

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)  
AT KIGOMA**

**MISC. LAND APPLICATION NO. 18 OF 2022**

(Arising from Land Appeal No. 56/2017 of Kigoma District Land and Housing Tribunal  
for Kigoma at Kigoma, Original Dispute No. 19/2016 of Msambala Ward Tribunal)

**MTABAZI ADAMU CHALUKULA .....APPLICANT**

**VERSUS**

**BODI YA WADHAMINI JIMBO LA KATOLIKI KIGOMA ..... RESPONDENT**

**RULING**

7/10/2022 & 21/10/2022

**L.M. Mlacha,J**

This application is made under section 41(2) of The Land Disputes Courts Act, cap 216 R.E. 2019. It was filed by Mtabazi Adamu Chalukula (hereinafter referred to as the applicant) against BODI YA WADHAMINI JIMBO KATOLIKI KIGOMA (hereinafter referred to as the respondent). It is seeking for the following orders: -

a) That the Honourable High Court of Tanzania, at Kigoma may be pleased to extend the prescribed time for appealing against the decision of the District Land and Housing Tribunal in Land Appeal No. 56/2017.

b) That costs of this application abides with this application.

Reasons upon which the application is based are contained in para 2,3 and 4 (i) to (v) of the affidavit supporting the application. They are reproduced as follows for easy of reference:

*"2. That the judgment of the 1<sup>st</sup> appellate Tribunal was delivered in my presence but the supply of certified copies of judgment was delayed extensively as the judgment thereof was issued to the Applicant on 11/02/2021 and decree I appeal was issued upon my Advocate on 30/06/2021 in my absence as I was searching for traditional healers in respect of my son in Bariadi region.*

*3. That as soon as my appeal had become ready for appeal to the High Court of Tanzania, Kigoma District Registry, at Kigoma as a 2<sup>nd</sup> appeal purposes on 30/06/2021 I was facing family problems and was not available within the jurisdiction of the court for quite a long time also much so that 20<sup>th</sup> day of February, 2022 my Advocate swore an affidavit, drawn and filed a chamber summons which was struck out for bearing hear say evidence; Hence this affidavit.*

*4. That the cause of my delay in appealing against the Decree of the 1<sup>st</sup> appellate Tribunal is attributed to the following facts, among others, Namely:-*



- i. *That from the month of May, 2021 to April, 2022 the Applicant was away from the Jurisdiction of this High Court of Tanzania in BARIADI region.*
- ii. *That the decision of the trial Ward tribunal was illegal for the secretary of the Ward Tribunal participated in giving out the judgment.*
- iii. *That the seller of the disputed land one JOHN KAYANDA was wrongly made a witness instead of being joined as a party respondent (a third party) to the proceedings rendering the proceedings thereof a "nullity"*
- iv. *That the 1<sup>st</sup> appellate Tribunal acted upon hearsay evidence in that the disputed land had a certificate of occupancy which was not tendered in evidence and the trial Ward Tribunal did not visit the locus in quo.*
- v. *That the 1<sup>st</sup> appellate District Tribunal acted in bad faith for failing to visit the locus in quo, which is well fenced."*

The respondents opposed the application and filed a counter affidavit in opposition. With leave of court, hearing was done by written submissions. Both Mr. Ndayanse for the applicant and Mr. Kabuguzi for the respondent filed the submissions in time. In his short submissions, Mr. Ndayanse told the court that the delay in lodging the appeal was caused by; i) the delay in getting copies of the judgment and decree, ii) the conduct of an incompetent application before the court, iii) family problems and iv)



illegalities in the decision of the DLHT. Counsel submitted that the decision was delivered on 11/11/2019 but the applicant got copies of the decision and decree on 11/2/2021 and 30/6/2021 respectively. He then lodged the incompetent application on 28/2/2022 which held him in court up to 20/4/2022. He went on to say that he had family problems which put him out of the jurisdiction of this court from June 2021 up to June 2022. He added that the decision of the DLHT has an illegality calling the attention of this court.

Mr. Kabuguzi resisted the application strongly. He told the court that the defence that the applicant could not get a copy of judgment and decree in time is unfounded for lack of supporting documents. Counsel submitted that it was important to attach a letter addressed to the tribunal requesting for copies of judgment and decree for appeal purposes and a response from the tribunal. Mere words are not enough. He proceeded to say that it was not enough to claim family problems without further details. He went on to say that the applicant has failed to account for each day of delay making the application incompetent. He referred the court to **Safari Petro v. Boay Tremu**, Civil Application No. 320/2017. He proceeded to say that it was not correct to say that there is an illegality in the records



without particulars. He found the point as a misconception. He added that if there is any illegality it is defeated by the inordinate delay. Counsel referred the court to **Chuki Ibrahimu Masala v. Dotto Dunia Musa**, Miscellaneous Land Application No. 29/2021 as his authority on this aspect.

I have examined the pleadings and submissions closely. With respect to Mr. Ndayanse, I have seen no good cause upon which extension of time can be granted. In principle courts have discretion in deciding whether or not to grant extension of time. However, such discretion must be exercised judiciously, meaning that sufficient reasons must be given before extension of time is granted. The most persuasive reason that the applicant can show is that such delay has not been caused or contributed to by dilatory conduct on his part. **See Mohamed Hamisi Mawa (the Administrator of the estate of the late Hamisi Hassan Mawa) v. Selemani Omari Kikwala and another** Miscellaneous Land Application No. 51 of 2013(Kibela J. rtd) **Shanti v. Hindiche & Others** [1973] E.A.207.

The applicant says that he could not lodge the appeal without copies of the judgment and decree. He could not get them in time. I agree that without those documents he could not be able to lodge the appeal. But, how can we be able to know that he could not be given the judgment and decree in



time without any tangible evidence. As correctly pointed out by Mr. Kabuguzi, he was supposed to attach copies of letters requesting for the supply of the documents for appeal purposes and or any letter from the DLHT promising to release or releasing the documents. He had none. He came with mere words. I am not in a position to accept mere words. He also spoke of family problems. This can be a good cause if well presented, but he could not establish the details. It was important to give some documents showing the problem making reference to the particular period of time. There was no such a thing in this case. He spoke of illegalities in the records of the lower court. He said that the secretary of the ward tribunal participated in the proceedings, the seller one John Kayanda was not made a party, the case is based on hearsay evidence, the title deed could not be tendered and lack of visit of the locus in quo. I think these are the grounds of appeal. They should not be used as a peg upon which time may be extended. Instead of spending time to narrate his grounds of appeal, the applicant was supposed to make an account for each day of delay as required by the law. He could not do so making the application baseless.

That said, the application is found to be devoid of merits and dismissed with costs. It is ordered so.



**L.M. Mlacha**

**Judge**

**21/10/2022**

**Court:** Ruling delivered. Right of Appeal explained.



**L.M. Mlacha**

**Judge**

**21/10/2022**