

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

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**MISC LAND APPLICATION NO. 10 OF 2022**

*(Arising from the decision the DLHT for Ngara at Ngara in Land Application No.04 of 2016)*

**ROZALIA BUSHAKALI..... APPLICANT**

**VERSUS**

**ROZATHA PHILLIP.....RESPONDENT**

**RULING**

29/03/2022 & 27/04/2022

**NGIGWANA, J.**

The applicant is seeking for extension of time within which to file appeal before this court out of time against the decision of the District Land and Housing Tribunal (DLHT) for Ngara at Ngara delivered on 27/08/2021. The Court is also asked to give any other order as it may deem fit and just to grant.

The application was brought by way of chamber summons made under section 14(1) and (2) of the Law of Limitation Act Cap.89 R: E 2019 and supported by an affidavit sworn by the applicant herself. The applicant was duly served with the chamber summons on 19/03/2022 but filed no counter affidavit.

Briefly, the facts leading to this application as can be deciphered from the affidavit and the record are that; before the District Land and Housing

Tribunal for Ngara at Ngara, the respondent filed a suit to wit; Application No. 4 of 2016 against the applicant seeking for a declaration that she was the owner of the disputed land, an order for vacant possession of the disputed land and costs of the suit. After a full trial, the trial tribunal was convinced that the respondent had proved the case to the balance of probability. In the event, the respondent was declared the owner of the disputed land, therefore, the applicant was ordered to vacate the disputed land, and pay costs of the suit.

The applicant was aggrieved by the said decision, but the copies of judgment and decree were supplied to her on 28/10/2021, whereas on 6<sup>th</sup> day of December 2021 through her advocate Mr. Liberatus John Rwebuhanga, lodged an appeal electronically into the wrong Registry to wit; Bukoba High Court Land Division and she became aware of that misfortune on 24/12/2021 when the same was still pending for admission in Judicial Statistical Dashboard System (JSDS). That at that point, she discovered that that she was out of time hence this application.

At the hearing date to wit; 29/03/2022, the respondent was absent despite receiving summons on 19/03/2022 for hearing today. Despite the court order to appear, yet the respondent entered no appearance. The applicant entered appearance through her advocate, Mr. Liberatus John Rwebuhanga. In that premise, the hearing proceeded in absence of the respondent.

Supporting the application, Mr. Rwebuhanga prayed to adopt the applicant's affidavit to form part of his submissions. He argued that the

reasons for delay have been stated in paragraph 4, 5 and 6 of the applicant's affidavit, one being delay to supply copies of the judgment and decree to the applicant, the second being filing of the appeal electronically in the non-existing registry, and the third reason being absence of the advocate in office as he was in the end of the year vacation. Mr. Rwabuhanga further argued that the necessary documents for appeal purposes were supplied to the applicant on 28/10/2021, thus as per section 19(2) and (3) of the Law of Limitation Act Cap. 89 R: E 2019, time limitation for filing the appeal in this matter accrued on that date; that is to say 28/10/2021.

The learned counsel supported his argument by referring the court to the case of **Alex Senkoro and Three others versus Eliyambuya Lyimo** (As an administrator of the Estate of Fredrick Lyimo, Deceased), Civil appeal No. 16 of 2017 (CAT). He added that on 6/12/2021 while still within the prescribed appeal time, he lodged an appeal electronically on behalf of the applicant, but unfortunately, the same was filed into the non-existing Registry to wit; High Court of Tanzania, Land Division – Bukoba Registry and that was a human error which is sufficient to constitute sufficient cause for extension of time. He further submitted that the error was communicated to the applicant on 24/12/2021, and the applicant traced him immediately but he was still in the end of the year vacation hence the present application was filed electronically on 3/01/2022. The learned counsel added that, the applicant was not negligent because he filed the present application promptly after becoming aware of the foregoing stated human error. To support his argument, the learned counsel referred me to case of **Bahati**

**Musa Hamisi Mtopa versus Salum Rashid**, Civil Application No. 122/07 of 2018 CAT (unreported) in which human error committed by the applicant's learned counsel was considered in granting the application. He also made reference to the case of **Paskal Arusha versus Mosses Mollel**, Civil Application No. 574/17 of 2017 (CAT) (unreported) in which the Court of Appeal cited with approval the case of **Lyamuya Construction Company Limited versus Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) which stipulated factors which can assist the court in assessing as to what amounts to good cause as follows; **One**, that the applicant must account for all the period of delay. **Two**, the delay should not be inordinate. **Three**, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take. **Four**, if the court feels that there are other reasons, such as existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged. Mr. Rwabuhanga, ended his submission urging the court to grant the application.

Having heard submission by the learned counsel for the applicant, the issue for determination is whether the applicant has been able to show good cause for the court to exercise its discretionary powers to extend time within which the applicant can file an appeal out of time.

Section 14(1) of the Law of Limitation Act Cap 89 R: E 2019 provides that;  
*“Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an***

*application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

What amounts to good cause has not been defined. In the case of **Oswald Masatu Muizarubi versus Tanzania Proceeding 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*".

It was also held in the case of **Mumello versus Bank of Tanzania** [2006] EA 227 that an application for extension of time is entirely in the discretion of the court to grant or to 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 the matter at hand, the DLHT delivered its decision on 27/8/2021.

