

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

MISC. LAND APPLICATION NO. 123 OF 2021

(Originating from the Application No. 187 of 2012 in the District Land and Housing Tribunal of Kagera at Bukoba)

YUSTO EUSTACE----- APPLICANT

VERSUS

JOSEPHINE KAWAGERE-----RESPONDENT

RULING

Date of last Order: 02/03/2022

Date of Ruling: 11/03/2022

A.E. Mwipopo, J.

Yusto Eustace, the Applicant herein, filed the present application for extension of time to file Appeal out of time. The Applicant is praying for the following orders of the Court:-

- i. Application for leave to appeal out of time.*
- ii. Any other and further relief this Court may deem just to grant.*

The application is made by Chamber Summons supported by the applicant's affidavit. The respondent namely Josephina Kawegere, who is administrator of the

estate of the late Yulitha Kishuru Kacholi, opposed the application through counter affidavit sworn by her Advocate namely Lameck John Erasto.

The brief background of the application is that the respondent instituted Application No. 187 of 2012 in the District Land and Housing Tribunal for Kagera at Bukoba against the applicant for encroaching in the suit land. The Tribunal delivered its judgment on 27.02. 2020 in favour of the respondent. The applicant was not satisfied with the decision of the Tribunal and he filed Land Appeal No. 21 of 2020 in this Court on 09.04.2020. The said appeal was struck out on 17.09.2021 for being accompanied with a defective decree. The applicant did write to the District Land and Housing Tribunal to rectify the defects in the decree on 21st September, 2021 and the Tribunal rectified the decree on 18.10.2021. On 28.10.2021 the applicant filed the present application for extension of time.

When the application came for hearing both parties were represented. The applicant was represented by Advocate Fahad, whereas, the respondent was represented by Advocate Geoffrey Rugaimukamu.

The counsel for the applicant said that the reason for the delay to file an appeal against the judgment of the District Land and Housing Tribunal for Kagera at Bukoba is found in paragraph 7 of applicant's affidavit. He submitted that the decision of the District Land and Housing Tribunal was delivered on 27.02.2020 and the applicant filed his appeal for the first time on 09.04.2020. The said appeal

was struck out for being attached with defective decree on 17.09.2021. Thereafter the applicant followed the process of rectifying the decree. On 18.10.2021 the decree was rectified. The applicant the filed the present application on 28.10.2021 in this court.

He said that it is the principle of the law to exclude the time when the party was waiting for the decree in counting the time to file the suit. Section 21 (2) of Law of Limitation Act allows the court to exclude the time which the appellant was waiting for the judgment or decree from the time limitation. After the appeal was found to be incompetent for the defects in the decree, the applicant was waiting for rectification of the decree by the trial court and soon after the decree was rectified he filed the present application.

The counsel said that the applicant has been diligent in pursuing his appeal during all this time and in support of the argument he cited the case of **Elibariki Asseri Nnko v. Shifanya Mushi and Another, [1998] TLR 81**. He said that the delay falls under section 21 (1) of the Law of Limitation Act hence forming a good cause. He prayed for the days which the applicant was waiting for the decree to be rectified to be excluded and the applicant to be allowed to file his appeal out of time.

The counsel further said there are illegalities in the record of the subordinate tribunal as it shown in the paragraph 8 of the affidavit. He said the composition of

the trial tribunal was not proper as assessors were changing during each day of the hearing of the suit. Also, assessors were not duly involved as they did not provide their opinion in the proceedings and the same is found in the judgment of the Tribunal. To support the position he cited the case of **Eng. Justin D. Rweyemamu v. James Rugakingira and 3 Others**, Land Case Appeal No. 61 of 2021, High Court Bukoba Registry at Bukoba, (unreported).

The counsel for the respondent said that he has no objection to the applicant's prayer for extension of time.

From the submission, 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 Court may for good and sufficient cause extend the time for filing an appeal within 45 days after the decision or order. 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 word "good cause" is relative one 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 the delay to file appeal on time. The first ground is that the delay was caused by decree of the trial Tribunal to be defective as result their appeal which was properly instituted in the High Court was struck out. The applicant's second ground of the application is the presence of illegalities in the record of the trial Tribunal.

It is not disputed that the decision of the District Land and Housing Tribunal was delivered on 27.02.2020. Aggrieved by the decision, the applicant filed Land Appeal No. 21 of 2020 in this Court on 09.04.2020. This means that the said appeal was filed within 45 days limitation provided by the law. The said appeal was struck out for being attached with defective decree on 17.09.2021. The applicant did write a letter to the Tribunal Chairman requesting him to rectify the decree on

21.09.2021 and on 18.10.2021 the decree was rectified. Thereafter applicant the filed the present application on 28.10.2021 in this court. This facts prove that the applicant has been diligent in pursuing his appeal during all this time. The time applicant used to communicate with the trial Tribunal to rectify the decree which is four (4) days and the time to file the present application after the decree was rectified which is ten (10) days are reasonable. For that reason, I'm satisfied that the appellant has accounted successful for the delay which is among the requirement in such application for extension of time as it was held in the case of **Bharya Engineering & Contracting Company Limited V. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017, Court of Appeal of Tanzania, at Tabora, (Unreported); and **Tanga Cement Company V. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, at Tanga, (Unreported) .

Further, as it was stated by the counsel for the applicant section 19 (1) of the Law of Limitation Act, Cap. 89, R.E. 2019, excludes a period of time requisite for obtaining a copy of the decree or order appealed from in computing the period of limitation for any proceeding. The law also in section 21 (1) excludes from computing the period of limitation prescribed for any suit the time during which the applicant has been prosecuting, with due diligence, another civil proceeding in a court of first instance or in a court of appeal.

As it was stated earlier herein, the applicant delayed to file the appeal on time as he was diligently pursuing his appeal in this Court which was struck out for incompetence caused by defective decree and in waiting for the trial Tribunal to issue a rectified decree. For that reason, the Court is satisfied that the applicant has provided sufficient and good cause for the Court to grant the application.

Therefore the application is granted and the applicant has to file his appeal within 45 five days which start to count from today which is the day of the ruling. Each party to take care of its own cost.



A.E. Mwipopo

Judge

11.03.2022

The ruling was delivered today, this 11.03.2022 in chamber under the seal of this court in the presence of the applicant and in the presence of the counsel for the Respondent.



A. E. Mwipopo

Judge

11.03.2022