

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC. LAND APPLICATION NO. 8 OF 2022

(Arising from the ex-parte judgment in Land Appeal No. 14 of 2017 at
the High Court of Tanzania at Mwanza)

KIRANDORA MUHERE ----- APPLICANT
VERSUS
AMOSI BHOKE ----- RESPONDENT

RULING

5/5/2023 & 19/5/2023

ROBERT, J:-

The applicant, Kirandora Muhere, seeks an extension of time to file an application to rehear Land Appeal No. 14/2017, which was decided by this Court in his absence. The applicant's request is grounded on the reasons outlined in his sworn affidavit.

At the hearing of this application the applicant was represented by Mr. Innocent Kisigiro, learned counsel whereas Mr. Emmanuel John, learned counsel represented the respondent. Hearing proceeded orally.

Highlighting on the reasons for this application, Mr. Kisigiro, submitted that the applicant was not summoned to appear and defend the appeal. He was also not informed of the date of judgment so that he could apply to set aside the decision of the Court within the prescribed time. He informed the Court that the applicant became aware of the decision in the said appeal when the respondent went to execute an order of the Court. He relied on the cases of **Bernard Luttashaba vs Constancia Kamugisha**, Misc. Land Application No. 46 of 2021, and **Mugesi Tetaha vs Samson Ibrahim**, Misc. Civil Application No. 120 of 2020, where similar extensions of time were granted.

Additionally, Mr. Kisigiro further contended another reason for the extension of time is illegality. He claimed that the assessors did not provide their opinion before the trial tribunal's decision, resulting in a violation of the section 23 and 24 of the Land Dispute Courts Act and Reg. 19 of GN. No. 174 of 2003. He also argued that the procedure followed during the visit to the locus in quo by the DLHT did not adhere to the prescribed guidelines. To support his position, he made reference to the cases of **Principal Secretary Ministry of Defence and Natural Service vs Devran Devram Pallangya** (1992) TLR 185 and **Tropical**

Air (TZ) Limited vs Godson Eliona Moshi, Civil Application No. 9 of 2017, CAT at Arusha.

Furthermore, Mr. Kisigiro contended that an extension of time can be granted in the interest of justice, citing the case of **Mkurugenzi wa Nelis vs Eliab Cassus**, Land Appeal No. 73 of 2010.

In response, Mr. John argued that the applicant failed to comply with the requirement of filing the application to rehear the appeal within 30 days after the delivery of the judgment. He pointed out that the applicant did not specify when he became aware of the judgment, and although the applicant stated in his affidavit that initially he filed an application for extension of time in a wrong registry, no further information was provided on the subsequent actions taken after filing his application in a wrong registry. Mr. John cited the case of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, where the court emphasized the need for the applicant to account for all days of delay, which he claimed that the applicant in this matter failed to account for.

Regarding the alleged illegality, Mr. John argued that it is premature to address this issue at the present stage and suggested that it should be

raised in an application to set aside the ex-parte judgment if extension of time is granted by the Court.

He maintained that, the applicant's complaints at paragraph 8, 9 and 10 of the affidavit that he was informed orally by registry officials that his case would be transferred to Mwanza registry are not supported by any evidence. To buttress his argument, he made reference to the case of **Dianarose spareparts Limited vs Commissioner General TRA**, Civil Application No. 245/20 of 2021, CAT at Dsm (unreported) where the Court of Appeal decided that where an affidavit mentions another person on a material point, that other person should also take an affidavit.

He argued that, the case of **Bernard Lutashaba** cited by the counsel for the applicant is not relevant in this case as the applicant in that case went to court immediately after becoming aware of court judgment unlike the applicant in this case. He argued further that, the applicant was served with summons but he refused to heed to the summons. He therefore prayed for this application to be dismissed with costs.

In a brief rejoinder, Mr. Kisigiro responded to the argument that the applicant did not specify when he became aware of the impugned judgment. He submitted that, the applicant pointed out at paragraph 12

of his affidavit that he became aware of the judgment during execution and at paragraph 7 he stated that immediately thereafter he went to High Court, Musoma registry as a lay person. He maintained that, the High Court, Musoma Registry should have transferred the case to Mwanza registry instead of striking it out as it did on 12/12/2019. He explained that the said application having been struck out in 2019, the applicant filed this application in 2022.

