

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

MISC. LAND APPLICATION NO. 66 OF 2019
(Arising from Application No. 46 of 2015)

BRIGHTON LAUREAN.....APPLICANT

VERSUS

PISI KAMUKURU.....RESPONDENT

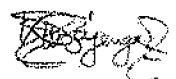
RULING

23rd September & 03rd October 2022

Kilekamajenga, J.

The instant application was preferred under **section 14(1) and 21(1) of the Law of Limitation Act, Cap. 89 RE 2019** where the applicant sought leave of this court to enlarge time to file an appeal. The application was brought by way of chamber summons accompanied with an affidavit deposed by the applicant. This court invited the parties to fend the application. The applicant appeared in person and enjoyed the legal services of the learned advocate, Mr. Alli Chamani whereas the respondent appeared in person and without representation.

When prompted for an oral submission, Mr. Chamani for the applicant informed the court that, the applicant used a wrong forum in pursuit of his rights against an exparte judgment/ruling delivered by the District Land and Housing Tribunal



on 05th January 2016. He submitted further that, the respondent filed application No. 46 of 2015 in the District Land and Housing Tribunal at Bukoba which was decided on 05th January 2016 in absence of the applicant. As a result, the applicant filed application No. 46 of 2016 in the District Land and Housing Tribunal praying to set aside the exparte judgment. That application was struck-out on 18th January 2017.

Thereafter, the applicant appealed to this court vide Land Case Appeal No. 05 of 2019 which was heard by the Resident Magistrate with extended jurisdiction through Land Case Appeal No. 5 of 2019 and the appeal was dismissed for lack of merit. The applicant went back and filed the instant application seeking leave to challenge the exparte judgment which was delivered on 05th January 2016. Mr. Chamani was of the view that, the applicant's delay was technical and under **section 21 of the Law of Limitation Act**, the time spent by the applicant pursuing his rights in the wrong forum should be excluded. To support his argument, the counsel cited the case of **Elibariki Asseri Nnkyo v. Shifaya Mushi and Another [1988] TLR 81**.

Mr. Chamani went further arguing that there is an illegality in the proceedings of the trial tribunal and that the judgment is not worthy of its name. The said judgment violated Regulation 20(1) of the GN 174 of 2003 which requires the

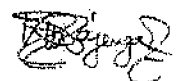


judgment to state the facts, findings on the issues, a decision and reasons for the decision. He invited the court to consider the decision in the case of **Ruta S. Nelson v. Attorney General and Another [2000] TLR 144**. He urged the court to allow the application.

On her side, the respondent had a brief submission that, the applicant was silent until the matter went for execution. She was content that the matter was heard by this court and decided accordingly.

Thereafter, there was no rejoinder from the counsel for the applicant.

Having considered the submissions from both sides, I am aware, this is an application for extension of time for the applicant file an appeal albeit out of time. It is already a settled principle of the law that extension of time is the discretion enjoyed by the court. The discretion is always exercised after the applicant has advanced sufficient cause or good reason for the delay. See, 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.**

However, the court must exercise this discretion judiciously upon finding good reason or sufficient reason for the delay. However, there is no comprehensive definition of what amounts to good reason for the delay. The court, therefore, must gauge a number of reasons to determine whether the reason advanced by the applicant is sufficient to constitute good reason for the delay. In the case of **Tanga Cement Co. v. Jummanne Masangwa and Another**, Civil Appeal No. 6 of 2001 (unreported) the Court of Appeal of Tanzania had this to say:

'This unfettered discretion of the court, however, has to be exercised judicially, and the overriding consideration is that there must be 'sufficient cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly: the absence of any valid explanation for the delay: lack of diligence on the part of the applicant.'

In this case, the applicant alleged that he was pursuing his rights in this case, albeit through a wrong forum hence, according to Mr. Chamani, it is a good reason for extension of time. The perusal of the record shows that the decision intended to be challenged was an *ex parte* judgment delivered on 05th January



2016. Thereafter, the applicant applied to set aside the *ex parte* judgment but, his application was struck out on 18th January 2017. Instead of filing an appropriate application before the court, the applicant lodged an appeal before this court vide Land Case Appeal No. 2 of 2017. The same appeal was assigned for determination before the Resident Magistrate with extended jurisdiction through Land Case Appeal No. 5 of 2019. The appeal was finally dismissed for want of merit on 18th July 2019. The applicant lodged the instant application on 26th August 2019 but, he did not prosecute this application for almost two years until it was dismissed for want of prosecution on 03rd February 2021. He applied for the application to be re-admitted and the prayer was granted on 30th September 2022.

It is obvious that, the applicant has been in court's corridors for almost seven years without properly prosecuting his case. On the other hand, the respondent has been waiting for her rights for all that time. In my view, the applicant has been negligent in prosecuting this matter. The applicant might be employing some delaying tactics for the reasons only known to him. Under the law, any negligence committed by the advocate in prosecuting a case does not amount to good cause or sufficient reason for the court to enlarge time. See, cases of **Transport Equipment Ltd Versus D.P. Valambhia [1993] TLR 91 (CA); Umoja Garage Versus National Bank of Commerce [1997] TLR 109 (CA)**

and **Inspector Sadiki and others Versus Gerald Nkya [1997] TLR 290 (CA)**. I also find the same principle of the law should apply for a party who negligently roams in the court's corridors without following the required procedures and then comes back to apply for extension of time. The law should prevent parties who just want to spend their time in courts without any serious issues for determination.

Furthermore, in the case of **Bushiri Hassan v. Latifa Lukio Mashayo** the Court of Appeal of Tanzania stated that:

'...a day of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.'

Applying the above principle of the law to this case, the applicant has failed to account for each day of delay in prosecution his case since in 2016.

In this application, the applicant advanced illegality as the reason for the application of extension of time. I am alive, the allegation of illegality is sufficient reason for the delay. This principle of the law was stated in the case of **Principal Secretary, Ministry of Defence and National Service Versus Devram P. Valambilia [1992] TLR 185** that:

"We think that where, as here, the point of law at issue is the illegality of or otherwise of the decision being challenged, that is of sufficient reason" Within the meaning of Rule 8 of the Rules for extension of time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand...in our view when the point at issue is one challenging 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 be established, to take appropriate measures to put the matter and the record right."

Also, in the case of **VIP Engineering and Marketing Limited v. Citibank (T) LTD**, Consolidated Civil Reference Nos. 6, 7 and 8 of 2006 (unreported), the Court of Appeal of Tanzania 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.'

However, in my view, not every allegation of illegality should warrant the court to extend time. Applying this principle of the law without reservations is likely to invite parties who lost their cases some years ago who just want to see the court's rooms but have no interest in seeking rights. Of course, I understand, this being an application for extension of time, I have no reason to decide whether the case has merit but I cannot close my eyes on the nature of the

dispute. I have generally considered the genesis of the dispute and reasons advanced for the delay, I find no reason to allow the extension of time. An extension of time should not be a leeway for matters which a party uses to prevent the other party from enjoying his/her rights. For the reasons stated above, I hereby dismiss the application with costs. Order accordingly.

DATED at BUKOBA this 03rd day of October, 2022.




Ntemi N. Kilekamajenga.
JUDGE
03/10/2022

Court:

Ruling delivered this 03rd October 2022 in the presence of the parties all present in person. Right of appeal explained to the parties.




Ntemi N. Kilekamajenga.
JUDGE
03/10/2022

