

TANZANIA / JUDGMENT

CHARLES BUCHWA

COURT
TANZLIIDECIDED
28 February 2025

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (BUKOBIA SUB-REGISTRY) AT BUKOBA MISCELLANEOUS LAND APPLICATION NO. 2666 OF 2024 {Arising from the High Court of Tanzania (Bukoba Sub-Registry) at Bukoba in Land Case Appeal No. 60 of 2022, original Land Application No. 103 of 2019 before the District Land and Housing Tribunal for Kagera at Bukoba) CHARLES BUCHWA..... APPLICANT VERSUS ALLY ABDU MABARAZA..... 1st RESPONDENT JONAS CHARLES..... 2nd RESPONDENT

RULING

17th & 28th February 2025 KIWONDE, J. In this application, the applicant, one Charles Buchwa, filed it by way of chamber summons supported by his affidavit praying for the court orders below:

- i. An order for extension of time within which to file a notice of intention to appeal to the Court of Appeal of Tanzania against i the judgment delivered on 6th June 2023 by the High Court of Tanzania at Bukoba. ii. That this court be pleased to enlarge time to apply for certified copies of judgment, decree and the proceedings of the above- mentioned appeal and Land Application. iii. Cost of this application iv. Any other order or relief this court deems fit to grant. The 1st respondent filed a counter affidavit in which he refuted the facts deposed by the applicant; the 2nd respondent defaulted to file counter affidavit nor appeared to court and the matter proceeded ex parte against him. During the hearing of this application both parties were unrepresented. The applicant submitted that he has two reasons for the delay to file notice of appeal to the Court of Appeal. The first reason is that he was sick and admitted at Bukoba Regional Referral Hospital where he was admitted from 09/06/2023 to 06/02/2024 as he was suffering from tuberculosis (TB) disease. He said he was undergoing medical treatment and that he has some medical documents in support of that. According to the applicant, the second reason for delay to take necessary legal actions is that he was aggrieved by the conduct of his counsel who 2 decided to abandon the other grounds of appeal and only argued the remaining 4th ground out of five (5) which led to dismissal of his appeal. The applicant prayed this court to allow the application. In reply to the submissions in-chief, the 1st respondent submitted that the argument that the applicant was aggrieved by the conduct of his advocate who abandoned other grounds of appeal is not

sufficient reason for extension of time. He was of the view that what the applicant was required to do is to sit down with his advocate and discuss about their case. Regarding the reason of illness, the 1st respondent submitted that the applicant was not sick and he was not admitted at Bukoba Regional Referral Hospital. He submitted that he made a follow-up after receiving a discharge form and noted that the applicant was not admitted and even the doctor who signed the medical chit is not an employee at Bukoba Regional Referral Hospital. He further submitted that, the applicant forged the said discharge form. He therefore argued that the applicant did not advance sufficient reason for his delay. In rejoinder submissions, the applicant submitted that he was sick and his medical documents indicate so. He submitted that he did not forge the 3 medical documents and that the 1st respondent lives in another Ward therefore it is impossible for him to know his health condition. He insisted this application be allowed. Having gone through the submissions of both parties and the pleadings, the main issue for determination is whether the applicant has managed to show sufficient reasons for this court to grant an order extending time to lodge notice of appeal to the Court of Appeal out of time. It is a matter of law that the court has discretion to grant an application for extension of time if sufficient reason or good cause for delay is shown. In law, sufficient reason or good cause depends on the circumstances of each case. However, there are some factors the court considers before granting extension of time. They include; one, length of time of delay (delay should not be inordinate), two, reasons for delay, three, if the applicant was not diligent to pursue his rights, four, whether grant of the order extending period will prejudice the respondent and five, if the applicant can account for each day of delay, six, whether there is arguable case such as a point of law or illegality apparent on the face of record. This was a position in *Lyamuya Constructions Company Ltd Versus Board of Registered Trustees of Young Women's Christian 4 Association of Tanzania*, Civil Application No.2 of 2010 [2011] TZCA 4 (3rd October 2011), *Mohamed Salum Nahdi Versus Elizabeth Jeremiah*, Civil Application No. 474/01 of 2016 [2017] TZCA 338 (8th June 2017) and *Wambele Mtumwa Shahame Versus Mohamed Hamis*, Civil Reference No.8 of 2016 [2016] TZCA 898 (12th October 2016), all are published in *TanzLII*. In the present application the applicant said he delayed to take legal action within time for he was aggrieved by the conduct of his advocate who abandoned other grounds of appeal and argued only the 4th one and his appeal was dismissed. This has never been a good reason for this court to grant extension of time. Thus, this argument and reason are ignored. In his prayer (ii), the applicant asks for enlargement of time to apply for certified copies of judgment, decree and proceedings of the said appeal. While, in his affidavit, the applicant said he was supplied with the documents on 8th February 2024, thus, he has them in hand. Upon being notified to go and collect them, the Deputy Registrar normally issues a certificate of delay as the case may be. There was no need to include this prayer of enlarging time to apply for documents which have been 5 supplied. For that matter, the prayer in item (ii) is frivolous and it is refused. Apart from that, the applicant, under paragraph 7 of his affidavit raised the ground of illegality in the impugned judgment of this court, Land Appeal No. 60 of 2022. He deponed that the Honourable Judge failed to determine each ground of appeal. At the same time, the applicant said his counsel, Gerase Reuben abandoned the

