

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

MISC. CIVIL APPLICATION No. 35 OF 2022

(Originating from the High Court in (PC) Civil Appeal No. 75/2001 and from Muleba District Court in Appeal No. 10/2001 and Originating from Muhutwe Primary Court in Civil Case No. 32/1998)

ANDREW RWEIKILA.....APPLICANT

VERSUS

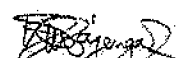
NOVATUS TEGARUGABA COELESTINUS.....RESPONDENT

RULING

21st October & 21st October 2022

Kilekamajenga, J.


The applicant and the respondent's father have been in court corridors since 1991 contesting over a piece of land which was sold by the applicant's brother back in 1975. Later, the respondent's father died and the respondent took over the case. When the applicant's brother sold the land in dispute, the applicant was nine years old. Before this Court, the applicant filed an application seeking extension of time to approach the Honourable Court of Appeal for the second time in order to challenge the decision of this Court which was delivered by Honourable Judge Luanda in 2005 in PC Civil Appeal No. 75 of 2001. The instant application was made by way of chamber summons and supported with an affidavit deposed by the applicant. The application was made under **section 11 (1) of the Appellate Jurisdiction Act, cap. 141 RE 2019** and any other



enabling provisions of the law. In the affidavit, the applicant advanced illegality and technical delay as the reasons for extension of time.

When the application was called for hearing, the learned advocate, Mr. Frank John who appeared for the applicant informed this court that, the applicant appealed to the Court of Appeal vide Civil Appeal No. 304 of 2020. The same appeal was withdrawn on 24th November 2021 and everything collapsed. Therefore, the applicant preferred this application to enable him approach the Court of Appeal though out of time. Mr. Frank also raised an alarm on the illegality apparent on the decision being challenged. He finally urged the Court to allow the application. The respondent, on his part objected the application on the reason that the applicant has failed to prove whether he is the lawful owner of the land in dispute. Also, as the matter has taken over twenty four years before its final determination, the application should be denied. When rejoining, Mr. Frank for the applicant insisted that the applicant advanced sufficient cause to warrant extension of time.

In determining the instant application, I should recap the two reasons advanced by the applicant for the delay. It is evident that the parties were before the Honourable Court of Appeal in 2021 where the applicant withdrew the appeal. In case the applicant wishes to reach the Court of Appeal of Tanzania, an



application as this is pertinent. Furthermore, the applicant advanced illegality as the reason for the delay. It is already a settled principle of the law that, an allegation for illegality is a sufficient cause for the delay. This application, being among the discretions exercised by this Court, I find good reason to exercise the discretion by granting extension of time. I hereby allow the applicant to file notice of intention to appeal to the Court of Appeal of Tanzania against the decision of this Court which was delivered in 2005. The costs of this application shall follow in the course. It is so ordered.



Ntemi N. Kilekamajenga

JUDGE

21/10/2022

Court:

Ruling delivered this 21/10/2022 in the presence of the counsel for the applicant, Mr. Frank Karoli (Adv) and the respondent present in person. Right of appeal explained to the parties.



Ntemi N. Kilekamajenga

JUDGE

21/10/2022

