, 2022

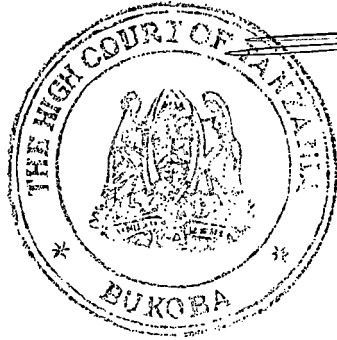


E.L. NGIGWANA

JUDGE

22/09/2022

Ruling delivered in chambers this 22nd day of September, 2022 in the presence of Hon. E.M. Kamaleki, Judges' Law Assistant, Ms. Tumaini Hamidu, B/C but in the absence of the parties and their advocates, though their advocates were aware of the ruling date.



E.L. NGIGWANA

JUDGE

22/09/2022