Regarding the issue of illegality, Mr. Kisigiro argued that this is the appropriate moment to raise it so that the court may address it as a reason to extend time in order to deal with it at the right time.

Having considered the arguments presented, I will now make a determination on whether the applicant has provided sufficient grounds to warrant an extension of time.

It is evident from the records that the impugned ex-parte Judgment in Land Appeal No. 14/2017 was delivered on 10/5/2018. According to Order XXXIX Rule 21 of the Civil Procedure Code, where an appeal is heard ex-parte and judgment is pronounced against the respondent, the respondent may apply to the Court to re-hear the appeal. The prescribed time for filing an application for the rehearing of an appeal heard ex parte is thirty days under item 10 Part III of the Schedule to the Law of Limitation of Act. According to the records, the judgment in Land Appeal

No. 14/2017 was delivered on 10/5/2018. However, the applicant did not lodge his application within the prescribed time and his affidavit does not clearly state the date when he became aware of the impugned Judgment of this court apart from stating at paragraph 12 of the affidavit that he became aware of the judgment when execution took place.

Although the applicant mentioned in his affidavit that he first filed an application for extension of time in the High Court, Musoma registry which was strike out on 12/12/2019, he did not provide information on what transpired from that moment until 7/2/2022 when he filed this application. Therefore the Court finds that the applicant did not sufficiently account for the delays from the date of striking out of his previous application on 12/12/2019 to the date of filing the present application on 7/2/2022.

I have also noted that the applicant's complaints regarding oral information he allegedly received from the registry officials that his case would be transferred to Mwanza registry from Musoma registry are unsupported by any formal evidence. The absence of any evidence to that effect undermines the credibility of the applicant's claims in this regard.

Reference to the case of **Dianarose Spareparts Limited vs Commissioner General TRA**, Civil Application No. 245/20 of 2021, CAT at Dsm, indicates that when an affidavit mentions another person on a

material point, that person should also provide an affidavit. However, no such supporting affidavit was presented.

Most importantly, the Court does not see how it could be possible for the application already struck out by the High Court, Musoma Registry to be transferred to Mwanza registry for determination. Hence, I find no merit in this argument.

Although illegality may be a good reason for extension of time, the alleged illegality in this matter, as stated in paragraph 4 and 5 of the applicant's affidavit, that he was not served with summons to appear and defend the case against him at the High Court and further that the judgment of the trial Tribunal was not set aside is somehow lacking in merit.

The applicant's refusal to heed to summons despite being served as pointed out at page 3 of the impugned decision of this Court undermines his argument on illegality by reason of not being given opportunity to defend the case against him and his claim for extension of time.

Similarly, Mr. Kisigiro's argument that assessors at the trial Tribunal did not give their opinion before the decision of the trial Court is not tenable. It should be noted that, this application seeks to rehear Land Appeal No. 14 of 2017 which was decided ex-parte by this Court not to challenge the decision of the trial Tribunal which declared the applicant a

winner. Issues raised by the applicant were not subject of determination in land appeal No. 14 of 2017 and if the applicant wanted to challenge the decision of the Trial Tribunal in respect of those issues he would have filed an appeal against the decision of the trial Tribunal. Hence, applicant's issue that the judgment of the trial Tribunal was not set aside does not arise.

That said, this Court finds that, the applicant has failed to provide specific and compelling reasons justifying an extension of time. The arguments presented by Mr. Kisigiro do not sufficiently demonstrate why the applicant deserves an extension. Consequently, this application is dismissed for lack of merit. Each party to bear its own costs.

It is so ordered.



K.N. ROBERT
JUDGE
19/5/2023

A handwritten signature in black ink, appearing to read "K.N. ROBERT". Below the signature, the name "K.N. ROBERT" is printed in capital letters, followed by the word "JUDGE" and the date "19/5/2023".