

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

AT BUKOBA

MISC. LAND APPLICATION NO. 31 OF 2022

(Arising from the High Court of Tanzania at Bukoba in Misc. Land Application No. 70 of 2021 and Original Land Application No. 73 of 2017 from the District Land and Housing Tribunal for Muleba at Muleba)

ALTIMON MUKEREBE1ST APPLICANT

JAMES SIMON 2ND APPLICANT

REVINA SIMON 3RD APPLICANT

VERSUS

AUDAX R. RUKWATAGE RESPONDENT

RULING

*Date of Ruling: 15.02.2023
A.Y. Mwenda J,*

This is an application for extension of time to file an appeal out of time brought under section 41(2) of the Land Disputes Court's Act [CAP 216 R.E 2019]. It is supported by an affidavit sworn by the applicant. In counter thereof, the respondent filed a counter affidavit.

During the hearing of this application, the applicant was represented by Mr. Victor Blasio, learned counsel while the respondents appeared without legal representation.

When invited to submit in support of the application, Mr. Blasio submitted that the applicant filed Appeal No. 57 of 2019 before this court which was dismissed for being filed out of time. He submitted that after such order, on the 18th June

2021 the applicant filed Application for Review to test the correctness of the said court order as to whether the said application ought to be dismissed or struck out. He submitted that the said application was marked withdrawn hence the present application for extension of time.

He further submitted that Land Application No. 73 of 2017 before the District Land and Housing Tribunal for Muleba at Muleba is tainted with illegalities for lack of assessors' opinion and failure to follow proper procedure during visiting locus in quo contrary to the requirement of the law. To support his argument, he cited the case of DR CLEMENCE KALUGENDO VS PETER ANDRWE ATHUMAN, CIVIL APPEAL NO. 92 OF 2018, (unreported) and the case of KIMONIDIMITRI MANTHEAKIS VS ALLY AZIM DEWJI & 7 OTHERS CIVIL APPEAL NO. 4 OF 2018. He thus prayed this court to grant extension of time to lodge an appeal out of time.

Responding to the submission by the learned counsel for the applicant, Mr. Audax the respondent conceded to the submission by the learned counsel. He prayed this application should be granted.

It is trite law that court has discretionary powers to grant or refuse an application of extension of time. But such discretion has to be exercised judiciously according to rule and principle of justice. The guiding principle in granting an application for extension of time is that the applicant must demonstrate good cause or sufficient reasons for the delay.

That being the legal position the issue before this court is whether the applicant have advanced sufficient reasons for the delay.

Going through submissions by the learned counsel for the applicant, he only demonstrate one reason for the delay which is illegality the fact which exist in the Tribunal's proceedings. The respondent did not oppose the application and prayed for the applicant to be granted extension of time.

It is trite practice of this court and the Court of appeal that a claim of illegality is the sufficient reason for the court to grant extension of time. This position was stated in the case of ATTORNEY GENERAL V. TANZANIA PORTS AUTHORITY & ANOTHER, CIVIL APPLICATION NO. 87 OF 2016, where Court of Appeal held inter alia that:

"It is a 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 rule to account for the delay".

In the present application, since the applicant claim is illegality in the proceedings of the District Land and Housing Tribunal for Muleba at Muleba in Land Application No. 73 of 2017 this court therefore is of the opinion that the applicant has advanced sufficient reasons for extension of time. He is thus ordered to file his appeal within fourteen (14) days from the date of receipt of this ruling.

Each party shall bear its own costs.

It is so ordered.




A.Y. Mwenda

Judge

15.02.2023

Ruling delivered in chamber under the seal of this court in the presence of Mr.

Victor Blasio learned counsel for applicant and in the present of Mr. Audax R.

Rukwatage the respondent.




A.Y. Mwenda

Judge

15.02.2023