

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

**(ARUSHA DISTRICT REGISTRY)**

**ARUSHA**

**MISC LAND APPLICATION NO. 41 OF 2017**

**EMMANUEL GIDAHOTAY ..... APPLICANT**

**VERSUS**

**GAMBANYASHITA MUHALE ..... RESPONDENT**

**MAIGE, J**

**RULING**

Before me is an application for extension of time to appeal to this Court against the judgement of the District Land and Housing Tribunal for Babati as per Wingine, (Hon. Chairman) in Appeal No. 10 of 2014. The application is supported by the affidavit of the Applicant which contains the grounds for the application. When this matter came for hearing, Mr. Njooka, learned advocate appeared for the applicant. The respondent was absent despite being aware of the pendency of the proceedings. For that reason, I allowed the applicant to proceed *ex-parte*.

In his brief oral submissions, Mr. Njooka adopted the factual deposition in the affidavit to read as part of his submissions and submitted further that

the same demonstrates sufficient cause for the delay, namely sickness of the applicant. My attention was drawn to a copy of the medical report in annexure **EG-2**. He submitted further that because the respondent has not filed any counter affidavit, it should be deemed that the application is not opposed. He has placed reliance on the authority of this Court in **MOSES NDOZI VS. SUZANA NDOZI, MISC LAND APPLICATION NO. 117 OF 2013** in support of the proposition that failure to file a counter affidavit is a signification that the application is not factually opposed. I am highly persuaded by the authority and I will apply it as the relevant principle of law in my ruling.

In accordance with the uncontested facts in the affidavit, the judgment sought to be faulted was delivered on 10<sup>th</sup> February 2015. For the reason of the sickness confirmed in annexure EG-2 of the affidavit, the applicant could not pursue his appeal within the prescribed time. As a result, in April 2015, he lodged an application at this Court, for extension of time. On technical ground however, the applicant was allowed, on 14<sup>th</sup> February 2017, to withdraw the application with a liberty to refile. A copy of the court order in annexure **EG-3** of the affidavit supports the proposition.

The instant application, I have noticed, was filed after expiry of 44 days after the date when the previous application was withdrawn. This period seems to have not been accounted for in the affidavit as required by law. However, since the sickness of the applicant which is reflected in the

medical report appears to be permanent and affects his memory as well, and there being no opposition from the respondent, I find it fair and equitable to make use of my discretion and give him a benefit of doubt. Accordingly therefore the application is hereby granted. The applicant should file his attended appeal within 30 days from the date of receipt of a copy of this ruling. I will not give an order as to costs in the circumstance.

It is so ordered.

**MAIGE.I**

**JUDGE**

**19/10/2018**

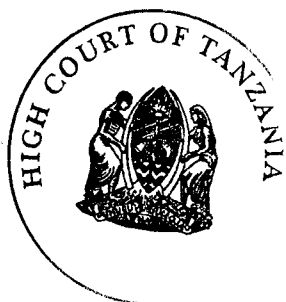
Delivered in the presence of Mr. Njooka, learned advocate for the applicant and in the absence of the respondent this 19/10/2018.

**MAIGE. I**

**JUDGE**

**19/10/2018**

I hereby certify this to be a true copy of the Original.



*J. F. Nkwabi*  
**J. F NKWABI**  
**DEPUTY REGISTRAR**  
**ARUSHA**

*31/10/2018*