

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

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**LAND DIVISION**

**(APPELLATE JURISDICTION)**

**Misc. Land Application No. 51 of 2020**

(Original from District Land and Housing Tribunal – Kigoma, Land Appeal No. 13/2016  
of the District Land and Housing Tribunal Kigoma)

**IRENE D/O EDWARD KAMINYONGE.....1<sup>st</sup> APPLICANT**

**MARIAM D/O KASSIM IDD.....2<sup>nd</sup> APPLICANT**

**VERSUS**

**ZABRON S/O JUMA POYONGO.....RESPONDENT**

**R U L I N G**

17<sup>th</sup> Nov. & 02<sup>nd</sup> December, 2020

**I.C. MUGETA, J.**

The applicant seeks extension of time to appeal to this court against the decision of the District Land and Housing Tribunal in Land Application No. 13/2016 which according to annexure "A" to the counter affidavit, is an ex partes judgment delivered on 31/1/2020. In the affidavit, the applicants admit to be aware of the case where they filed a defence which was followed by many adjournments due to absence of the chairman. Then they failed to follow up on the case until in September 2020 when they were served with

*Mugeta*

orders for execution, hence, this application. In his oral submissions, Thomas Msasa, Counsel for the applicant, argued that since existence of the Tribunal's decision came to the applicant's attention in September, 2020 and this application was filed on 21/10/2020, then the delay from the date of the decision up to when it came to the knowledge of the applicants has been accounted for. That the period between September and October, 2020 was spent on obtaining the necessary documents and preparation of this application.

In reply, Mr. Silvesta Sogomba, learned advocate, submitted that not only a good cause has not been demonstrated because the applicants deliberately absented themselves from the proceedings but also the application is misconceived in that since the impugned decision was made ex partes, then the remedy is to apply to set it aside not to appeal.

In rejoinder, Mr. Msasa did not respond to the question of applying for orders to set aside the ex partes decision before the trial tribunal as a matter of procedure.

In deciding this application, I shall confine myself to the issue whether the application is properly before the court. According to Rule 11 (1) (c) of the

Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 the District Land and Housing Tribunal can proceed ex partes in case of absence of the respondent which was the case here. Rule 11 (2) provides that a party dissatisfied with the decision under sub rule 1 of rule 11 ought to apply, within 30 days, for orders to set aside the ex partes judgment. It follows, therefore, that on becoming aware of the tribunal's decision, the remedy was for the applicants to seek for orders to set it aside not to appeal. In view of the foregoing, I agree with Mr. Sogomba that this application is Misconceived. It is hereby struck out with costs.

  
**I.C. Mugeta**

**Judge**

**02/12/2020**



**Court:** Ruling delivered in chambers in the presence of Thomas Msasa, advocate for the applicants and the respondent in person.

**Sgd: I.C. Mugeta**

**Judge**

**02/12/2020**