

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**MISC. LAND APPLICATION NO. 6 OF 2020**

*(Arising from High Court of Tanzania in Land Appeal No. 10 of 2019 and original Application No. 13 of 2015 Bukoba District land and Housing Tribunal)*

**ZAMLAT AYUBU..... APPLICANT**

**VERSUS**

**SAMWEL MANUMBU..... RESPONDENT**

**RULING**

08/03/2022 & 29/03/2022

**NGIGWANA, J.**

The applicant Zamlat Ayubu has lodged this application by way of chamber summons made under Section 11(1) of the Appellate Jurisdiction Act Cap. 141 R: E 2019, and supported by an affidavit sworn by her advocate Mr. Alli Chamani. In this application, the applicant is in pursuit of extension of time within which to file an application for leave to Appeal to the Court of Appeal of the United Republic of Tanzania.

The decision giving rise to this application arose from Land Appeal No. 10 of 2019 which was determined by this court (Kilekamajenga, J) on 12/03/2021 in which applicant was the respondent while the present respondent was the appellant. The brief facts of this matter are that; the respondent was allocated a Plot of land at plot No. 123 Block "A" at Nshambya Kyabitembe within Bukoba Municipality, where as he was later issued with a title Deed No. 17099 on 8<sup>th</sup> September, 2006. Thereafter, the applicant appeared

claiming that she bought the said land from James Simon on 5<sup>th</sup> June 2013 in which it was also alleged that James Simon bought it from Ibrahim Shabani on 20/06/2000. In that respect, the respondent Samwel Manumbu instituted a case against the applicant at the DLHT for Kagera at Bukoba, Application No. 13 of 2015; but the same ended being dismissed, and the applicant Zamlat Ayubu was declared the lawful owner of the said land under the deemed right of occupancy.

Aggrieved, the respondent successfully appealed to this court vide the herein above stated case, that is to say; Land Case Appeal No. 10 of 2019.

The applicant was aggrieved and desired to appeal against the decision of the High Court, but time was not in her favor, and since an appeal to the decision of the High court in land matters delivered by the court in exercise of its appellate jurisdiction is subject to leave of the High Court as per section 47 (2) of the Land Disputes Courts Act Cap. 216 R: E 2016, the applicant has filed in this court the present application seeking for extension of time within which to file leave to appeal to the Court of Appeal of Tanzania. For easy reference section 47 (2) of Cap 216 R: E 2019 states that;

*"A person who is aggrieved by the decision of the High Court in the exercise of its revisional or **appellate jurisdiction may**, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal."*

At the hearing of this application, the applicant had the services of Mr. Alli Chamani, learned advocate while the respondent had the services of Zedy Ally, learned counsel. Mr. Chamani adopted his affidavit to form part of his submission. Arguing in support of the application, Chamani relied paragraphs

5, 6 and 8 of the affidavit supporting the application and submitted that in Misc. Land Application No. 27 of 2021, the applicant sought leave to appeal to the Court of Appeal but the same was struck out on 8/12/2021 for being incompetent, and that, according section 21 (1) of the Law of Limitation Act Cap. 89 R:E 2019, the time taken in prosecuting an incompetent application has to be excluded. Chamani further made reference to the case of **Elibariki Nnko V. Mushi & Another [1998] TLR 81** and the case for **Fortunatus Masha versus William Shija [1997] TLR 154** and invited the court to consider the question of technical delay.

Submitting on the question of illegalities, Chamani stated that, the proceedings of the trial tribunal does not reflect the opinion of assessors and whether the same was ever read to the parties before the matter is set for judgment. He further submitted that the matters which need the Court of Appeal intervention are as follows; whether in law, the Bukoba Municipal council as an Allocatee of the Suitland had prior acquired good title by complying with the legal procedure before disposing to the respondent; whether the Bukoba Municipal Council was a necessary party in the proceedings, and whether the act of surveying of land can confer good title to the Bukoba Municipal Council to allocate it to the respondent. The learned counsel made reference to section 67 (1) of the Local Government (Urban Authorities) Act Cap. 288 R: E 2002.

On the other hand, Mr. Zedy submitted that the applicant was negligent for filing incompetent application. Mr. Zedy further submitted that; the application was struck out on 08/12/2021 but the advocate for the applicant

did not explain what transpired from 08/12/2021 up to 30/12/2021 when the present appeal was filed. He further submitted that the issue of illegality alone is not sufficient for the grant of extension of time, and the issue of illegality has to be apparent on the face of the record. He ended his submission praying for the dismissal of the application with costs.

