

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT ARUSHA**

**LAND REVIEW NO. 02 OF 2017**

*(Originating from the decision of the District Land and Housing Tribunal of Arusha District at Arusha in Land Case No. 2 of 2011)*

**JOSEPHINE EMANUEL MLAY**

**w/o EMANUEL ELIFATAO MLAI.....APPELLANT**

**VERSUS**

**EMANUEL ELIFATAO MLAI.....1<sup>ST</sup> RESPONDENT**

**OMARY FRANK MSHANA.....2<sup>ND</sup> RESPONDENT**

**GLADY FRANK MSHANA.....3<sup>RD</sup> RESPONDENT**

**ANNE FRANK MSHANA.....4<sup>TH</sup> RESPONDENT**

**M/S MAJEMBE AUCTION MART LTD.....5<sup>TH</sup> RESPONDENT**

**RULING.**

**S.M. MAGHIMBI, J:**

This application was lodged under the provisions of Section 78(1)(a) and Order XLII Rues 1(1) (a) & (b) and 4(2)(a) of the Civil Procedure Code Cap. 33 R.E 2002 (The CPC) and Section 51(1) of the Land Disputes Courts Act, 2002 as replaced by Section 20 of the Written Laws (Misc. Amendments) Act No. 2/2010. The applicant is seeking for review of the decision of this court in Land Appeal No. 07/2015 dated 13/05/2016 on the following grounds:

1. That, the Applicant through Misc. Land Case Application No: 198/2014 High Court of Tanzania, Arusha on 5<sup>th</sup> March 2015 was

granted extension of time for 14 days to file an Appeal out of time by Madam Judge S. C. Moshi, (Copy of the order is hereby attached and marked EXB – A1)

2. That, the Applicant/Appellant complied with the Order of the High Court granted by Madam Judge S. C. Moshi, J. by filing in the High Court of Tanzania Arusha and Appeal No. 8 of 2015 on 16<sup>th</sup> March 2015 which was within the time given by the High Court of Tanzania, Arusha. (Copy of Petition of Appeal is hereby attached and marked as EXB – A2)
3. That, on 7<sup>th</sup> June 2016 the presiding Judge Madam S. M. Maghimbi dismissed the Appeal No. 8 of 2015 filed by the Applicant/Appellant in court for being time bared without due regard of the order for extension of time granted to the applicant/appellant by Madam Judge S. C. Moshi, J.  
(A copy of Judgment and Decree in Appeal of Madam S. M. Maghimbi is hereby attached as EXB – A3).
4. That, there is an error apparent on the face of record in which the Honourable Judge S. M. Maghimbi erred in law and fact for not making proper perusal and consideration of the court records to satisfy itself if the order for extension of time was granted before dismissing the appeal.

The applicant hence prayed that this Honourable Court be pleased to review its Judgment and decree in appeal and restore the dismissed Land Appeal No. 7/2015 in favour of the applicant.

On my part I need not be detained much by this application. The record is clear that on the 05/03/2015 vide Misc. Land Case Application No. 198/2014, the applicant was granted 14 days to lodge his appeal of which she subsequently lodged on the 17/03/2015 which was within the time granted by the court. since the evidence was missing on the records of the Land Appeal No. 08/2015, the decision of the court was reached on the wrong footing. Having the new evidence on record, I find that I am obliged to review my decision made on the 07/06/2016 dismissing the appeal for being time barred. I hereby review the decision and set aside the dismissal order thereto. I further restore the Land Appeal No. 08/2015 which shall continue with the hearing and determination on a date that shall be subsequently scheduled by the court. Given the circumstances which led to the current application, I make no order as to costs.

Dated at Arusha this 29<sup>th</sup> day of August, 2018



A handwritten signature in black ink, appearing to read "S. M. Maghimbi", is written over a horizontal dotted line.

**S. M. MAGHIMBI**

**JUDGE**