

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

**MISC. LAND APPLICATION No. 05 OF 2023**

*(Arising from Misc. Land Application No. 36 of 2022 and High Court Land Appeal Case No. 09 of 2020 and Originating from Application No. 9 of 2012 in the District Land and Housing Tribunal for Kagera at Bukoba)*

**MAGONGO JUSTUS.....APPLICANT**

**VERSUS**

**PRISKILA MWAINUNU.....RESPONDENT**

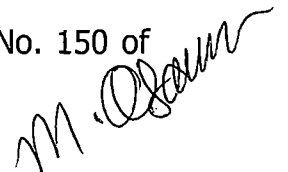
**RULING**

*23<sup>rd</sup> February & 24<sup>th</sup> March 2023*

**OTARU, J.**

This Application is made at the instance of Magongo Justus (the Applicant) under Section 93 of the **Civil Procedure Code** (Cap 33 R.E. 2019) seeking for extension of time within which to file Application for Leave to Appeal to the Court of Appeal. The decision intended to be challenged was delivered on 16<sup>th</sup> October 2020. The Chamber Summons filed in this court is supported by the Affidavit sworn by Frank Kalory John, learned Advocate.

It is worth noting that the Applicant had earlier been granted extension of time by this court (Hon. Judge E.L. Ngigwana) in Misc. Application No. 36 of 2022, but time expired before the order was implemented. That prior to Misc. Application No. 36 of 2022, the Applicant had filed similar applications to wit Misc. Land Application No. 94 of 2021 and Misc. Land Application No. 150 of



2021 which were withdrawn for being incompetent. This is a subsequent Application to Misc. Application No. 36 of 2022.

Paragraphs 4, 5 and 6 of the Affidavit contain reasons for the delay. It is shown that on 22<sup>nd</sup> September 2022 when the Application was granted by the High Court, both the Applicant's counsel as well as the Applicant himself were absent. That they became aware of existence of the Ruling almost a month later. Thereafter, the learned Counsel for the Applicant was assigned Criminal Session Cases, Court of Appeal Session Cases as well as Civil Session Cases. He prayed for extension to be granted, otherwise he will suffer irreparable loss.

At the hearing of the Application, Mr. Frank Karoli, learned Advocate represented the Applicant while Mr. Alli Chamani represented the Respondent. Mr. Karoli changed his story as well as the grounds for the grant of the Application. He stated that he was aware of the date of the Ruling but was precluded from attending due to reasons beyond his control. He also added that the impugned decision lacked assessors' opinions, an illegality which need be considered by the Court of Appeal. He relied on the cases of **Valerie McGiven v. Salim Fakhruddin Dalal**, Civil Application No. 11 of 2015 (CAT Tanga) (unreported) and **V.I.P Engineering and Marketing Ltd & 2 Others v. Citi Bank Tanzania Ltd** Consolidated Civil Reference No. 6,7 & 8 of 2006 that existence of illegality in the decision to be challenged by itself constitutes sufficient reason. He thus prayed for the court to grant extension basing on the illegalities therein.

*M. Qam*

Mr. Alli Chamani, learned Advocate for the Respondent strongly opposed the Application. He prayed to adopt the Counter Affidavit so it forms part of his submissions. He argued that the case of **Valerie** (supra) is distinguishable as the reasons of illegality that the Applicant has advanced came from outside that Affidavit filed in court. Counsel argued strongly that the reasons for grant of extension should come from within the Affidavit, and not otherwise. He argued further that the Applicant was well aware of the Ruling date thus stating that they became aware of existence thereof almost a month later did not carry any water. In support of his argument, counsel referred this court to the court record which indicated that parties were in court on the date set for the Ruling. He also cited the case of **Halfan Sudi v. Abieza Chichiri** [1998] TLR 527 that court record represents what happened. In addition thereto, on the sessions cases, counsel pointed out that it is not known which exact cases was the counsel assigned and on what dates. Counsel argued that the Application was filed on 10<sup>th</sup> January 2023 more than a month after conclusion of the Court of Appeal Session and he has not accounted for these days. He also added that all in all the Applicant did not seem to have taken any timely action.

