

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

MISC. LAND APPLICATION NO. 22 OF 2021

(Arising from Land Appeal No. 4/2020 of District Land and Housing Tribunal of Kigoma
Before F. Chinuku Chairperson, Originating from Kasanda Ward Tribunal in Land
Dispute 2/2019)

BUKURU S/O BARUGIZE..... APPLICANT

VERSUS

EVELINE D/O ANDREA.....RESPONDENT

R U L I N G

15/03/2022 & 11/5/2022

L.M. MLACHA, J.

The applicant, Bukuru s/o Barugize filed an application under section 38(1) of the Land Disputes Courts Act, Cap. 216, R.E. 2019 seeking extension of time within which to appeal against the decision of the District Land and Housing Tribunal for Kigoma (the DLHT) made in Land Appeal No. 4 of 2020 (original Land Dispute No. 2 of 2019 Kasanda Ward Tribunal). The application is supported by the affidavit of his counsel, Michael Mwangati. Attached to the affidavit is a copy of the decision delivered on 4/1/2021 (F. Chinuku Chairperson). The respondent, Evelina Andrew was dully served

and lodged a counter affidavit in opposition sworn by her counsel, Daniel Rumenyela.

With leave of court, hearing was done by written submissions. Counsels could lodge their submissions in time. Submitting before the court, the counsel for the applicant advanced three reasons to support the application. One, that he lost communication with his client who lives in Kakonko District far away near the Burundi border where there is no telephone network. He could not proceed to lodge the appeal without instructions from his client, he said. He stressed that doing that could be both illegal and unethical. He referred the court to **Nyamunini Ntarambigwa v. Simon Kikoti**, Miscellaneous Land Appeal No. 19 of 2021 (High Court Kigoma) and **Evance Bugale v. Jimi Modest** Miscellaneous Land Appeal No. 3 of 2021 (High Court Kigoma) to support this view. Two, that, the appeal has an overwhelming chance of success because there is evidence that the respondent bought the land from the applicant not the respondent's mother who is the owner of the land. And three, that, the applicant has a constitutional right to be heard as per article 13(6) of the constitution of the United Republic of Tanzania.

Submitting in reply, the counsel for the respondent said that the applicant has travelled outside his pleadings in the course of submissions. He said that the affidavit in support of the application says that the applicant delayed to file the appeal because he could not get a copy of the judgment in time. This aspect, counsel submitted, is not in the submission. Instead, the counsel has brought a new point that he lost contact with the applicant who was far away in the village. He said that failure to get a client is not a ground for extending time. He argued the court to disregard that aspect. He referred the court to **Sarrchem International Tanzania Ltd v. Wande Printing and Packaging Company Ltd**, Commercial Case No. 31 of 2020 (H/C-unreported) on this point.

Counsel proceeded to submit that what was needed was an account for each day of delay as was said in **Finca (T) Ltd and another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (CAT) something which is missing in this case. He added that the existence of an overwhelming chance of success has never been a ground for extending the time. He argued the court to dismiss the application.

The counsel for the applicant filed a rejoinder submission and joined issues with counsel for the respondent.

I have considered the submissions carefully. Indeed, as hinted by counsel for the respondent, in an application of this nature, what the applicant is required to do is to give reasons why he could not lodge the appeal in time making details on a daily basis. In other words, he has to account to each day of delay as per **Sebastian Ndaula vs Grace Rwamafa** (Legal Personal Representative of Joshwa Rwamafa), (CAT) Civil Application no. 4 of 2014. The position of the law on this point was put more clearer in **Bushiri Hassan vs. Latifa Lukio Mashayo**, (CAT) Civil Application No. 3 of 2007 (unreported) where it was said thus:

"...Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

As correctly observed by counsel for the respondent there has been no such account in this case.

Extension of time may also be given where there is an illegality on the face of the record calling for the attention of the higher court. See **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, (CAT) Civil Application No. 2 of 2010 and **Ezron Magesa Maryogo v. Kasimu Mohamed Said and another**, (CAT) Civil Application No. 227 of 2015.

There has been no mention of a daily account or illegality in this case. Instead, counsel for the applicant has submitted on loss of communication to his client, overwhelming chances of success and the right of appeal which are not valid grounds for extending the time.

Extension of time is discretionary as was said by this court in **Mohamed Hamisi Mawa (The Administrator of The Estate of The Late Hamisi Hasan Mawa) V. Selemani Omari Kikwala and Another**, Misc. Land Cause Application No.51 of 2013 Page 3 where my brother Kibela J. retired, had this to say:

*In principle courts have discretion in deciding whether or not to grant extension of time. However, such discretion must be exercised judiciously. Meaning that sufficient reasons must be given before extension of time is granted. The most persuasive reason that the applicant can show is that such delay has not been caused or contributed to by dilatory conduct on his part.(see **SHANTI VS. HINDICHE & OTHERS [1973] E.A.207**)*

I think this is a fit case to exercise the discretion of this court by denying the extension of time.

With those few remarks, with respect to the counsel for the applicant, the application is found to be baseless and dismissed. Costs to follow the event.



L.M. Mlacha

Judge

11/5/2022

Court: Ruling delivered. Right of Appeal Explained



L.M. Mlacha

Judge

11/5/2022