

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

LAND REVIEW NO. 01 OF 2020

(Arising from the Ruling of the High Court (Hon. Gwae, J) dated 31/7/2015 in Land
Appeal No 100 of 2014)

PAULINA THOMASAPPLICANT

VERSUS

1. PROSPER JOHN MUTAYOBA

2. FRNCIS GRATIANRESPONDENTS

RULING

29 & 30.06.2020

RUMANYIKA, J.:

When the application for review (originally judgment and decree of the District Land and Housing Tribunal Mwanza (the DLHT) of 16/7/2010 was called on for hearing on 29/6/2020 for hearing, I had to hear the parties on a time bar preliminary point of objection (the p.o) formerly raised on 19/5/2020 by Mr. G. Kange learned counsel for Prosper John Mutayoba (the 1st respondent) and now taken by the learned counsel. Paulina Thomas (the instant applicant) appeared in person. Francis Gratian (the 2nd respondent) wasn't in attendance. Although there was no sufficient

proof of service on the latter, I dispensed with his appearance because the p.o was not his nor could the subsequent ruling by all means adversely affect him.

Mr. G. Kange learned counsel in a nut shell submitted that the application was one (1) day by far out of seven (7) days, by order of this court, Tiganga J, given with effect from 27/3/2020. That now that instead of 2/4/2020 latest the applicant lodged it on 3/4/2020, the time barred application was bound to be dismissed with costs much as by its order, the court had set the specific date within which one to lodge the application but without good cause the applicant did not comply (counsel cited the case of **Rupesh Enterprises Limited V. Commissioner General TRA**, Civil Application No. 66 of 2012 (CA) at Dar es Salaam unreported). That is it.

The applicant submitted that she lodged the present application within seven (7) days of the ruling and order of the judge that, if anything she got copy of the ruling late in the day. That is it.

Given the free of ambiguity wording of my brother judge Tiganga (page 9 of the typed ruling of 27/3/2020) under reference, it reads:-

... I think seven days will serve justice I therefore struck out the application with leave to re file the same in seven days failure of which will mean to relinquish the right to challenge the Decree passed in the year 2010 in Land Case Application No 43

of 2007. The counting starts from today ... (emphasis added).

The applicant may have been supplied with copy of the ruling late in the day fine, in which case therefore, like Mr. G. Kange learned counsel argued, that one should have been a ground upon which the applicant to apply for extension of time. However, the copy of Exchequer Receipt appended to the application cut the long story short because she paid the filling fee on 3/4/2020 which is considered to be the actual filling date. The applicant therefore, and without more words she filled the application **one** good day ahead the time given by court.

However, looking at the copy of the impugned ruling it would suggest that on her application for extension of time within which the present applicant to lodge appeal against judgment and decree of the DLHT, this court, Mwangesi, J (as he then was) he granted her fourteen (14) days basing on that one she lodged appeal on 2/12/2014 in which case therefore Judge Gwae held that the applicant had lodged the appeal 25 days far beyond the 14 days this, in my considered is where the problem arises. The provisions of Section 38 (3) of the Land Disputes Court Act Cap 216 RE 2019 required that where, on application for extension of time within one to appeal against decision of the DLHT, like it happened here in exercise of its original jurisdiction an application was granted, the applicant shall have 45 days but here, the applicant was given only 14 days. As said, the judge pegged limitation on the said 14 days therefore dismissed the subsequently lodged appeal.

It is trite law that extension of time is given by court on its discretion but yes, but once it was sought and granted, the court had no option other than giving not more or less than the time prescribed by the law (see the case of **John Mugo v. Adam Moleli**, Civil Appeal No. 2 of 1990) suffices the point to dispose of the application. The p.o is overruled.

The applicant is granted extension of time to apply for review. It is very unfortunate that since 16/7/2010 when, for the first time the DLHT decided the matter on merits and she was not happy, present the applicant's right of appeal had not been determined on merits (it is 10 years ago to be specific). Each party shall bear their costs. The applicant shall file a review application within 60 (sixty) days of this ruling. It is so ordered.

Right of appeal explained.

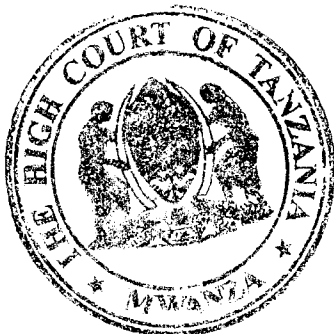


S. M. RUMANYIKA

JUDGE

29/06/2020

The ruling delivered under my hand and seal of the court in chambers in the absence of the parties with notice.



S. M. RUMANYIKA

JUDGE

30/06/2020