

**IN THE HIGH COURT OF TANZANIA**

**[LAND DIVISION]**

**AT MTWARA**

**MISC. LAND APPLICATION NO. 10 OF 2013**

**RAHISI MNUNG'A MOHAMED ..... APPLICANT**

**VERSUS**

**JAMILA ABDULRAHAMANI MNUNG'A ..... RESPONDENT**

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**(Application for extension of time to appeal out of time from the Decision of the District Land and Housing Tribunal of Mtwara District at Mtwara in Land Application No. 2 of 2010)**

**RULING**

**MGETTA, J.**

In this purported application, the applicant Rahisi Mnung'a Mohamed moves this court under section 14(1) of the **Law of Limitation Act, Cap.89 R.E 2002** and section 38(1) of the **Land Disputes Courts Act, Cap.216 R.E 2002**, for the order, among others that, this court be pleased to extend time within which to file an appeal against the decision of the District Land Housing and Tribunal of Mtwara [henceforth the trial tribunal] out of time.

When the application was called on for hearing, Mr. Hussein Mtembwa leaned advocate representing the respondent brought to my attention, amongst other preliminary objection on point of law that, this court has no jurisdiction to entertain the matter.

Going by the record, it is apparent that on 13<sup>th</sup> April, 2010 the trial tribunal delivered its judgment in the exercise of its original jurisdiction. The applicant herein was aggrieved; and, on 26<sup>th</sup> May, 2010 he filed his appeal before this court (Vide Land Case Appeal No. 4 of 2010). On 21<sup>st</sup> October, 2010, this court [Hon. Lila, J] dismissed his appeal for want of prosecution. He attempted to restore his appeal (vide Misc. Land Application No.18 of 2010). On 8<sup>th</sup> November, 2012, his application for setting aside the dismissal order of 21<sup>st</sup> October, 2010, was found incompetent and therefore struck out with costs [Hon. Lila, J].

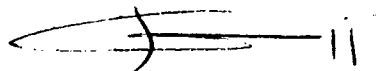
He is now in this court with the present application, praying for an extension of time to appeal against the decision of the trial tribunal. This is where the word “purported application” comes in.

Without much ado I agree with Mr. Mtembwa, that I am not clothed with jurisdiction to entertain the present application. For the above sequence of events which gave rise to this application, it is my opinion that, the present application is misconceived, and abuse of the court process. The procedure adopted by the applicant is a creature not known in law.

The applicant admits that, his application for re-admission of the dismissed appeal was struck out by Hon. Lila, J, for being brought under wrong provision of the law. What he ought to have done therefore is to go back and rectify the irregularity as directed by the

court; and, subject to time limitation, re-file again his application for re-admission of the dismissed appeal. If he was of the view that his earlier application for re-admission of the dismissed appeal was finally and conclusively determined by this court [Hon. Lila, J], his only remedy was to appeal to the Court of Appeal and not to envisage to another procedure not known in law.

Having found as above, this point alone suffice, to dispose of the application. The application is therefore dismissed with costs. It is so ordered.

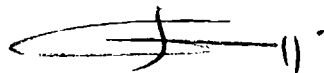


J.S. Mgetta,

Judge

5/7/2013

Court: This ruling is delivered today this 5<sup>th</sup> July, 2013 in the presence of the applicant in person and of Mr. Hussein Mtembwa, the learned advocate for the respondent.



J.S. Mgetta,

Judge

5/7/2013