grounds of appeal and argued only one of them, that is, the 4th ground of appeal. In law, once the grounds of appeal are specifically abandoned by a party or his counsel, they cease to be called so. There were no other grounds of appeal to be dealt with by the Honourable Judge. With regard to the single ground of appeal dealt with, the complaint was on the lack of opinions of the assessors. But the judgment is clear that there are opinions of the assessors in records. So, I find no illegality apparent on the face of records to warrant extension of time to appeal out of time. Finally, the reason of illness on the part of the applicant. This is a good ground for illness is beyond human control. However, the applicant has to account for each day of delay. The applicant, under paragraph 4 of his affidavit said he fell sick and admitted at Bukoba Regional Referral 6 Hospital from 09/06/2023 to 06/02/2024. He attached to this application, the discharge form. But this was objected by the 1st respondent on the ground that it was a forged document and fabricated fact. The 1st respondent stated that, he made a follow up before Bukoba Regional Hospital and noted that the applicant has never been admitted there. The 1st respondent complained before the deputy Registrar and the allegations were taken seriously by this and on 09/05/2024 the Deputy Registrar wrote a letter to Regional Medical Officer requesting him to clarify the said discharge form. On 17/05/2024 the Deputy Registrar wrote the said letter and it was replied on 04/06/2024 that the applicant has never been admitted at the hospital and that he never received any treatment from that hospital and the said medical doctor by name Paulsen Eliud is not an employee of that hospital. Thus, the applicant's affidavit in support of the application contains untrue facts. In law, the affidavit which is tainted with untrue facts cannot be relied upon in support of the application. This position is stated in the case of Ignazio Messina vs Willow Investment SPRL and another, Civil Appeal No. 105 of 1998 [2002] 7ZCA 9 (21st June 2002) TanzLII. 7 Having found so above, it means the applicant has failed to account for each day of delay. Consequently, I find and hold that the applicant has failed to advance sufficient reasons for his delay. The application lacks merits and it is hereby dismissed with costs. DATED at BUKOBA this 28th day of February, 2025. F.H. KIWONDE JUDGE 28/02/2025 Court: Ruling is delivered in chamber in the presence of the applicant and the 1st respondent and Grace Mutoka (RMA) but in the absence of the 2nd respondent this 28th February 2025 and the right of appeal is explained. JUDGE 28/02/2025 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/338827/source_file/13b239d3c2d86294/CHARLES_BUCHWA.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/charles-buchwa-extensionoftime-tanzlii-2025>

Prepared on 14 October 2026 · Esheria