

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 637 OF 2020

(Arising From the Ruling of the High Court of Tanzania (Land Division) in Misc. Land Application No.559 of 2019)

GIDEON MANDESIAPPLICANT

VERSUS

CHARLES JOHN MKANGARESPONDENT

Date of last Order:25/6/2021

Date of Ruling:01/07/2021

R U L I N G

MWENDA, J:

This is an Application for extension of time to file an appeal out of time.

In his Affidavit in support of Chamber Application, the Applicant submitted that sometimes in 2019 he applied for extension of time before this Court in Land Application No. 559 of 2019. His prayers were granted on 19/10/2020 and he was ordered to file his appeal within 14 days from the date of ruling. However, the applicant did not comply with the court's order as on 15th October, 2020 he was assigned by NEC as a coordinator and facilitator for tactile Ballot Folder to travel to Mbeya for training Sessions. He referred this Court to a letter from NEC dated 15/10/2020 as a proof to his submission and prayed his Application to be granted.

The respondent through the services of Mr. Ombuya, learned advocate opposed this application. He submitted that this Application is incompetent as in Misc. Land Application No. 559 of 2019 the Applicant was granted 14 days extension of time to file his Appeal. This application is therefore *res judicata*.

Secondarily, the learned Advocate submitted that there is no proper citation of Law. All enabling provisions cited in the chamber summons are referred to as R. E. 2002 instead of R. E. 2019. This contravenes the provisions of Section 20(1) of Interpretation of Laws Act, Cap. 1. Failure to properly cite the relevant provision renders this application incompetent before the court. He thus prayed this application to be struck out.

Without prejudice to his points of objections Mr. Ombuya submitted that there are no sufficient reasons for delay raised by the applicant. The Applicant's allegations that he was assigned by NEC as a coordinator and facilitator tactile Ballot Folder to travel for training sessions in Mbeya is unsubstantiated on the following reasons. First, the said invitation letter from NEC does not show he was personally assigned as a facilitator. Secondly, there is no Affidavit from NEC officers to confirm that he was assigned that task. In support to his argument he cited the case of **Sebana Technics Dar Ltd vs. Michale J. Luwunzu, Civil Application No. 451/18 of 2021** (at Page 11) in which it was stated inter alia that an affidavit which mentions another person is hearsay unless that other person swears an affidavit. The learned advocate added that failure to submit affidavit from NEC Officials renders this Applicant's evidence hearsay and in principle courts cannot rely on hearsay evidence. He thus prayed this Application to be dismissed.

In rejoinder, the Applicant responded that it is true he was granted 14 days' time to file an appeal in Land Application No. 559 of 2019. He however could not file the same in time as he travelled to Mbeya that is why he is now seeking extension of time to file his Appeal.

Responding on wrong citation of enabling provisions of the Law the applicant asserted that what matters in his application is the section of the Law in question as long as it is not causing any injustice to the respondent. He thus prayed for this Court to consider his prayers and discussed in his submission in chief.

Having summarized the submission from both parties the issue for determination is whether the Applicant raised sufficient reasons for extension of time.

Before I respond to this issue Mr. Ombuya raised two points of objections. One that this Application is res judicata in that the Applicant was granted extension of time to file an Appeal within 14 days in the Land application No. 559 of 2019. When responding to this point of objection the Applicants submitted that it is true that he was granted extension of time to file appeal within 14 days. However that time lapsed before he could do so that is why he has preferred this other application. This court have considered this point of objection and agree with the applicant that this application is not res judicata. This is because the 14 days' time which the applicant was granted to lodge his appeal lapsed before he could do so and the option for him was to file another application seeking extension of time.

Another point of objection which the learned advocate for the respondent raised is improper citation of enabling provisions that is R. E.

2002 instead of R. E. 2019. This court have considered this point and noted that the omission to properly cite enabling provision was not occasioned by the applicant's negligence and it won't occasion any injustice on the Respondents. In **Mussa Hamisi Mariamoja vs. Mussa Selemani Mussa and Another (Misc. Land Application No. 431 of 2020** the court among other things stated:-

"....for the court to tolerate omission by a party to cite a proper enabling provision of the law, the omission should have resulted from inadvertence and without there being an element of negligencé. It should a well have not occasioned failure of justice"

Having discussed the points of objections raised by the advocate for respondent the Applicants in his submission averred that the reasons for his delay to file appeal in time is the assignment by NEC as a coordinator and facilitator of tactile Ballot folder to conduct training Sessions at Mbeya.

In support to this argument, he referred this Court to a letter from NEC Annexure A2. Going through the said letter the addressees are: -
"WARATIBU WA UCHAGUZI MIKOA YA, TABORA/TANGA/KAGERA/MTWARA/DODOMA WA MBEYA TANZANIA BARA. In this letter there is nowhere the Applicant's name is appearing. The addressees are **WARATIBU WA UCHUNGUZI MKOA.** We are also not informed if the Applicant is one of the addresses (**WARATIBU**).

Again paragraph two of the said letter reads *"Kamati ya Tactile Ballot Folders ambavyo ni muunganiko wa Vyama vya watu wenye Ulemavu inakusudia kutoa mafunzo ya matumizi ya Tactile Ballot Folders....."*


From this paragraph it was expected the Applicant to produce evidence to show if he is a member of Tactile Ballot Folder Committee "*Kamati ya Tactile Ballot Folders*".

Having so analyzed the submission from both sides, I agree with Mr. Ombuya, Learned Counsel that the Applicant have not advanced sufficient reasons delay.

This application is hereby dismissed with costs.

It is so ordered.




A. Y. MWENDA
JUDGE
01/07/2021