

**IN THE HIGH COURT OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**MISC. LAND APPLICATION NO. 27 OF 2021**

(Originating from District Land and Housing Tribunal Land Application No. 140/2013)

**MAYOMBYA MAHUGI .....APPELLANT**

**VERSUS**

**1. MADOSHI KIYENZE**

**2. ROBERT MLONGO**

**3. JOHN RWABUHANGA**

**.....RESPONDENTS**

**RULING**

**3<sup>RD</sup> & 30<sup>TH</sup> JUNE, 2021**

**RUMANYIKA, J**

When, with respect to judgment and decree dated 14/02/2020 of the District Land and Housing Tribunal for Mwanza at Mwanza (the DLHT) the application for extension of time within which in capacity of Admin. of the Estate of Mahugi Nkwabi Mayombya Mahugi (the applicant) to lodge an appeal was, by way of audio teleconference called on 3/6/2021 for hearing, I had to hear the parties on a competency - based preliminary point of

objection (the p.o ) formerly raised by Egbert Mjunga Learned Counsel for Robert Mlongo (the 2<sup>nd</sup> respondent). Mr. Julius Mushobozi learned counsel appeared for the applicant. On the digital platform therefore, the learned counsel were heard through mobile numbers 0767934787 and 0783533829 respectively. As the p.o concerned not with them, appearance of Madoshi Kireme and John Rwabuhanga (the 1<sup>st</sup> and 3<sup>rd</sup> respondents) respectively therefore was dispensed with.

The point of objection reads as hereunder quoted; "This application is incompetent because already this court passed a dismissal order under S. 3(1) of the Law of Limitation Act Cap. 89 (RE. 2019) against the same applicant in Land Appeal No. 29/2020.

Mr. Egbert Mjunga learned counsel submitted that on that basis having had the time barred appeal been dismissed, this court – Mgeyeka, J on 24/02/2021, in any form whatsoever the applicant should not have come back here but only by way of appeal, revision or review much as the parties and the subject matter remained the same. (Case of **East African Development Bank Vs. Blue line Enterprises Ltd. Civil Appeal No. 101 of 2009** and **MM World Wide Coy Ltd & 2 Others Vs. NBC, Civil**

**Appeal No. 285 of 2017 (CA)** both unreported, we humbly submit and pray that the application be dismissed with cost. That is all.

Mr. Julius Mshobozi learned counsel submitted that the time bar based dismissal of the appeal yes, but as it happened here, the law allowed the applicant to come back upon applying and obtaining extension of time much as the appeal had not been determined on merits. It was only struck out for being incompetent (cases of **Blue Star Service Station Vs. Jackson Mseti (1999) TLR 80** and **Hashim Madongo & Others v. Minister for Industry and Trade, Civil Appeal No. 27 of 2003 (CA) at DSM** (unreported) that on such basis therefore, the case of **East African Development Bank** (supra) was distinguishable. We humbly submit and pray that the point of objection be dismissed with costs stressed the learned counsel.

On rejoinder, Mr. Mjungu learned counsel submitted that the case of **Blue Star Service Station** (supra) was distinguishable because in that case the matter was incompetent for the copy of impugned decree was not attached therefore it was struck out (not dismissed). We humbly submit, and pray that the application be dismissed with costs much as in the

instant matter the appeal was time barred and on that basis dismissed. Mr. Mjungu learned counsel further contended.

Essentially looking at paragraphs 7 of the supporting affidavit the central issue is not whether or not Land Appeal No. 29 of 2020 was on time bar basis dismissed but rather whether once an appeal was dismissed for being time barred the aggrieved party could come back seeking extension of time to file an appeal. The answer is no. On that one there is unbroken chain of authorities. Like Mr. Mjungu learned counsel submitted, with respect to the dismissal order the appellant (now applicant) was at liberty to appeal, apply for revision or otherwise challenge the order other than coming back to the court seeking extension of time (case of **East African Development Bank** (supra) unless the appellant had conceded to the time barred appeal being dismissed. The issue is laid there to rest much as I agree with the learned counsel that a time barred matter or otherwise incompetent matter were, in terms of legal consequences two different things. Whether in the former case the order was meritorious or not it is immaterial in my view. The law of limitation also intends to discourage endless litigation. Now that as far as this court (Mgeyeka, J) is concerned, the issue of limitation period was long ago determined and

concluded by the dismissal order of 24/02/2021, I am therefore functus officio I therefore last but not least would agree with Mr. Julius Mshobozi learned counsel that sufficed the points of illegality for extension of time but no point was stated in the supporting affidavit or even orally enumerated by counsel during submissions.

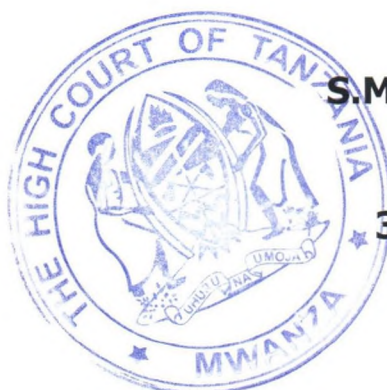
In the upshot, the p.o is sustained. The application for extension of time is with greatest respect out of place and dismissed with costs. It is so ordered.



**S.M. RUMANYIKA**  
**JUDGE**  
**30/06/2021**

Right of appeal explained.

The ruling is delivered under my hand and seal of the court in chambers this 30/06/2021 in the absence of the parties.



**S.M. RUMANYIKA**  
**JUDGE**  
**30/06/2021**