According to section 41 (1) and (2) of the Land Disputes Courts Act, Cap. 216 R:E 2019, an appeal originating from any proceeding in the DLHT in the exercise of its original jurisdiction has to be lodged to the High Court within 45 days after the date of decision or order, provided that the High Court, may for good cause, extend the time for filing an appeal either before or after the expiration of such period of 45 days.

It is apparent that the applicant lodged no appeal within 45 days from the date of the decision. It is also undisputed that the decree and copy of

judgment were supplied to the applicant on 28/10/2021. I agree with Mr. Rwabuhanga that under section 19(2) and (3) of the Law of Limitation Act Cap. 89 R: E 2019, the time spent by the applicant for obtaining the necessary documents for appeal purposes is excluded from days delayed in filing the appeal. In the case of **Trustees of Mariah Faith Healing Centre @Wanamaombi versus Registered Trustees of the Catholic Church of Surbawanga**, Civil Appeal No. 47 of 2007 CAT (unreported) it was held that;

*"In computing the time period of appeal the time spent to obtain a copy of judgment should be excluded".*

The case of **Senkero and 3 others** (supra) the Court of Appeal held;

*"We entertain no doubt that the above sub-sections (That is to say section 19 (2) and 3 of the LLA) expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed Limitation period. Such exclusion need not be made upon an order of the court in a found application for extension of time".*

However, in a recent decision of the Court of Appeal in **Valerie MCgovern versus Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019 it was held among other things that;

*"--- However, it must be understood that section 19 (2) of LLA **can only apply if the intended appellant made a written request for the supply of the** requisite copies for the purposes of appeal (emphasis added).*

In the matter at hand paragraph 4 of the affidavit was coached as follows:-  
***“That after frequent physical visitations to the Tribunal in demand for the copies of the judgment and decree, I was supplied with the same or 28<sup>th</sup> of October, 2021 when the time of limitation to appeal had already lapsed.”***

Indeed, there is no proof in this matter that the applicant ever made a written request to be supplied with the copies of judgment and decree. The applicant’s affidavit is silent on that fact. No copy of the letter (if any) was attached to the applicant’s affidavit, and during the hearing, the learned counsel did not submit that there was such a written request. In that premise, the provision of section 19(2) and ((3) of the LLA cannot be applied.

However, the copies of judgment and decree attached to the chamber shows clearly that they were ready for collection on 28/10/2021; and were collected on the same date by the applicant. In that respect, it is proper under the circumstances of this case to consider the time spent waiting to be availed with the necessary documents as one of the reasons which may constitute sufficient cause for extension of time see **Kimaro versus Khalfan Mohamed** [1995] TLR 202.

However, in the matter at hand, the applicant had the duty to explain what transpired from 28/10 2021 when the copies were supplied to her until 6/12/2021 when she filed the appeal into the wrong registry a period of almost 38 days. The principle relied by the applicant’s advocate that the time spent to obtain a copy of judgment and decree should be excluded

can only be invoked in favor of the applicant upon proof that she made a written request to be supplied with the necessary documents for appeal purposes. **See Valerie McGivern (Supra).**

Since, in this matter such requirement was not met, that reveals ignorance of the law on the applicant's side which has never been accepted as sufficient reason or good cause for extension of time. See **Vedastus Raphael versus Mwanza City Council and Two others**, Civil Application No. 594/08 of 2021 CAT (Unreported)

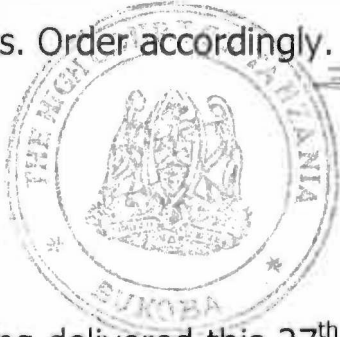
As regards the act of filing an appeal into a wrong registry, I agree with the learned counsel that it was a human error, but since the time prior to the commission of the error has not been accounted, the existed human error under the circumstances of this case, is rendered obsolete.

It is clear that extension of time is not a right of a party; it is an equitable remedy that is only available to the deserving party at the discretion of the court. Whether the court should exercise the discretion to extend time is a consideration to be made on a case to case basis. In this matter, the applicant has failed to account for the delay of almost 38 days from the date when the necessary documents were supplied to her.

In the event, having considered the totality of the chamber summons and the applicant's affidavit and the oral submission made by the applicant's advocate in support of the application, I am satisfied that the applicant has failed to advance good cause to warrant the court to grant extension of time within which to file the appeal. Consequently, the same is hereby



dismissed. Since the matter proceeded ex-parte, I enter no order as to costs. Order accordingly.



E. L. NGIGWANA

JUDGE

27/04/2022

Ruling delivered this 27<sup>th</sup> day of April 2022 in the presence of Ms. Joanitha Jonathan, holding brief for Mr. L. J. Rwebuhanga, learned advocate for the applicant, Mr. E .M Kamaleki, Judges' Law Assistant and Tumaini Hamidu, B/C, but in the absence of the respondent.



E. L. NGIGWANA

JUDGE

27/04/2022.