

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOBA SUB- REGISTRY)

AT BUKOBA

MISC. LAND APPEAL NO. 33 OF 2023

(Arising from the District Land and Housing Tribunal for Muleba in Misc. Land Application No. 83 of 2020 and original Land Case No. 5 of 2017 from Kagoma Ward Tribunal)

PAUL EZEKIEL APPELLANT

VERSUS

ALFREDINA BONIPHACE RESPONDENT

JUDGMENT

6th March & 15th March 2024

A.Y. Mwenda J.

This appeal arises from the decision of the District Land and Housing Tribunal for Muleba at Muleba in Misc. Application No. 83 of 2020. Before the Tribunal the applicant was seeking leave to appeal out of time against exparte judgment in Land case No 5 of 2019 before Kagoma Ward Tribunal. After the hearing of the said application the Hon. Chairman dismissed the application with costs for lack of sufficient reasons.

Aggrieved by the said ruling the appellant filed the present appeal with four (4) grounds the same read as follows;

- 1) That the learned chairman erred in law and fact by denying the enlargement of time to file appeal against the decision

of Kagoma Ward Tribunal in Land Case No 5 of 2019 as he was not summoned and be heard. (sic)

- 2) That the learned chairman erred in law and fact when ruled that the hamlet leader of Kagoma (Patrick Ruhosho) was a proper and enough person for summons service to the appellant who was a residence of Bugeye hamlet, Kikuku village. (sic)
- 3) That the learned chairman erred in law and fact by determining an application for enlargement of time to file an appeal as if it was determining an appeal on merit. (sic)
- 4) That the trial tribunal never affords the appellant his constitution right to be heard.

At the hearing of this appeal the appellant appeared in person without legal representation while the respondent hired the legal services from Mr. Scarious Bukagile learned counsel.

When invited to submit in support of ground of appeal the appellant submitted that, he filed an application for extension of time to file an appeal out of time because he was not involved in Land Case No. 5 of 2019 before Kagoma Ward Tribunal. He further submitted that he became aware about the said case when he was served with summons requiring him to hand over the property in dispute which triggered him to file an application for extension of time. He prayed this appeal to be allowed.

Responding to the submissions by the appellant, Mr. Bukagile addressed the court that before the District Land and Housing Tribunal the appellant failed to advance sufficient reasons for extension of time. He said what he alleges in the present appeal is different from what he stated before the District Land and Housing Tribunal. According to him, before the District Land and Housing Tribunal the appellant alleged that he was not served with the summons although the records are clear that he was served with the summons through the Hamlet chairman but he refused to receive the same.

The learned counsel further submitted that extension of time can be granted if the applicant demonstrates sufficient reasons. To support this point, he cited the case of LYAMUYA CONSTRUCTION CO. LTD VS BODY OF TRUSTEES IN YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2 OF 2010.

In his concluding remarks the learned advocate was of the view that in the present matter there is no any illegality on the face of record to justify extension of time to file an appeal out of time and he added in that since appellant did not demonstrate sufficient reasons for delay then this appeal should be dismissed with costs.

Having gone through the submissions by both parties, it is clear that this court is vested with discretionary powers to grant or refuse an application for extension of time. However, such discretion has to be exercised judiciously according

to rule and principle of justice. The guiding principle in granting or refusing granting for extension of time is that the applicant must demonstrate sufficient cause or reasons for the delay. In the case of LYAMUYA CONSTRUCTION COMPANY LTD VS BOARD OF TRUSTEE OF YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA (Supra), four principles which guide the court before exercising its discretion were laid down, these are

- a) The applicant must account for all the period of delay.
- b) The delay should not be inordinate.
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take and
- d) If the court feels that there are other sufficient reasons such as existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.

That being the legal position, the issue in this appeal is whether the appellant advanced sufficient reasons for the delay. In his submission the appellant stated that the reason for the delay to file an appeal in time is that he was not aware with Land Case No. 5 of 2019 until he was required to hand over the property in dispute.

On his part the respondent's advocate submitted that the appellant's allegation that he was not aware of Land Case No. 5 of 2019 is an afterthought because he never raised it before the Tribunal. According to him, the Ward tribunal's

records shows that he was served with the summons to appear but he refused to endorse his signature. According to him the appellant did not advance sufficient reasons for this court to grant extension of time.

This court went through the records of Land Case No. 5 of 2019 only to find that the applicant was issued with three summons which he refused to sign. The said summons were issued on different dates, to wit 15.03.2019, 28.06.2019 and 12.07.2019 with those summons, there is an endorsement of the Hamlet Chairman that the applicant refused to sign the summons.

In the summons, the Hamlet Chairman reported that;

“On 15.03.2019: Muhusika amekataa kusaini hati hii na kudai kuwa kesi hii alishinda.”

“28.06.2019: Muhusika amekataa kupoke hati hii.”

“12.07.2019: Muhusika ameendelea kukataa kuasini hati hii na kutoa maneno ya kashfa.”

With the foregoing quotes this court is satisfied that the applicant was duly served but refused to sign, thus his allegation that he was not aware about Land Case No 5 of 2019 is unfounded.

That being the case this court find substance on the counsel for respondent's arguments that the appellant did not advance sufficient reason for the delay because the records are clear that he was served with the summons from Kagoma Ward Tribunal and he refused to endorse his signature.

Basing on the above analysis I hereby dismiss this appeal with costs.

It is so ordered.


A.Y. Mwenda
Judge

15.03.2024

Judgment delivered in chamber under the Seal of this Court in the absence of Mr. Paul Ezekiel the appellant and in the presence of Mr. Scarious Bukagile learned counsel for the Respondent.



A.Y. Mwenda
Judge
15.03.2024