

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. LAND APPLICATION NO. 115 OF 2021

(Arising from Land Application No. 48 of 2018, Land Appeal No. 15 of 2010, Misc. Land Application No. 37 of 2012 n ad Misc. Land Application 95 of 2016 of the HC the District Registry of Bukoba at Bukoba Land Case Appeal No 98 of 2020 originated from Application No. 156 of 2007 of the DLHT of Kagera at Bukoba)

VEDASTO PROTACE (Administrator of the estate of the late Protace) **APPLICANT**

VERSUS

JOHN JOSEPH MUGANGO (Administrator of the estate of the late Josephat) **RESPONDENT**

RULING

24/01/2022 & 04/02/2022

NGIGWANA, J.

The applicant has filed this application seeking for extension of time within which to file an appeal out of time against the judgment and decree of the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 156 of 2007 dated 12/11/2009.

The application was brought by way of chamber summons made under section 14(1) of the Law of Limitation Act cap. 89 R: E 2019 and Section 41(2) of the Land Disputes Courts Act Cap 216 R: E 2019 and supported by the affidavit sworn by the Applicant Vedasto Protace. The application was generally not opposed by the respondent.

In order to facilitate a quick appreciation of the reasons behind this application, a brief back ground is necessary. This matter originates from Land application No. 156 of 2007 of the District Land and Housing Tribunal for Kagera at Bukoba

in which Joseph Herman (now deceased) sued the Applicant Vedasto Protace for encroachment into his piece of land.

After full trial, Joseph Herman was declared the lawful owner of the suit land, hence the applicant was ordered to give vacant possession, and pay Tshs. 339,000/= to Joseph Herman being compensation of the harvested and destroyed agricultural crops and timber trees. He was also ordered to pay costs of the suit. The judgment was delivered on 12th day of November, 2009.

Aggrieved by the decision of the District Land and Housing Tribunal, the Applicant lodged an appeal to this court which was registered as Appeal No. 51 of 2010. The respondent Joseph Herman through his advocate Mr. Kabunga raised an objection that the memorandum of appeal was not accompanied by the decree, the objection was sustained, (Kibela, J as he then was) and as a result, Appeal No. 15 of 2010 was struck out on 18/06/2012 for being incompetent.

From there, the Applicant filed application for extension of time within which to file appeal out of time, and it was registered as Misc. Application No. 37 of 2015, but the same was also found incompetent because it was supported by an incurable affidavit, therefore, on 14/12/2015 it was struck out by the court (Kairo, J as she then was).

The Applicant filed a second application for extension of time within which to lodge appeal out of time, the same was registered as Misc. Land Case Application No. 95 of 2016. On 13/07/2018 the same was struck out (Kairo, J as she then was) after being found that it was supported by an incurable defective affidavit.

The Applicant knocked the doors of this court for the third time seeking for extension of time within which to lodge appeal out of time. The same was

registered as Misc. Land Case Application No. 48 of 2018 whereby the application was granted. The court (Kilekamajenga, J.) ordered the applicant to lodge the appeal within 14 days from the date of the order to wit; 26/10/2020.

The applicant complied with the court order, hence lodged the appeal to this court and it was registered as Land Case Appeal No. 98 of 2020. The objection was raised by John Joseph Mugango (Administrator of the estate of the late Joseph Herman) through his advocate Mr. Frank Karoli that the appeal is incompetent since the memorandum of appeal was not accompanied by the copies of decree and judgment. Again, the objection was sustained on the ground that the omission goes to the validity of the appeal itself. Consequently, the same was struck out.

Now, the applicant has filed the present application for extension of time within which to file appeal out of time. It is trite that anyone seeking a legal remedy has the right to knock on the doors of justice and be heard.

From the herein above historical back ground, I have learned that the applicant had been repeating the same procedural mistakes/irregularities. It was very important for the applicant to read and understand the orders or rulings of the court in order to know the reasons why his application or appeal was struck out so as not to repeat the same mistakes. Had that been done in this case, the applications of the same nature lodged by the applicant would not have been so many.

Currently, we have the overriding objective principle, sometimes referred to as the "Oxygen Principle" which was entrenched in our laws vide the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018, Act No. 8 of 2018 which requires courts to deal with cases justly and to have regard to substantive justice. In

other words, to dispense justice without being tied up with technicalities which may obstruct dispensation of justice.

However, it must be noted that the principle of overriding objective is not a panacea to every defect or omission. As held by the Court of Appeal in **Juma Busiya vs Zonal Manager, South Tanzania Postal Corporation**, Civil Appeal No.273 of 2020 (unreported);

"The Principle of Overriding Objective is not the ancient Greek goddess of universal remedy called Panacea, such that its objective is to fix every kind of defects and omissions by parties in courts".

The parties to the case therefore, must know that mandatory procedures have to be complied with and when the application or appeal is struck out, it is an ideal to read and understand the order or ruling of the court so as to avoid coming to the court with an application or appeal which will be struck out on the same ground to wit; incompetence.

With such back ground, observation and comment, it is now proper to determine the present application.

When the application was called on for hearing, the applicant appeared in person and unrepresented while the respondent had the legal services of Mr. Frank J. Karoli, learned advocate. The hearing was through oral submissions.

Submitting in support of the application, the applicant prayed to this to adopt his affidavit and form part of his submission. He briefly submitted that he had never been negligent that is why he had been knocking the court doors since 2010. He ended his submission urging the court to grant the application for the interest of justice.

Responding, Mr. Frank Karoli stated that he had time to read the applicant's affidavit but also heard his oral submission, and found no need to object the grant of this application. The applicant was invited to a brief rejoinder (if any), but had nothing to add. It is settled that 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 the case of **Mumelo versus Bank of Tanzania** [2006] TLR 227 that –

"an extension of time is entirely in the discretion 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 this application, as highlighted in above protected back ground of this matter, the applicant has been in and out of corridors of this court in search of his right of appeal. The applicant is a layperson and his actions are a clear demonstration of a person knocking the door of the justice system in search of the fate of what he believes to be just.

Taking into account the steps which had been taken by the applicant knocking the doors of this court, it is obvious that there is no real delay but what is termed as technical delay. This is a delay that arises as a result of pursuing matters that are subsequently adjudged defective or through a procedure that is wrong. Such delay is excusable in the sense that it is acceptable and constitute sufficient cause for extension of time. See **William Shija and Another versus Fortunatus Masha** [1997] TLR 213, **Yara Tanzania Ltd versus DB Shaprya and Co. Ltd**, CAT – Civil Appeal No. 498 of 2016 and **Zahara Kitindi and another versus Juma Swalehe and Others**, CAT, Civil Application No. 4 of 2005 of 2017 (both unreported) See also **Paschal Sabato versus Mariam**

Edward Mrakala, Misc. Land Application No. 24 of 2020 HC- Mwanza (unreported).

Having considered from the applicant's affidavit and his oral submission, it is my view that the Applicant has demonstrated sufficient cause to trigger exercise of the court discretion, therefore, the application is hereby granted. The applicant is given 14 days from the date of this ruling within which to file a competent appeal out of time. Given to the nature of the application, each party shall bear its own costs.

It is so ordered.




E. L. NGIGWANA

JUDGE

04/02/2022

Ruling delivered this 4th day of February, 2022 in the presence of the applicant in person, Mr. E.M. Kamaleki Judges' Law Assistant, Mr. Gosbert Rugaika, B/C but in the absence of the respondent.




E. L. NGIGWANA

JUDGE

04/02/2022