

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. LAND APPLICATION NO. 102 OF 2021

(Arising from Misc. land Application No. 39 of 2020 Before the High Court of Tanzania at Bukoba)

MESAKI SIRIVESTER.....APPLICANT

VERSUS

ROSE CHRISTIAN.....RESPONDENT

RULING

15/08/2022 & 19/08/2022

E. L. NGIGWANA, J.

This application has essentially been preferred under section 11(1) of the Appellate Jurisdiction Act Cap. 141 R: E 2019. It is for an extension of time within which to file a notice of intention to appeal to the Court of Appeal of the United Republic of Tanzania against the decision of this court (Hon. Mwipopo, J.) in Land Application No. 39 of 2020 delivered on 30/07/2021, and is premised on the affidavit deposed by Mr. Gerase Reuben, learned advocate for the Applicant.

This application has been successfully filed electronically on 06/09/2021, therefore, there was a delay of six (6) days as the prescribed time limit of thirty (30) days to file the notice lapsed on 30/08/2021.

The learned advocate for the applicant deposed; that the applicant herein filed application No. 39 of 2020 seeking for extension of time within which to file an appeal to this Honorable court against the decision of the DLHT for

Kagera at Bukoba in Appeal No. 40 of 2019, but the same was dismissed on 30/07/2021.

That, on 30/08/2021, the applicant brought a Notice of Appeal to appeal to the Court of Appeal to be lodged, but the same could not be processed on that date due internet problems; which made it impossible for the applicant to be provided with control number to pay for the same to be admitted within the required time. That, having noticed that time has lapsed; the applicant has preferred this application immediately to seek leave of this court to extend time within which to lodge the said Notice of Appeal of Tanzania. That, the applicant also spent some days looking legal assistance, therefore, the delay was not caused by negligence of the applicant, rather by the above stated reason which was beyond the applicant's control. He added that, six (6) days delay does not amount to inordinate delay.

The respondent filed a counter affidavit drawn and filed by Mr. Eliphas Bengesi, learned advocate. It is unfortunate that the same is not clear whether the applicant is objecting or supporting the application.

At the hearing of this application, Mr. Gerase Reuben, learned advocate appeared for the Applicant while Mr. Eliphas Bengesi, learned advocate appeared for the respondent.

Submitting in support of the application, Mr. Gerase submitted that the reason for delay was internet problem which made impossible to be provided with a control Number to pay for the same to be admitted.

Mr. Bengesi, learned counsel for the respondent supported the application by the Applicant.

Having heard the parties, the issue for determination is whether a good cause has been demonstrated for granting the application in terms of the provision of section 11(1) of the Appellate Jurisdiction Act Cap. 141 R: E 2019.

Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R: E 2019 provides that;

*"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired**"*

However, it is settled that an application for extension of time can only be granted upon the applicant adducing good cause or sufficient reason(s) for delay. This principle was clearly stated in **Mumello v. Bank of Tanzania** [2006] E.A. 227 that,

"... an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause"

In **Regional Manager TANROAD Kagera versus Ruaha Concrete Company Ltd**, Civil application No. 96 of 2007 CAT (unreported) the court held that;

"The test for determining an application for extension of time is whether the applicant has established some material amounting sufficient or good cause as to why the sought application is to be granted.

What amounts to sufficient cause or good cause is not defined in the statutes. However, in the case of **Lyamuya Construction versus Board of Registered Trustees**, Civil Application No.2 of 2010 CAT (Unreported), factors to be considered before granting or refusing extension of time are; whether the applicant has accounted all days delayed, whether the delay is inordinate or not, whether the applicant has shown diligence, and not apathy negligence or sloppiness in prosecution of the action that he intends to be taken. Last but not least, if the court feels that there is any point of law of sufficient importance such as the illegality involved in the decision sought to be challenged.

Furthermore, the court of appeal of Tanzania in the case of **Masalu versus Tanzania Processing Ltd**, Civil Application No. 13 of 2020 held that-

"What constitute good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one, is dependent upon a party seeking extension to prove the relevant material in order to move the court to exercise its discretion".

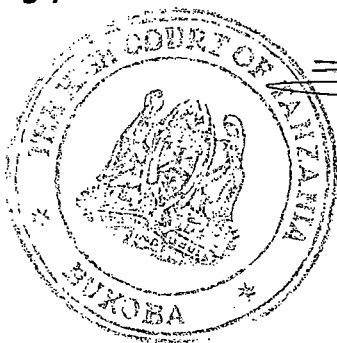
Generally, from the herein above Court of Appeal authorities, it can be learnt that extension of time is not a right of a party but an equitable

remedy that is only available to a deserving party at the discretion of the court. That, the law does not set any minimum or maximum period of delay. The applicant must give valid, clear and sufficient reasons upon which the discretion can be favorably exercised. It is also a celebrated principle practice that each case should be determined in its own circumstances.

In the application at hand, it is apparent that the application was promptly brought but also the applicant has accounted for the 6 days as the applicant had to spend few days to look for an advocate who can draw proper documents for him, and having completed preparation of the documents, he met another stumbling block which is internet problem.

I am alive that there is no precise measure of what amounts to inordinate delay. It will differ from case to case depending on the circumstances of each case. In the matter at hand, I am convinced that the delay of six (6) days is not an inordinate delay. Thus, I find it proper to exercise the discretion of the court to grant extension of time as I hereby do.

Having said so, the application is granted. Applicant should file the Notice of Appeal within fourteen (14) days from the date of this ruling. Order accordingly.

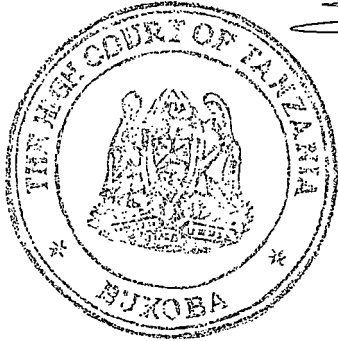


E. L. NGIGWANA

JUDGE

19/08/2022

Ruling delivered this 19th day of August, 2022 in the presence of both parties in person, Hon. E. M. Kamaleki, Judge's Law Assistant and Ms. Tumaini Hamidu, B/C.




E. L. NGIGWANA

JUDGE

19/08/2022