

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

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**MISC. LAND APPLICATION NO. 9 OF 2023**

*(Arising from Land Application No. 135 of 2016 District Land and Housing Tribunal for Bukoba)*

**KAGERA FARMERS' COOPERATIVE BANK LTD UNDER  
LIQUIDATION OF DEPOSIT INSURANCE BOARD..... APPLICANT**

**VERSUS**

**ALSTIDES MARTIN..... RESPONDENT**

**RULING**

14<sup>th</sup> and 25<sup>th</sup> July, 2023

**BANZI, J.:**

At the District Land and Housing Tribunal for Kagera at Bukoba ("the DLHT"), the respondent sued the applicant over the suit land located at Plot No. 14/2 Block "BB" Hamugembe Bukoba Municipal claiming to have bought from Kheloon Mohamed on 7<sup>th</sup> July, 1996 on a consideration of Tshs.6,000,000/=. In their sale agreement it was agreed that, the said amount would be paid in two instalments through the Court Broker and Process server Mr. Wilbert Maziku and the certificate of right of occupancy would be handed over to the respondent upon payment of the whole purchasing price. However, after he had paid Tshs.3,500,000/=, Kheloon Mohamed died and left the certificate of right of occupancy to Munaf Hussein Ibrahim. The said Munaf Hussein Ibrahim mortgaged that certificate to the

applicant and secured a loan amounting Tshs.12,000,000/=. However, Munaf failed to pay back the loan and the applicant wanted to sell the suit land under auction. After being aware of that auction, the respondent filed Application No. 135 of 2016 with a prayer to be declared as the lawful owner of the suit land. He also sought an order that the mortgage transaction executed by the late Munaf Hussein Ibrahim and the applicant was null and void ab initio.

After hearing the parties, the DLHT in its judgment dated 17<sup>th</sup> February, 2021 declared the respondent as the lawful owner of the suit land and issued the order of perpetual injunction against the sale of the suit land by the applicant. The decision of the DLHT did not please the applicant, she appealed to this Court vide Land Appeal No. 14 of 2021 faulting the findings of the trial tribunal. However, when the respondent was served with the memorandum of appeal, he raised a preliminary objection that appeal was incompetent for being accompanied by the incompetent decree of which the date inserted in the judgment differed with the date of decree. Having heard both parties, this court (Hon. Mwenda, J.) on 6<sup>th</sup> September, 2022, struck out the appeal for being incompetent.

After the appeal was struck out, the applicant through the office of Solicitor General, Bukoba, initiated the process to secure a rectified decree

and the same was issued on 18<sup>th</sup> November, 2022. Having found herself out of time, the applicant filed this application seeking for extension of time to file the appeal out of time. The application was made under section 14 (1) (2) of the Law of Limitation Act [Cap. 89 R.E. 2019] ("the LLA") and it is supported by the affidavit deposed by Mr. Lameck Buntuntu, learned Senior State Attorney. The respondent through his counter affidavit opposed the application.

At the hearing, the applicant was represented by Mr. Lameck Buntuntu, the learned Senior State Attorney, whereas the respondent was represented by Mr. Lameck John Erasto, the learned advocate. Submitting in support of the application, Mr. Buntuntu adopted his affidavit and contended that, the applicant delayed to file the appeal because the appeal that was filed was accompanied with defective decree which was struck out by this court and they were directed to go back to the DLHT to secure the rectified decree. After securing the rectified decree, they filed this application. He therefore urged the court to grant the application so that they can file the appeal.

In his reply, Mr. Erasto responded that, the applicant filed this application almost one month after securing the rectified decree but has not accounted for each day of the delay. According to Mr. Erasto, the affidavit deposed by Mr. Buntuntu lacks material requirement for this court to extend

time. He further submitted that; the impugned judgment was delivered on 17<sup>th</sup> February, 2021 thus, the present application if granted will prejudice the respondent who was declared the owner of the suit land. He supported his submission with the case of **Yusufu Hassan v. The Republic** (Criminal Application No. 50 of 2017) [2020] TZCA 37 TanzLII. Moreover, he argued that, the applicant did not act promptly after receiving the rectified decree and she did not explain the reason for spending almost one month without filing the application for extension of time. He urged the court to dismiss the application because the applicant has failed to account for each day of delay, they did not act promptly and therefore granting this application will prejudice the respondent. He concluded his submission by citing the case of **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 CAT at Dar es Salaam (unreported).

