

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

AT BUKOBA

MISC. LAND APPLICATION NO. 46 OF 2021

BERNARD LUTTASHABA.....APPLICANT

AND

CONSTANCIA KAMUGISHA.....RESPONDENT

RULING

Date of Last Order: 23/09/2021

Date of Ruling: 01/10/2021

A.E. Mwipopo, J.

Bernard Luttashaba, the Applicant herein, filed the present application for extension of time to file application to set aside an *ex-parte* judgment of this Court in Land Case Appeal No. 61 of 2018. The appeal was filed by the Respondent namely Constancia Kamugisha, who is the Administratrix of the late Gaspary Kamugisha, following her dissatisfaction with the decision of the District Land and Housing Tribunal for Muleba at Muleba in Application No. 13 of 2017 which was in favour of the Applicant. The appeal was heard by the High Court in *ex-parte* and the judgment of said appeal was delivered on 19th February, 2021 in favour of the Respondent. The Applicant was aggrieved with the judgment of this Court and on

26th May, 2021 he filed the present application for extension of time to file application to set aside the ex-parte judgment. The Applicant is praying for the following orders:-

1. That, this Honourable Court be pleased to extend time for the Applicant to file an application for re-hearing of Land Case Appeal No. 61 of 2018.
2. That, if the prayer will be disposed of in favour of the Applicant, the Honourable Court be pleased to re-hear Land Case No. 61 of 2018.
3. Cost be provided for.
4. Any other or further reliefs/orders as the Court may deem it is fit and just to grant.

The application is made by Chamber Summons supported by the Applicant's Affidavit. The Respondent namely Constancia Kamugisha opposed the application through Counter Affidavit.

When the matter came for hearing, both parties to the application had service of Advocates. The Applicant was represented by Mr. Godfrey Kange, Advocate, whereas, the Respondent appeared in person as she was not represented.

In brief, Mr. Godfrey Kange submitted that in regards to the application for extension of time that the court has to grant leave for extension of time as there irregularities in the ex-parte Judgment of this court in Land Case Appeal No. 61 of 2018. He said that the appeal proceeded with hearing in *ex-parte* without informing the Applicant the date of Judgment. He said that this is a fatal omission.

To support the position he cited the case of **Cosmas Construction Company Limited V. Arrow Government Ltd [1992] T.L.R 127**, where the Court of Appeal held that when a party fails to enter appearance the hearing has to proceed in ex-parte. Although the matter is supposed to proceed in ex-parte, the party is entitled to know the result of the hearing.

He stated that the Applicant was not notified of the date of Judgment as a result he filed his application to set aside ex-parte Judgment out of time. This is reason is sufficient for the court to extend time described by the law as it was held in the case of **Mohamed Salum Nahdi V. Elizabeth Jeremiah**, Civil Reference No. 14 of 2017, Court of Appeal of Tanzania, at Dar Es salaam, (Unreported).

Another reason submitted by the Applicant's Counsel is that the Respondent did not do any effort to ensure that the Applicant is appearing in court on the date of hearing before the Respondent published in the newspaper the summons to appear for hearing. He said that the Applicant had a service of Advocate at the trial before the District Land and Housing Tribunal but the Respondent did not serve that counsel. He added that there is no proof that the Respondent made an effort to serve the Applicant with summons, but it appears that the Respondent chose to serve summons to the other party by publication which is the last resort after all means of serving the Respondent has failed. The Counsel prayed for the land case appeal to be re – heard with cost.

In her reply, **Ms. Constancia Kamugisha** submitted that the Applicant was aware of the date of Judgment that is the reason he filed the present application. She said that the Applicant knew that there was judgment of this court as he was served with summons to appear through publication on 31.10.2021, but the Applicant chose not to appear in court. Thus, she said that the court rightly decided to proceed with hearing of the case in ex-parte and there is no sufficient reason provided for the present application.

