

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MSC. LAND APPLICATION NO. 125 OF 2021

*(Arising from Mbuba Ward Tribunal Case No.....of 2017, Ngara District Land and Housing Tribunal
Land Appeal No. 06 of 2018 and this Court's Appeal No. 28 of 2019)*

JULIAN PASTORY RUBAVU.....APPELLANT

VERSUS

JUMA ILDEPHONCE ODAS CHALIKWAYA.....RESPONDENT

RULING

Date of last order 08/02/2022

Date of judgment 08/02/2022

Kilekamajenga, J.

The applicant, through the legal services of the leaned advocate, Mr Alli Chamani, approached this court by way of chamber summons, supported for the following orders;

1. Leave to extend time to file notice of appeal to the Court of Appeal of Tanzania;
2. Leave to extend time to appeal to the Court of Appeal of Tanzania;
3. Any other and further relief this court may deem fit to grant.

The application was made Under Section 47 (2) and (3) of the Land Disputes Court Act, Cap. 216 RE 2019.

When the parties appeared before the court to argue the application, the applicant appeared in person and enjoyed the legal services of the learned advocate, Mr Alli Chamani whereas the respondent was present and represented by the learned advocate, Mr. Dickson Laurent.

In his oral submission, Mr. Chamani informed the court that the initial application was brought in time though was struck out before this court. He further alleged that there were illegalities in the records of the trial and first appellate tribunal.

Mr. Raulent on the other hand impugned Mr Chamani's argument as the application to file notice of appeal was never struck out by this court. He further argued that the instant application was brought under wrong provision of the law.

When rejoining, Mr. Chamani invited the court to invoke the principle of overriding objective as it is vested with jurisdiction to determine the instant application.

Having considered the rival arguments in this application, I wish to draw a backdrop to the application. The case giving rise this application was decided by Hon. Kairo, J, (as she then was) on 05th March, 2021. On 27th March, 2021, the applicant preferred an application seeking certificate on point of law and leave to appeal to the Court of Appeal. That application was struck out for improper naming of the respondent.

The decision striking out the application was delivered on 15/07/2021. On 29th August 2021, the applicant filed another application with an omnibus prayers. Having realised the errors on the application, the learned advocate for the applicant, Mr. Alli Chamani withdrew the application with leave to refile within 21 days. The order to withdraw the application was issued on 13/10/2021. On 28th October 2021, the applicant filed the instant application.

This background, sufficiently depict how a negligent advocate may contribute in the delay of justice because the instant application is made under wrong provisions of the law. As earlier stated, the instant application was made Under Section 47(2) and (3) of the Land Disputes Courts Acts, which provide that;-

47(2) 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.

(3) Where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal.

Now, this being the application for extension of time to file notice of appeal and extension of time to file leave to appeal to the Court of Appeal, the court is not properly moved. This gross negligence committed by the counsel for the applicant.

For the applicant's interest for justice, I hereby struck out the application with costs. It is so ordered.

DATED at BUKOBA this 08th day of February, 2022.



A handwritten signature in blue ink, appearing to read 'Ntemi N. Kilekamajenga'.

Ntemi N. Kilekamajenga

JUDGE

08/02/2022

Court:

Ruling delivered this 08/02/2022 in the presence of the applicant and his counsel, Mr Alli Chamani and the respondent and his counsel, Mr Dickson Raulent.

Order: The application is hereby struck out with costs.



A handwritten signature in blue ink, which appears to read "Ntemi N. Kilekamajenga", is written over a rectangular stamp.

Ntemi N. Kilekamajenga

JUDGE

08/02/2022