

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

LAND APPLICATION NO. 133 OF 2021

(Originating from the Misc. Application No. 65 of 2020 in the District Land and Housing Tribunal of Kagera at Bukoba)

EVALINA ALCHARD----- APPLICANT

VERSUS

RUTIGALIDA LWAMUGIRA-----RESPONDENT

RULING

Date of last Order: 22/03/2022

Date of Ruling: 08/04/2022

A.E. Mwipopo, J.

Evelina Alchard, the applicant herein, filed the present application for extension of time to file appeal against the decision of the Bukoba District Land and Housing Tribunal in Misc. Application No. 65 of 2020 which was delivered on 29th June, 2020. The Applicant is praying for the following orders:-

- i. That this Hon. Court be pleased to grant an extension of time within which to file appeal for reason of which are contained in the supporting affidavit sworn by the applicant.*
- ii. Costs of this application to follow the cause.*

iii. Any other relief as the Hon. Court may deem fit to award.

The application is made by Chamber Summons supported by the affidavit sworn by the applicant. The respondent namely Rutigalida Lwamugira filed counter affidavit in opposition to the application.

In order to understand the application, the brief background of the application will suffice. The respondent sued the appellant in Application No. 112 of 2015 at District Land and Housing Tribunal for Kagera at Bukoba for encroaching into the suit land situated at Buyekera Street within Bukoba Municipality. The hearing of the application proceeded in *ex parte* following failure of the appellant to appear and the District Land and Housing Tribunal delivered *ex parte* judgment on 20th June, 2018 in favour of the respondent. The appellant was not satisfied with the decision and she filed Misc. Application No. 65 of 2020 in the Bukoba District Land and Housing Tribunal seeking extension of time to file application to set aside *ex parte* order. On 20th June, 2020, the District Land and Housing Tribunal dismissed the said application for extension of time for wants of merits. The appellant was aggrieved with the decision and she filed Misc. Application No. 56 of 2020 in this Court for extension of time but the application was struck out 28th June, 2021 for incompetence. The applicant filed another application for extension of time in this Court which was registered as Misc. Application No. 65 of 2021 which was struck out on 27th October, 2021 with 14 days leave to refile. On 11th November, 2021 she filed the present application for extension of time to file

appeal against the decision of the District Land and Housing Tribunal in Misc. Application No. 65 of 2020, out of time.

When the application came for hearing both parties were represented. The applicant was represented by Mr. Sicarius Bukagire, Advocate, whereas, the respondent was represented by Mr. Lameck Erasto and Geoffrey Rugaimukamu, Advocates.

The counsel for the appellant submitted that the District Land and Housing Tribunal delivered *ex parte* Judgment in favour of the respondent on 20th June, 2018 in application No. 112 of 2015. In the said *ex parte* Judgment, there is no reason given for the decision to proceed with *ex parte* hearing or if the appellant was given notice to appear on the date of judgment. It is requirement of the law for the court to notify the parties on the date of judgment. This is provided under order XX Rule 1 of the Civil Procedure Code Act. He said in Civil Appeal No. 112 of 2007 between **Chausiku Athumani and Atuganile Mikitage**, High Court at Dar Es Salaam, (unreported), it was held that in *ex parte* proceeding failure to notify the defendant when *ex parte* judgment will be delivered renders such proceedings null because it denied the defendant the right to take necessary steps to protect his rights where the judgment is prejudicial to his interests. The Court of Appeal had similar position in the case of **Awali Idd Kajass v. Maffar Investment Ltd**, Civil Application No. 281/17 of 2017, Court of Appeal of Tanzania at Dar Es Salaam, (unreported).

Where anything goes contrary to the law renders the thing to be illegal and illegality is one of the sufficient cause for granting application for extension of time. He cited in support of his submission the case of **Jehangir Azizi Abdulrasal v. Balozi Ibrahim Abubakar**, Civil Application No. 79 of 2016, CAT at Dar Es Salaam, (unreported).