I have painstakingly followed the rival parties' arguments. I have also consulted the relevant legislation and the case law. The issue that I need to deliberate on is *whether good cause has been advanced to warrant the extension of time sought.*

*M. O. O. O.*

This Court has discretionary powers to grant an application for extension of time. That discretion has to be exercised according to the rules of reason and justice as elaborated in the case of **Wambura N.J. Waryuba V PS Ministry of Finance & AG** (Civil Application No. 320/01 of 2020). This goes hand in hand with the requirement of the Applicant to show *good cause* in justifying why his application should be granted. It has to be noted that *good cause* to warrant the extension of time is not defined as it depends on circumstances of each and every case. The Court of Appeal in the case of **Jacob Shija vs. M/S Regent Food & Drinks Limited and Mwanza City Council**, Civil Application No 440/08 of 2017 (CAT Mwanza) (unreported) expounded *good cause* as follows: -

*'What amounts to good cause cannot be laid by any hard and fast rule but is dependent upon the facts obtaining in each particular case. That is each case will be decided on its own merits, of course taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant.'*

Other reasons like *existence of point of law of sufficient importance such as illegality of the decision sought to be challenged* has been held to be *good cause* for extending the time. See the cases of **V.I.P. Engineering** (supra),

M. O. O. O.

**Lyamuya Construction Co. Ltd v. Board of Registered Trustees of YWCA (T)**, Civil Application No. 2 of 2010 (unreported) and **Valerie McGiven** (supra), just to mention a few.

In the Application at hand, the first reason for the delay provided by the Applicant's counsel is of his and his client's unawareness of the existence of the Ruling. I am not convinced about this reason, because, as pointed out by the Respondent's counsel, both parties were present in court on 6<sup>th</sup> September 2022, the date of hearing of the Application. They argued the Application. The Ruling date was set for 22<sup>nd</sup> September 2022, and was delivered as scheduled. This is clearly indicated in the court records and acknowledged at the hearing by the Applicant's counsel. I do not see this as a reason for the delay in either filing of the Appeal or this Application. Time was extended by 14 days from the date of the Ruling such that the Applicant should have filed the Appeal by 6<sup>th</sup> of October 2022. He did not. Instead, counsel for the Applicant filed this Application on 10<sup>th</sup> January 2023, almost 100 days late.

Concerning the learned Advocate for the Applicant being assigned court sessions cases, this has not been clearly articulated by the counsel. he just mentioned the dates from 29<sup>th</sup> November 2022 to 30<sup>th</sup> November 2022 the counsel was attending the Court of Appeal sessions case. Counsel also attended Criminal Session Case on 21<sup>st</sup> November 2022. He has not accounted for the rest of the delayed days.

*M. O. O. O.*

Instead of accounting for the delay or showing diligence in prosecuting the matter, counsel decided to change the course of his Application by introducing an element of illegality. This element did not appear in the previous Applications neither was it in the Affidavit in support of the Application. Counsel for the Respondent argued strongly against accepting this ground as a reason for extending the time because it has just been introduced at the hearing. I agree with the Respondent's counsel, this reason is a mere afterthought intended to delay justice in a dispute that was filed via Application No. 9 of 2012 in the District Land and Housing Tribunal for Kagera at Bukoba on 17<sup>th</sup> January 2012.

Evidently there is lack of diligence on the part of the Applicant's counsel in prosecuting this matter not only from the time the High Court granted extension of time in Misc. Application No. 36 of 2022 on 22<sup>nd</sup> September 2022, but also from 16<sup>th</sup> October 2020 when Judgment in Land Case Appeal No. 09 of 2020 was delivered. Consequently, the Applicant has not advanced *good cause* to warrant this court to grant the extension of time sought.

In exercise of this Court's discretionary powers, the Application for extension of time within which to file Application for Leave to Appeal to the Court of Appeal to challenge the decision of the High Court in Land Case Appeal No. 09 of 2020, is hereby dismissed. The Applicant is to pay the Respondent's costs in respect of this Application.

*M. O. O. O.*

It is so ordered.

**DATED** at **BUKOPA** this 24<sup>th</sup> day of March, 2023.



*M. P. Otaru*  
M. P. Otaru  
**JUDGE**

**Court:** Ruling delivered in court in the presence of Mr. Fahad, learned Advocate for the Respondent and in the absence of the Applicant.

The right of appeal is duly explained.



*M. P. Otaru*  
M.P. Otaru  
**Judge**  
24/03/2023