In his rejoinder, Mr. Buntuntu contended they filed this application less than a month after receiving the rectified decree, therefore, they did not stay idle after securing that decree. According to Mr. Buntuntu, granting this application will not prejudice the respondent because he is the one occupying the suit land.

Having thoroughly considered the affidavits and the submission of both parties, the issue for determination is *whether the applicant has established good cause to warrant this Court to grant extension of time.*

Section 41 (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] requires the appeal from the DLHT to the High Court to be filed within 45 days after the date of decision. However, under the proviso to the same section, the High Court is empowered to extend time after expiration of 45 days. The section provides thus:

*"41 (2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order.*

*Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."*

From the above cited provision of the law, it is trite law that, in application for extension of time, the applicant is required to show good cause for the delay in order to be granted extension of time. However, what amount to good/sufficient cause has not been defined 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). Also, it is the requirement of the law that, the applicant must account for each day of the delay. See the cases of **Wambebe Mtumwa Shahame v. Mohamed Hamis** (Civil Application No. 138 of 2016) [2016] TZCA 898 TanzLII and **Sebastian Ndaula v. Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014. In the case of **Jaliya Felix Rutaihwa v. Kalokora Bwasha and Another** (Civil Application No. 392 of 2020) [2021] TZCA 62 TanzLII, it was stated that:

*"Although there is no invariable or constant definition of the phrase "good cause" the court consistently looks at the factors such as the length of the delay involved; the reasons for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the Court exercises its discretion; the conduct of the parties; and the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal... Also, to be considered is whether there is a point of law of sufficient*

*importance such as the illegality of the decision sought to be challenged.*

Reverting to the case at hand, the time from 17/02/2021 when the DLHT delivered its judgment to 18/11/2022 when the applicant was supplied with the rectified decree is excluded in counting the time for delay because the parties were in the court prosecuting the case. Therefore, that was a technical delay. But the period after being supplied with the rectified decree and when the applicant filed this application, is actual delay which as a matter of law, must be accounted for. Mr. Buntuntu in his submission contended that, they did not stay idle after being served with the rectified decree and he insisted that they filed this application in less than thirty days. However, in his affidavit, he did not state what prevented them from filing the application promptly after being served with the rectified decree. What is contained in paragraph 8 is the effort he used to secure the rectified decree. With that regard, it is undisputed that, they did not act promptly and stayed almost a month before filing this application. I don't support his contention that the application was filed within 30 days because he did not back up his argument with any authority to substantiate that the application for extension of time must be filed within 30 days. Therefore, the period from 18/11/2022 to 12/12/2022 was actual delay which was required to be accounted for, but unfortunately, that period was not accounted for.

Accounting for delay has been insisted in a number of cases, for example in the case of **Tanzania Fish Processors Limited v. Eusto K. Ntagalinda**, Civil Application No. 41/08 of 2018 CAT at Mwanza (unreported), where the applicant delayed for 14 days from the period the application was struck out to the period, she filed the application and she did not account for such delay, it was stated that:

*"The law is clear that in an application for extension of time, the applicant should account for each day of delay...therefore, the applicant has failed to show good cause for the delay which is the first limb of the precondition for the extension of time..."*

Similarly, in the matter at hand, the applicant delayed for 24 days after being supplied with the rectified decree and they have failed to account for each day of the delay within those 24 days. Conversely, the learned Senior State Attorney concentrated on complaining that, they were delayed to be supplied with the rectified decree and he reminded the tribunal three times which was irrelevant to the matter at hand while he was required to account for 24 days after being supplied with the rectified decree. Thus, it is the finding of this Court that, the applicant has failed to establish good cause to warrant this Court to grant extension of time.



Since the applicant has failed to show good cause for the delay, the application has no merit and is hereby dismissed. Taking into consideration of the circumstances of the case, each party shall bear its own costs.



**I. K. BANZI**  
**JUDGE**  
**25/07/2023**

Delivered this 25<sup>th</sup> day of July, 2023 in the presence of Mr. Nestory Lutambi, learned State Attorney for the applicant and the respondent in person.



**I. K. BANZI**  
**JUDGE**  
**25/07/2023**