In his rejoinder the Counsel for the Applicant insisted that the Applicant was not served with the notice of judgment and that he became aware of ex-parte Judgment of this court after he was informed by Ward Executive Officer.

From the submissions, the only issue for determination in this application is whether the application has merits.

This Court has discretion to grant an application for extension of time for a good and sufficient cause under section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019. The section provides that, I quote hereunder:-

"14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

The Court of Appeal had similar position in the case of **Tanga Cement Company V. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, at Tanga, (Unreported), where it held that:

".....an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judicially, and overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."

The word "reasonable or sufficient cause" has been interpreted in several decisions of the Court to be a relative one dependent upon party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion [see. **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania]. The good cause must be determined by reference to all the circumstances of each particular case. The Court of Appeal observed in the case of **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly. The absence of any explanation for delay lack of diligence on the part of the applicant."

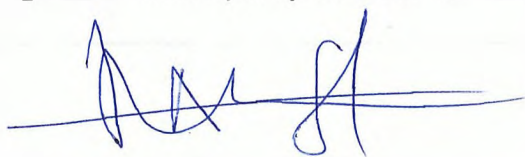
The Applicant reason for the delay is that he was not notified of the date of Judgment as a result he filed this application to set aside ex-parte Judgment out of time. This is a sufficient reason for Court to enlarge the time of filling the application to set aside the ex- parte judgment. A party who fails to enter an appearance on the date of hearing is entitled to know the date of final outcome of the case, although the matter is going to be considered without any input by him. He has to be told the date of delivery of the judgment so that he may attend to know the consequences which may follow, as it was held by the Court of Appeal in **Cosmas Construction Company Limited V. Arrow Garments Limited [1992] T.L.R. 127**. The record of proceedings discloses that the Respondent informed the Court on 07th December, 2020 that the service was effected through publication in the Nipashe Newspaper dated 03rd October, 2020 and the Court ordered for the hearing to proceed in absence of the Applicant. Then, the Court proceeded to record the Respondent submission and fixed a judgment date on 19th February, 2021. The judgment was delivered on the fixed date in the presence of the Respondent and in absence of the Applicant. There is nothing in record which shows that the Applicant was informed of the date of judgment.

The Applicant states in paragraph 6 of his affidavit that he became aware of the ex- parte judgment of the High Court on 22nd May, 2021 when he was served with summons to appear before the District Land and Housing Tribunal of Muleba in application for execution of the decree of the High Court in respect of Land Case Appeal No 61 of 2018. The Applicant states that soon thereafter he filed

the present application for extension of time on 26th May, 2021 as the time for making application to set aside ex-parte judgment has already lapsed. This evidence available in record proves that the Applicant soon after he became aware of the ex- parte judgment he filed the present application for extension of time.

Therefore, I find that the Applicant has provided sufficient cause and his application for extension of time is granted. The Applicant is granted 30 days from today to lodge the application to set aside the ex- parte judgment in Land Case Appeal No. 61 of 2018. For the Applicant's prayer that the Court has to re-hear Land Case No. 61 of 2018 if the prayer for extension of time is granted, the same has to be determined by this Court after the Applicant has lodged the application to set aside the ex parte judgment. Each party to bear its own cost.

It is so ordered.



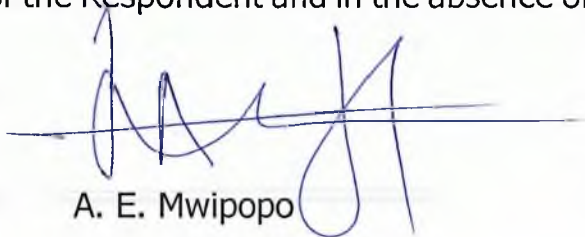
A. E. Mwipopo

JUDGE

01.10.2021



Court: The ruling was delivery today this 01.10.2021 in chamber under the seal of this court in the presence of the Respondent and in the absence of the Applicant.



A. E. Mwipopo

Judge

01.10.2021

