

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT TABORA

MISC. LAND APPLICATION NO. 4 OF 2012

(Arising from Shinyanga DLHT Land Appl. No. 16/2010)

MALENDEJA GWISU MASANJA & 3 OTHERS.....APPLICANTS

VERSUS

CLAVERY MADATA.....RESPONDENT

RULING

27th Aug. & 9th Sept. 2013

S. M. RUMANYIKA,J:

The application for extension of time within which to refile appeal (pursuant to this court's order, handed down by my brother Wambali, J on 2/2/2012), is brought under S.14(1) of the law of limitation Act and S.95 of the CPC. Chapters 89 & 33 R.E. 2002. it is supported by the affidavit of Mr. Musa Kassim learned advocate, whose contents he adopted whole sale at the hearing. Mr. Mtaki learned advocate appears for the Respondent. That there was in this registry, appeal no. 6/2011 filed on 28/01/2011 against judgment and decree of the district land and housing tribunal - Shinyanga (DLHT) in application no. 16 of 2010. Upon discovering it was a defective petition. However, Mr. Kayaga learned advocate having conducts of it then, withdrew the appeal with liberty to refile. With observance of the time limit. This was 02/02/2012 Mr. Musa Kassim submitted.

On his part, and having adopted all the contents of the counter affidavit of Clavery Madata (respondent), Mr. Mtaki learned advocate submitted that the appeal had been timely admitted yes! But was withdrawn while the preliminary point of objecting (p.o.) to it was still pending herein for court determination. It is like upon being waken up by the p.o, one withdrew the appeal. That still he would have asked to amend the document as well. Provided that there was no any p.o pending in court.

The underlined words of S. 38(1) of the land disputes courts Act, Cap. 216 R.E. 2002 are "good and sufficient cause" Without which no extension of time can be granted.

Now the pivotal issue is whether there is good and sufficient cause established in the present application. The answer to this has, in my considered opinion, a necessary bearing on why was it that the withdrawal of appeal No. 6 of 2011 was sought and granted by this court. It is not disputed that there was, at the time the appeal was being withdrawn, the respondents' p.o. Filed on 13th July, 2011 by Mr. Mtaki. It is pending undertermined todate! One could not, at that stage even amend the document. However, it is very unfortunate that none of the counsel drew court's attention to the error.

Be it as it may, counsel might have a number of reasons for withdrawing the appeal. But some fears on the p.o could not be

ruled out. It is fundamental principle in court proceedings that whenever there is a p.o, whether reasonable and probable or not, no matter can be withdrawn till the p.o. is concluded.

As regards to the layperson applicants' inability to draft pleadings which resulted into withdrawal of the document, this also can afford no good/sufficient cause in my view. There can be no two sets of law one for lay people and the other one for the non laypersons. The rules of the game are general. They are to be followed. Therefore the lack of legal skills and knowledge is, and cannot fetch good and sufficient cause for extension of time.

I am also obliged to hold that any withdrawal of matters with liberty to refile is intended not for the sake of it. But to avail one withdrawing it with time to make his house. Upon the court is satisfied that chances in an unlikely event of abusing the process are eliminated. It follows therefore, that it will be incumbent upon a party praying to withdraw a matter to assign sufficient reasons.

On the ground of over whelming chances of success, I will only say that unless the intended appeal was argued by the parties, I fear to run the risks of determining it prematurely.

As such there is, as correctly argued by Mr. Mtaki, no good and or sufficient cause for granting extension of time sought by Mr. Mussa. Application is dismissed with costs.

R/A explained.



S.M. RUMANYIKA

JUDGE

07/09/2013

Delivered under my hand and seal of the court in chambers,
this 09/09/2013. In the presence of Messrs Mtaki and Musa Kassim.



S.M. RUMANYIKA

JUDGE

09/09/2013