

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC.LAND APPEAL CASE NO. 72 OF 2022

*(Arising from Misc. Land Application No. 151 of 2021 District Land and Housing Tribunal for Karagwe
Originating from Land Case No. 1 of 2021 Rugu Ward Tribunal)*

MONIGUDA BERENADO..... APPELLANT

VERSUS

FRUGENSI KIBAGO..... RESPONDENT

JUDGMENT

22nd and 26th May, 2023.

BANZI, J.:

This appeal arises from the decision of the District Land and Housing Tribunal for Karagwe (DLHT) where the Appellant filed an application under regulation 22 (d) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019] read together with Order XLIII rule 2 of the Civil Procedure Code [Cap. 33 R.E. 2019] seeking extension of time to file the appeal out of time. The Application was supported by an affidavit of the Applicant/Appellant assigning reasons for the delay. The Respondent opposed the application by filing counter affidavit. After hearing both parties, the Chairman dismissed

the application for want of merit, the decision which agitated the Appellant who appealed to this Court with four grounds, thus:

- 1. That the honourable DLHT erred in facts and law by holding that the appellant has no reasonable ground to apply for extension of time to file appeal.*
- 2. That the honourable Chairman erred in law and facts by failure to consider that the trial Ward tribunal deliberately delayed to supply the copy of its decision to the appellant on time.*
- 3. That the trial tribunal erred in law and fact by failure to consider documentary evidences which proves that the appellant failed to file appeal on time since she was in Dar es Salaam nursing her daughter who faced complication during child delivery.*
- 4. That honourable Chairperson erred in law and fact by failure to consider that denying the appellant right to file her petition of appeal prejudices her fundamental right of being heard.*

At the hearing of the appeal both the Appellant and the Respondent appeared in person and unrepresented. Since the Respondent was not fluent in Kiswahili language, he was availed with an interpreter namely, Mr. Cornel Buberwa to interpret from Kiswahili language to Nyambo language and vice versa.

In her submission, the Appellant argued all grounds jointly. It was her contention that, after delivery of judgment at the ward tribunal, she applied for copy but they refused to supply her. Thereafter, she went to Dar es Salaam to nurse her daughter who gave birth. While she was there, she called the secretary of the tribunal and asked him if she can send someone to collect the copy in question. However, her request was rejected and she was insisted to go to collect the said copy personally. After that, she sent a person to collect it but they refused. Thereafter, she returned to Karagwe and went to collect her copy but the time had already lapsed for three days. After collecting the copy, she filed the application before DLHT. She added that, she had a good cause for the delay as she attached all relevant documents to support her application. She further claimed to be denied her right of appeal and she concluded by praying for her appeal to be allowed.

In his reply, the Respondent contended that, the Appellant delayed for more than twenty days and not three days as she claimed. He further submitted that, the Appellant has never travelled to Dar es Salaam because they are neighbours and she did not attach any photograph of the baby she claimed to nurse.

In her brief rejoinder, the Appellant insisted that, it was necessary for her to obtain copy of the decision for purpose of appeal. Also, she has

attached documents proving that, she was in Dar es Salaam nursing her daughter and the delay was just for three days.

Having scrutinised the record of the DLHT and submissions of both sides, the main issue for determination is *whether the Appellant had established sufficient cause for the delay.*

It is settled law that, granting extension of time is in the discretion of the court upon being satisfied that a party seeking the extension has shown sufficient/good cause to substantiate why he/she did not file the matter in question within the prescribed time. Although there is no hard and fast rule on what constitutes sufficient/good cause, but there are plenty of legal authorities which underline factors to be taken into account including the length of delay, the reasons for the delay, the degree of prejudice that the respondent may suffer if the application is granted, whether or not the application has been brought promptly, lack of diligence on the part of the applicant just to mention a few. See the cases of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 CAT (unreported) and **Omary Shabani Nyambu v. Dodoma Water and Sewerage Authority**, Civil Application No. 146 of 2016 CAT (unreported), **Tanzania Revenue Authority v. Tango Transport Co. Ltd**, Consolidated Civil Applications No. 4 of 2009 and 8 of 2008 CAT

(unreported) and **The Registered Trustees of Kanisa la Pentekoste Mbeya v. Lamson Sikazwe and Others** [2019] TZCA 516 TanzLII.

In the instant case, the DLHT refused to grant the extension sought by the Appellant on the reason that, she has failed to account for nine days of the delay from the moment she claimed to collect copy of judgment to the day she filed her application. Also, the Chairman did not believe the Appellant that the trial tribunal refused to supply her with copy of judgment because the fact that she signed on the judgment on the day it was delivered, then the same was ready for collection. Besides, she did not attach any document to substantiate her claim. In addition, it was the finding of the DLHT that, she did not state when she returned from Dar es Salaam and she did not attach any bus ticket.

Much as I am aware with the principle concerning the requirement to account for each day of the delay, but this is not the only factor which is always considered when the court or tribunal is exercising its discretion to grant or not to grant extension of time. The same is applied depending on circumstances of each case. Moreover, although it is not a requirement of the law to attach copy of judgment when appealing from ward tribunal to DLHT, but still, it is necessary for a party to have copy of judgment while preparing petition or memorandum of appeal because such grounds cannot

fall out of the sky. In the instant matter, there is no dispute that the Appellant signed the judgment on the day when it was delivered. The mere fact that, she signed it on the day of delivery is not a conclusive proof that, the said judgment was ready for collection on that date. Had it been ready for collection of that date, it would have been supplied to the parties on the same date and the Appellant would not be here arguing the same issue. Besides, even the Respondent in his counter affidavit did not state about being supplied with the copy of judgment on the date it was delivered which would form basis of the decision by the learned Chairman. Likewise, the fact that the Appellant did not attach copy of the ticket, does not conclude that, she has never travelled to Dar es Salaam as suggested by the Respondent because a person can travel and lost the ticket thereafter.

Furthermore, as it was stated in her affidavit, after collecting the copy on 4th September, 2021, she filed the application on 13th September, 2021 which is a span of nine days. This in itself demonstrated promptness of the part of the Appellant which is another factor to be considered in granting extension of time. Besides, looking closely at the circumstances of the case, there is no way that the Respondent would be prejudice if the application was granted. In that regard, had the DLHT considered all these factors, it wouldn't have denied the Appellant with extension of time. Thus, it is the

finding of this court that, the Appellant had managed to establish that, the delay was with sufficient/good cause.

That being said, I find the appeal with merit and I hereby allow it by quashing and setting aside the ruling and order of DLHT for Karagwe in Misc. Application No. 151 of 2021. The Appellant to lodge her appeal before the DLHT for Karagwe within thirty (30) days from the date of this judgment. Each party shall bear its own costs.

It is accordingly ordered.



I. K. BANZI
JUDGE
26/05/2023

Delivered this 26th day of May, 2023 in the presence of the Appellant and the Respondent both in person. Right of appeal duly explained.



I. K. BANZI
JUDGE
26/05/2023