

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

MISC. LAND APPLICATION NO. 30 OF 2022

(Arising from Misc. Application No. 84 of 2021 and Land Case Appeal No 58 of 2020, Original Land Application No 139 of 2013 of District Land and Housing Tribunal for Kagera at Bukoba)

EDITHA CHARLES.....1ST APPLICANT

LUCIA JASSON.....2ND APPLICANT

JOACHIM PATRIC.....3RD APPLICANT

VERSUS

WILBARD RWIZA.....RESPONDENT

RULING

13/09/2022 & 31/10/2022
E.L. NGIGWANA, J.

The Applicants herein have filed the present application for extension of time within which to file an application for restoration of Land case Appeal No. 158 of 2020 which was dismissed by this court (J.M.Minde-DR) on **15/02/2021** for want of prosecution.

The application was brought under Order XLIII Rule 2 and Order XXXIX rule 19 of the Civil Procedure Code cap. 33 R: E 2019 and section 14 (1) of the Law of Limitation Act, [Cap 89 R.E 2019] accompanied by an affidavit deposed by the applicants jointly. The application was contested by the respondent through a counter affidavit sworn by Mr. Eliphaz Benges, learned advocate who was engaged for drawing only.

The background leading to this application can be stated briefly that, the respondent herein sued the applicants herein claiming that they have

trespassed to his land located at Kashekuro Hamlet, Kashozi Village, Nyakato Ward within Bukoba District in Kagera Region and demolished his house. The respondent alleged to have purchased the said land in 1989 from one Justinian Buberwa. On the other hand, the applicants herein alleged to have inherited the suit house from their deceased father in 1999. After a full trial, the DLHT on 14/04/2020, decided the matter in favour of the respondent Wilbard Rwiza. Therefore respondent was declared the lawful owner of the suit land. The 1st and 2nd applicants herein were ordered to compensate the respondent at the tune of Tsh. 500,000/=. Costs of the suit were to be paid by all respondents now applicants.

Aggrieved by the decision of the DLHT, the Applicants registered Appeal No. 58 of 2020, but the same ended being dismissed on 15/02/2021 before Minde- DR for want of prosecution.

Thereafter, the Applicants filed Application No.84 of 2021 before this court seeking for an order to set aside the dismissal order dated 15/02/2021 out of time. On 24/02/2022, the applicants through their advocate Mr. Rogate Elligy Assey prayed to withdraw Application No.84 of 2021 with leave to file a proper application. The prayer was granted, and the Applicants were given 14 days within which to file a proper application, whereas, on 05/03/2022, the present application was filed.

The reason for the delay to file an application to set aside the dismissal order has been stated in paragraph 6 of the applicants' joint affidavit that, they became aware of the dismissal order on 15/07/2021 when they were called to appear before the DLHT to show cause as why execution should not take place.

When this matter came for hearing on 30/08/2022, the respondent entered no appearance therefore it was adjourned until 13/09/2022, but yet the respondent entered no appearance therefore, the hearing proceeded in his absence. At the hearing of this application, the applicants were represented by Mr. George Rugaimukamu who prayed for the court to adopt the applicants' joint affidavit to form part of his submission. Indeed, the learned counsel reiterated the reason which has been stated in the joint affidavit supporting the application. He mistakenly went on submitting as if this was an application of restoration of the dismissed appeal.

Having considered the joint affidavit, counter affidavit and having heard submission by the learned counsel for the applicants, the issue for determination is whether the Applicants have demonstrated sufficient cause to warrant extension of time within which they can file an application to set aside a dismissal order.

This application was brought under Order XXXIX Rule 19 of the Civil Procedure Code which provides that;

*"Where an appeal is dismissed under sub-rule (2), of rule 11 or rule 17 or rule 18, **the appellant may apply to the Court for the re-admission of the appeal**; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit."*

The prayer which is contained in the chamber summons is for extension
That, this honourable court be pleased to extend time within which the applicants herein can file an application to set aside a dismissal order.

Since the prayer for restoration of the dismissed appeal was not among the prayers contained in the chamber summons, it is my considered view that, the herein above provision of law was wrongly cited. However, I am aware that wrong or non- citation of the provision of law is an irregularity, but it is no longer a fatal irregularity depending on the circumstances of each case. I have also considered the fact that Section 14 (1) of the Law of Limitation Cap 89 R.E 2019 was also cited by the applicants. The same provides that;

*"Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application**, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

It is trite 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."

In **Regional Manager TANROAD Kagera versus Ruaha Concrete Company Ltd**, Civil application No. 96 of 2007 CAT (unreported) the court held that;

"The test for determining an application for extension of time is whether the applicant has established some material amounting sufficient or good cause as to why the sought application is to be granted.

What amounts to sufficient cause or good cause is not defined in the statutes. However, in the case of **Lyamuya Construction versus Board of Registered Trustees**, Civil Application No.2 of 2010 CAT (Unreported), factors to be considered before granting or refusing extension of time are; 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.

Furthermore, the Court of Appeal of Tanzania in the case of **Masalu versus Tanzania Processing Ltd**, Civil Application No. 13 of 2020 held that-

"What constitute good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one, is dependent upon a party seeking extension to prove the relevant material in order to move the court to exercise its discretion".

Generally, from the herein above Court of Appeal authorities, it can be learnt that extension of time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the

court. The applicant must give valid, clear and sufficient reasons upon which the discretion can be favorably exercised.

In the instant matter, there is no dispute that Appeal No.58 of 2021 was dismissed for want of prosecution on 15/02/2021. Under the provision of part III item 4 of the Law of Limitation Cap. 89 R:E 2019 the time to apply for an order to set aside the dismissal order is 30 days. However, the record of this court shows that, the copy of the dismissal order was collected by the 1st Applicant **Editha Charles on 23/06/2021**. In that respect, the claim by the applicants as per paragraph 6 of their joint affidavit that they became aware on 15/7/2021 that their appeal was dismissed for want of prosecution is lie intended to mislead the court. Even if, we consider that the time to set aside the dismissal order for purposes of this case is to be counted from the date when the copy of the dismissal order was availed to the applicants, It is apparent that thirty (30) days after the supply of the copy of the dismissal order lapsed on **23/07/2021**.

It should be noted that Misc. Application No.84 of 2021 was presented for filing on **13/08/2021**. Since it is trite law that in applications for extension of time, the applicant has to account for each day of delay, the Applicants in the instant matter had the duty to account for each day of delay from **24/07/2021 – 12/08/2021**. Since, there was such failure I hold the view that, the application has not met the threshold that justifies its grant. Accordingly, the same is dismissed. Each party shall bear its costs.

It is so ordered.

Dated Bukoba this 31st day of October, 2022.



E.L. NGIGWANA

JUDGE

31/10/2022

Ruling delivered this 31st day of October, 2022 in the presence of the 2nd Applicant Lucia Jasson, Hon. E. M. Kamaleki, Judge's Law Assistant and Ms. Sophia Fimbo, B/C.



E.L. NGIGWANA

JUDGE

31/10/2022