In reply, the counsel for the respondent said that the Judgment of the District Land and Housing Tribunal at page 3 shows that the applicant was served on 15/07/2015 and on 4/08/2015. The applicant filed written statement of defence on 04/08/2015. However, the applicant did not appear in court and on 13/07/2016 the Tribunal ordered for case to proceed in *ex parte*. It is settled law that court order and procedure has to be adhered.

It was submission of the counsel for the respondent that each case has to be determine on its own circumstance. The District Land and Housing Tribunal Regulation, 2003, provides in Regulation 11 (2) for a part aggrieved has to apply for the order to be set aside within 30 days from the date of delivery of the decision of the Tribunal. In the case of **Amina Rashid v. Mohinder Singh and Another [1986] TLR page 196** it was held where the appellant deliberately absented herself from the hearing of the application, the request to set aside *ex parte* order cannot be granted. The Civil Procedure Code Act is applicable in District Land and Housing Tribunal where the law and Regulation governing the Tribunals are silent.

In this case, there are laws which governs the hearing in the Tribunal as result Civil Procedure Code Act is not applicable. Hence, there is no irregularity which was occasioned. The applicant has been negligent in pursuing the matter and the application is made after the respondent has started execution process.

In his rejoinder, the counsel for the applicant said that the applicant become aware of ex parte Judgment after he was served with the execution order. Where there is illegalities, the court should not allow it to remain. It has to allow the application so that it may intervene.

After hearing the rival submissions from both parties the only issue for determination is whether the applicant has provided sufficient reason for the Court to grant the application for extension of time.

The Land Disputes Courts Act, CAP. 216 R.E. 2019, provides in section 41(2) that the High Court may for good and sufficient cause extend the time for filing an appeal before or after expiration of 45 days which is period of limitation provided by the law. The section reads as follows:-

"41.- (1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days.”

From above cited section, this Court has discretion to grant an application for extension of time for a good cause. The said good cause is dependent upon party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion [see. **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania]. The said good cause is determined by reference to all the circumstances of each particular case.

In the application at hand, the applicant has two grounds for his application for extension of time as they are found in his affidavit. The first ground is found in paragraph 6, 7 and 8 of the affidavit that the delay was caused by filing his petition of appeal in Swahili where he was advised to file it in English. That being a lay person he find the lawyer who told him as the time limitation for appealing to the High Court has expired so he has to file application for extension of time first. Then he filed Misc. Application No. 56 of 2020 which was struck out on 28th June, 2021 and Misc. Application No. 65 of 2021 which was struck out for incompetence with leave to refile before he filed the present application. The applicant's second ground of the application is the presence of illegalities in the record of the trial Tribunal as it is seen in paragraph 5 of the affidavit.

The applicant counsel did not submit at all in the first ground of application. In the said first ground the applicant did not mention the clerk who told him to file the petition of appeal in English language and the date which he filed the said petition written in swahili. Ignorance of the law is not defence thus being a lay person is not an excuse.

The applicant duty to account for each and every day delayed in the application for extension of time was stated by the Court of Appeal in the case of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another, Civil Application No. 278/15 of 2016, the Court of Appeal of Tanzania, (unreported)**. In this case the applicant did not account at all the days he delayed.

Regarding the presence of illegality in the record of the proceedings, illegality is sufficient cause for the Court to grant an application for extension of time. In the case of **VIP Engineering and Marketing Limited and Two Others VS. Citibank Tanzania Limited**, Consolidated Civil Reference No.6, 7 and 8 of 2006, Court of Appeal of Tanzania, (unreported) it was held that, I quote:-

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay."


apparent on the face of record as result there is no sufficient cause for the Court to grant application for extension of time.

Therefore, the application is dismissed for want of merits with cost. It so ordered accordingly.



A.E. Mwipopo
Judge
08.04.2022

The ruling was delivered today, this 08.04.02022 in chamber under the seal of this court in the presence of the appellant and their counsels.



A. E. Mwipopo
Judge
08.04.2022