

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC.LAND APPEAL CASE NO. 25 OF 2023

*(Arising from Misc. Land Application No. 120 of 2022 DLHT for Karagwe, Land Appeal No. 76 of 2018
DLHT for Karagwe, Land appeal No. 23 of 2022 High Court of Tanzania at Bukoba and
Land Appeal No. 25 of 2022 DLHT for Karagwe)*

ANYESI CHARLES BYAMPANJU.....APPELLANT

VERSUS

WILLIAM CHAMWIRU.....RESPONDENT

JUDGMENT

28th and 30th August, 2023

BANZI, J.:

This appeal arises from the decision of the District Land and Housing Tribunal for Karagwe (DLHT) where the appellant filed an application under section 20 (2) of the Land Disputes Courts Act [Cap.216 R.E. 2019] "(the Act") seeking extension of time to file the appeal out of time. The application was supported by an affidavit of the applicant/appellant assigning reasons for the delay. The respondent opposed the application by filing counter affidavit. After receiving the submissions of both parties, the learned Chairman dismissed the application for want of merit. Being discontented with that decision, the appellant appealed to this Court with two grounds which fall under one complaint that, the learned Chairman

erred in law to dismiss her application while he had acknowledged the delay was with sufficient cause.

At the hearing of the appeal both the appellant and the respondent appeared in person and unrepresented. The appeal was argued orally.

Being lay persons, parties had no much to say. The appellant contended that, after being succeeded in her appeal before this Court, in August, 2022 she went back to the DLHT and filed application for extension of time and she was informed to come back in October. She therefore prayed for her grounds to be considered. In his short reply, the respondent stated that, the appellant filed her application in October and not in August as she alleged. In her rejoinder, the appellant submitted that, in August, she filed a fresh appeal but later in October, she was informed about being time barred and that, she was supposed to file application for extension of time and not appeal. After being made aware of her mistake, she filed the application in question. Thus, she prayed for her ground to be considered and this appeal be allowed so that she can file her appeal before the DLHT.

Having scrutinised the records and submissions of both sides, the main issue for determination is *whether the appellant had established sufficient cause for the delay.*

It is worthwhile noting here that, section 20 (2) of the Act gives discretion to the DLHT for good and sufficient cause to extend the time for filing an appeal either before or after the expiration of forty five days. Although there is no hard and fast rule on what constitutes sufficient and/or good cause, but there are plenty of legal authorities which underline factors to be considered 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 case of **Tanzania Revenue Authority v. Tango Transport Co. Ltd**, Consolidated Civil Applications No. 4 of 2009 and 8 of 2008 CAT (unreported) and **The Registered Trustees of Kanisa la Pentekoste Mbeya v. Lamson Sikazwe and Others** [2019] TZCA 516 TanzLII.

Apart from that, there is another factor that is called technical delay *i.e.*, the time lost by party when he was pursuing matters in court. This factor was also developed by case law through the case **Fortunatus Masha v. William Shija and Another** [1997] TLR 154. This position was restated in the case of **Salvand K.A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006

(unreported). See also the cases of **Bank M (Tanzania) Limited v. Enock Mwakyusa** [2018] TZCA 291 TanzLII and **Emmanuel Makamba v. Bodi ya Wadhamini Jimbo Kuu la Mwanza** [2022] TZCA 809 TanzLII.

In the instant case, the records show that, in 2017, the appellant filed the land suit before Bugene Ward tribunal which was finally determined on 10th July, 2018. On 13th August, 2018, she filed the appeal before the DLHT which was dismissed for want of merit on 14th June, 2021. After that, she filed the appeal before this Court and on 1st July, 2022, the judgment was delivered whereby, the proceedings of the DLHT were nullified for want of involvement of the assessors. According to the judgment of this Court, parties were restored to the position after the decision of the ward tribunal. It is undoubted that, at the time the parties were restored to the original position, the time of appeal had already lapsed. However, the appellant had lost that time while she was in court corridors in pursuit of her right. Thus, as held by learned Chairman, the whole period amounts to technical delay.

Reverting to the remaining time from 1st July, 2022 to October 2022 when the appellant filed her application, the learned Chairman considered it as actual delay which formed the basis of dismissing the application on

the ground that, the appellant has failed to account for each day of the delay. However, in her submission, the appellant contended that, after her appeal was allowed before this Court, she went back to the DLHT and filed the appeal. This fact was not stated in her affidavit supporting the application but, before this appeal was heard, the appellant submitted the copy of order of the DLHT dated 28th September, 2022 indicating that, there was appeal number 25 of 2022 which was withdrawn on 28th September, 2022. The withdrawal prayer came from the appellant after being probed by the DLHT upon noticing that, the appeal was incompetent. This period ought to be included in technical delay as the appellant was still in court corridors though on wrong path. Had the learned Chairman considered it, he couldn't have reached into the conclusion of dismissing the application on failure to account for each day of the delay while there was technical delay. In that regard, the submission by the respondent that, the appellant did not go back to the DLHT in August is unfounded as there is tribunal's order which shows existence of appeal after the judgment of this Court. Thus, it is the finding of this court that, the delay was caused by technical ground and thus, the appellant had managed to establish sufficient and good cause of the delay.

That being said, I find the appeal with merit and I hereby allow it by quashing and setting aside the ruling and order of the DLHT for Karagwe in Misc. Application No. 120 of 2022 dated 3rd March, 2023. The Appellant is hereby allowed to lodge her appeal before the DLHT for Karagwe within thirty (30) days from the date of this ruling. Each party shall bear its own costs.

It is accordingly ordered.



I. K. BANZI
JUDGE
30/08/2023

Delivered this 30th day of August, 2023 in the presence of the respondent and in the absence of the respondent who is reported sick. Right of appeal duly explained.



I. K. BANZI
JUDGE
30/08/2023