In his brief rejoinder, Mr. Chamani stated that paragraph 6 of his affidavit explains what transpired from 08/12/2021 to 30/12/2021, and that the ruling of the court was supplied to the applicant on 27/12/2021. He added that illegality is a sufficient cause good for extension of time.

I have considered the submissions of the parties, the affidavit and counter affidavit registered, and applicable laws thus, the question that follows is whether the applicant has been able to show good cause for the Court to exercise its discretionary powers to extend time for her to lodge application for leave to the Court of Appeal. This application was brought under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R: E 2019 which provides;

*"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time** for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, **for making an application for leave to appeal** or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."*

**In Benedict Mumello v. Bank of Tanzania** [2006] 1 EA 227, three Justices of Appeal subscribed to the decision of the single Justice of Appeal in

the case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwandwa**, Civil Application No. 6 of 2001 (unreported) where it was stated that what amounts to sufficient cause has not been defined. However, in the case of **Oswald Masatu Mwizarubi versus Tanzania Processing Ltd**, Civil Application No.13 of 2010 the Court of Appeal had this to say;

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

The issue of illegality was raised and argued Mr. Chamani as a ground the constitute sufficient cause for extension of time, though it was opposed by Mr. Zedy. In principle, to successfully argue illegality in an application for extension of time, it must be one that is obvious. See **Star Media (Tanzania) Limited versus The Tanzania Revenue Authority**, Civil Appeal No.211 of 2019 CAT (Unreported). It was also held in **Tanzania Harbors Authority versus Mohamed R. Mohamed [2003] TLR 76** that, time will not be extended in every situation whenever illegality is alleged as an issue by the applicant. It depends on the circumstances of each case and the material placed, before the court. In the application at hand, given to the facts placed before the court, the alleged illegalities are not obvious. In my view, they constitute proposed grounds which need to be stated in the application for leave to the Court of appeal to enable the High to see if there is an arguable case worthy deration by the Court of Appeal. They were coached as follows;

1. *Whether opinions of assessors were ever read to the parties before the matter is set for judgment.*
2. *Whether in law, the Bukoba Municipal Council as an Allocatee of the Suitland had prior acquired good title by complying with the legal procedure, before disposing to the respondent.*
3. *Whether the Bukoba Municipal Council was a necessary party in the proceedings, and whether the act of surveying of land can confer good title to the Bukoba Municipal council to allocate it to the respondent.*

Another reason raised by the applicant is technical delay. In the application at hand, as clearly revealed in the affidavit supporting the application, the applicant was the respondent in Land Appeal No.10 of 2019 which was determined on 12/03/2021 in favor of the present respondent. The applicant was aggrieved therefore, filed Misc. Land Application No. 27 of 2021 which was struck out on 8/12/2012 for incompetence. The copy of the ruling was availed to the applicant on 27<sup>th</sup> day of December, 2021. The chamber summons revealed that the present application was filed on 30/12/2021, thus it is apparent that the applicant acted promptly after being supplied with the necessary documents. In this matter, the reason for the delay as stipulated under paragraph 6 & 7 of the affidavit supporting the application, and as argued by Mr. Chamani, is that time was lost when he was pursuing Misc. Application No. 27 of 2021 which was struck out on 8<sup>th</sup> December, 2021, but the copy of the ruling was supplied to her on 27/12/2021, hence the delay was not actual but technical. There is no doubt that technical delay constitutes sufficient cause for the extension of time. See the case of

**William Shija versus Fortunatus Moshi** [1997] TLR 213 and **The Director of General LAMP Pensions Fund versus Pascal Ngalo**, Civil Application No. 76/08 of 2018, CAT (Unreported).

All said, I find merit in the application and hereby grant it. The applicant is given 14 days from the date of being availed with the copy this ruling, within which to file the intended application for leave to the Court of Appeal of Tanzania. In view of the circumstances of this matter, I order each party to bear its own costs. Order accordingly.

DATED at BUKOBA This 29<sup>th</sup> day of March, 2022.



  
E. L. NGIGWANA

JUDGE

29/03/2022

Ruling delivered this 29<sup>th</sup> day of March, 2022 in the presence of the Applicant in person, Mr. E. M. Kamaleki, Judges' Law Assistant, and Ms. Tumaini Hamidu, B/C but in the absence of the respondent.



  
E. L. NGIGWANA

JUDGE

29/03/2022