

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

MISC. LAND APPLICATION NO. 14 OF 2020

(Originating from Appeal No.31 of 2013 of the High court of Tanzania at Mtwara, from the decision of the District Land and Housing Tribunal of Lindi at Lindi in Land Case Appeal No.46 of 2018 which emanated from the Land Cause No.115 from Nachunyu Ward Tribunal)

HIDAYA AUSI.....APPLICANT

VERSUS

HAMZA MPENYEWE..... RESPONDENT

Date of last Order: 12/11/2020

Date of Ruling: 16/11/2020

RULING

DYANSOBERA, J.

The applicant Hidaya Ausi was successfully sued by the respondent Hamza Mpenyewe before the Ward Tribunal of Nachunyu in Land Case No.115 of 2018 over trespass on a cashewnut farm. Her appeal before the District Land and Housing Tribunal for Lindi at Lindi in Land Appeal No.46 of 2018 was dismissed on 9th August, 2018.

Undaunted, the applicant filed her second appeal to this Court but the appeal was, on 7th May, 2019 dismissed for want of prosecution.

Desirous of further pursuing her legal rights, the applicant, on 16th June, 2020, filed an application seeking re-admission of the dismissed appeal. The application has been resisted by the respondent by way of a Preliminary Objection on the ground that the application is time barred.

On 15th September, 2020 when the Preliminary Objection was called on for hearing the applicant requested the hearing of the Preliminary Objection to be argued by way of written submissions.

Mr. Kaijage, learned counsel for the respondent who wished the preliminary hearing to be argued orally, reluctantly conceded to the applicant's prayer.

Since the applicant's prayer to have the Preliminary objection disposed of by way of written submission was premised on her intention to have a legal representative, this court granted the prayer and set a time frame. Fortunately, parties complied with the time frame.

In arguing the Preliminary Objection, the respondent submitted that the Land Case Appeal No.31 of 2018 which the applicant seeks to be re-admitted was dismissed by this Court on 7/5/2019 but it is not until on 12/6/2020 when this application was filed by the applicant, which is after almost a year and a month after the appeal was dismissed for want of prosecution hence the contention that this application is time barred.

The applicant on the other hand, conceded to the Preliminary Objection that her application is Misc. Application No.14 of 2020 is, indeed, time barred.

As the record clearly shows, this application is time barred and since the applicant rightly concedes to the fact that her application is indeed, barred by limitation, the court has no option but to uphold the Preliminary Objection raised by the respondent.

Consequently, the application is dismissed with no order as to costs.

Order accordingly.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W.P. Dyansobera

Judge

16/11/2020