

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

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**MISC. LAND APPLICATION NO. 4 OF 2019**

*(C/F Land Application No. 21 of 2016, District Land and Housing  
Tribunal of Same at Same)*

**NOIMI DAVID MFINANGA ..... APPLICANT**

**VERSUS**

**FREEDOM ABDUEL KISAKA ..... RESPONDENT**

**RULING**

**15/7/2020 & 22/10/2020**

**MWENEMPAZI, J**

The applicant is applying for an order for execution of time to file an appeal against the judgment of the District Land and Housing Tribunal for Same at Same (Hon. T.J. Wagine, Chairman) dated 8/6/2018 and cost of this applicant. The application is made under Section 41(2) of Land Disputes Courts Act, 2002 as amended by the Written Laws (Miscellaneous Amendments) (No.2) Act, 2016. The application is supported by affidavit of Noimi David Mfinanga.

According to the affidavit, the applicant in this application was also the applicant in the Land Application No. 21/2016 in the District Land and Housing Tribunal of Same at Same. The applicant appointed an attorney to represent her as she could not herself attend to the application due to old age and constant sickness. The attorney, Beatrice Enosy Mkanga was present in the tribunal when the judgment was delivered on the 8<sup>th</sup> June, 2018.

However, she heard that the applicant had won and later on August, 2018 applied for the copy of judgment which was delivered late on November, 2018. She did not know the content, until when her sister's son came and read the content and informed her that the application was dismissed for insufficient evidence and that which was adduced was not corroborated.

I have noted the respondent has never attended to court; however, the record shows that on the 29/10/2019 the applicant informed the court that service was affected by affixation. Local leadership was hesitant to sign the summons for proof at court. Thus, this application proceeded with the applicant only attending the court sessions through her appointed attorney.

On the 6/5/2020 this court ordered a hearing to proceed by way of written submissions. A schedule was created. The applicant complied to the same.

In the written submissions the applicant has submitted that extension of time is a discretion of court, however, the applicant must demonstrate sufficient

reasons for the court to consider and exercise its discretion, citing Section 41(2) of the LDCA, Cap. 216 R.E. 2002.

The applicant has reiterated the predicaments that occasioned delay as explained in the affidavit. That it was due to sickness she could not make follow up herself, that after the decision had been made, she was misinformed by her attorney and copies were supplied late. Again due to ignorance to language, she sat comfortable believing the decision was made in her favour until a relative read the judgment and disclosed the true decision.

In her submission, the applicant has submitted that she did all what was necessary save for the shortfalls explained. The applicant is also alleging illegalities in the judgment. She has not, however said the nature of the illegality. In her argument she has submitted that courts of law have determined in favour of extension of time in several occasions on ground of illegality of the decision. On this she has cited the case of **Attorney General Vs. Consolidated Holding Corporation & another, Civil Application No. 26/2016.**

I have read the proceedings in the District Land and Housing Tribunal and the judgment. The way the judgment was entered after closer of the proceedings there is illegality in that assessors were not required to give their opinion first before composing and delivering the same.

In the Case of **VIP Engineering and Marketing Limited and Three others V. Citbank Tanzania Limited**, Consolidated Civil Reference No. 6,7 and 8 of 2006 CAT (unreported) where it was stated thus:

*"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged that by itself constitutes "sufficient reasons" within the meaning of rule 8 of the Rules for extending time"*

Under the circumstances I am satisfied that there are sufficient reasons to extend time; and therefore, for the interest of justice, the application is granted with costs. The applicant to file an appeal within 30 days from today. Dated and delivered at Moshi this 22<sup>nd</sup> day of October, 2020.



A handwritten signature in blue ink, appearing to read "T. Mwenempazi".

**T. Mwenempazi**

**Judge**

**22/10/2020**