

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT SUMBAWANGA**  
**MISC. LAND APPLICATION NO. 03 OF 2019**

**JOHN MAHINDI ..... APPLICANT**

**VERSUS**

**1. FORTUNATA KAJEMBE**

**2. BENDERA MSIPI**

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**..... RESPONDENTS**

**RULING**

**W.R.MASHAURI – J**  
**16/04/2020 & 04/05/2020**

This is an application for leave to file in this court an appeal out of time against the decision of the Katavi District Land and Housing Tribunal in Land Appeal No. 25 of 2015 originated from the decision of Kapalamsenga Ward Tribunal in Civil case No. 01 of 2018.

The application has been filed in this under S. 38(1) of the Land Disputes Courts Act No. 2 of 2002 and any other provisions of the law.

It is quite apparent from the record of this application that, when the same was lodged in this court on 19/03/2019, the applicant made efforts to serve the respondents but success did not attend his efforts. District of notices of hearing issues to the respondents by this court several times, no any one of them who entered in court to attend their case.

On 16/04/2020, the applicant besought this court to argue his application exparte and this court granted his prayer.

In his submission in support of his application, the applicant submitted as well as he does in his sworn affidavit that he was a complainant in the Kapalamsenga Ward Tribunal in land disputed No. 01 of 2018 over two acres of land. The dispute was decided in his favor. Being dissatisfied with the decision of the Ward Tribunal, the respondents appealed in the District Land and Housing Tribunal through Land Appeal No. 25 of 2018 of which was decided against his favour on 24/11/2018. On 28/11/2018 his biological mother passed away. He therefore failed to process his appeal in time.

He therefore prayed the court to allow his application as the delay to file his appeal in time was not that of his own making.

The issue is whether the reason for death of his biological mother given by the applicant is reasonable.

It is deponed by the applicant in paragraphs 5 and 6 of his affidavit that his biological mother died on 28/11/2015 soon after delivery of the judgment of the District Land and Housing Tribunal against him on 24/11/2018.

After completed burial and funeral ceremonies, he made a follow-up to his judgment on 3/01/2019 at Katavi District Land and Housing Tribunal and was given it on 21/01/2019 and found it being late to lodge his appeal in time.

It is cardinal principle that, an appeal out of time is permissible where the appellant was sick or where any of his parent or his close relative under his attention during sickness and death thereafter provided that, the delay after the event is not inordinate.

In this matter the judgment of the Katavi District Land and Housing was pronounced on 24/11/2018. The applicant's biological mother died on 28/11/2018. He started making a follow-up to get the judgment on 3/01/2019 and given it on 21/01/2019.

There is no delay taken by the applicant on processing his application for leave to appeal to this court out of time. The reason of death of his mother given by the application is reasonable.

His application is allowed. He shall lodge his appeal in this court within 21 days from the date of this ruling.

It is so ordered.



  
**W.R. Mashauri**

**Judge**

**04/05/2020**

Ruling delivered in court in the present of John Mahindi Applicant and in absence of the respondents this 04/05/2020



  
**W.R. Mashauri**

**Judge**

**04/05/2020**