

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 61 OF 2021

(Arising from the District Land and Housing Tribunal for Mwanza at Mwanza in Application No. 261 of 2012)

**TATU BUSIA (As Administratrix of
The estate of the late Busia Fuku)..... APPLICANT**

versus

BUJIKU BUSIA.....1ST RESPONDENT

YAHAYA JOSEPH MARWA.....2ND RESPONDENT

RULING

20th August & 15th September, 2021

RUMANYIKA, J

With respect to judgment and decree of the District Land and Housing Tribunal of Mwanza at Mwanza (the DLHT) dated 26/02/2021, the application for extension of time within which Tatu Busia (as Administratrix of the estate of the late Busia Fuku) (the applicant) to lodge an appeal it was brought under Sections 14(1) and 95 of the Civil Procedure Code (the Code) and the Law of Limitation Act (the Act) Chapters 89 and 33 RE. 2019 respectively it is supported

by affidavit of Tatu Busia whose contents Mr. Joseph Kinango learned counsel adopted during audio teleconference hearing on 05/08/2021. Mr. Julius Mushobozi learned counsel appeared for Bujiku Busia and Yahaya Joseph Marwa (the 1st and 2nd respondents). I heard them through mobile numbers 0752 845 092 and 0767 934 787 respectively.

When the application was called on for hearing first of all I had to hear the parties on 3 limbs preliminary point of objection (the p.o) formerly raised on 4/8/2021 by Mr. Julius Mushobozi learned counsel and now taken by him;

- (i) That the application was incompetently before the court for wrong citation of enabling provisions of the law.
- (ii) That the application was incurably defective due to a defective verification clause.
- (iii) That the application was but an abuse of the court process.

Like arguing the 3 points combined, Mr. Julius Mushobozi learned counsel submitted that the application was abuse of the court process, on the merit part of it this court (Tiganga, J) having had

dismissed the time- barred appeal under S. 3(1) and (2) of the Act. That the instant application was both misplaced and improperly before the court because the applicant should have only applied for revision or review as the case may be (the case of **Mayombya Mahugi v. Madoshi Kiyenze & 2 Others**, Misc. Land Application No. 27 of 2021) HC. At Mwanza, unreported. That the application be dismissed with costs.

In reply, Mr. Joseph Kinango learned counsel submitted that in fact the applicant's appeal was not dismissed on merits (page 19 paragraph 2 last line of the typed judgment refers). That if anything, the issue of time- bar was raised only in the written submissions such that on that one the parties were not heard. That is all.

The central issue is whether the instant application is tenable and properly before the court much as I entertain no doubts that in blacks and whites, but for the reason of time bar the applicant's appeal was dismissed on 12/04/2021. At page 19 paragraph 2 of the judgment it reads;-

... I find the appeal to have been filed out of time, without leave for extension of time sought and obtained.

The same is in terms of section 3 of the Law of Limitation Act (supra) dismissed for being filed out of time. **Since the appeal is out of time, there is no way this court may go further and to discuss the short coming in the judgment and proceedings in the judgment and proceedings in the trial tribunal. As earlier on held that the appeal is dismissed with costs not on merits,** but for being filed out of time.

The catch words were that the appeal was time barred and for that reason was dismissed. In the supporting affidavit (paragraphs 10 and 13) the applicant also took cognizance of it;

.....That after hearing of the matter this court, Hon. Tiganga, J **dismissed the said appeal for being lodged out of time.**

... That since 3rd May, 2019 to sometimes April, 2021 I was not idle but **I was litigating Land Appeal No. 27 of 2019 which unfortunately without my knowledge was filed out of time...**

Whether or not the appeal was determined on merits, rightly or not, that one it may not be subject of the present application in any way but sufficed the order to put the matter to finality.

Now that Land Appeal No. 27 of 2019 was dismissed for being time barred, on that one with effect from 12/4/2021 this court was *functus officio* such that as it was argued by Mr. J. Mushobozi learned counsel, the aggrieved applicant should not have come back here applying for extension of time other than appealing, applying for revision or, as the case may be apply for review (see the cases of **East African Development Bank v. Blue Line Enterprises Ltd**, Civil Appeal No. 101 of 2009 and **MM World Wide Company Ltd & 2 Others v. NBC**, Civil Appeal No. 285 of 2017 (CA) both unreported (quoted in the case of **Mayombya Mahugi** (*supra*) irrespective of however good reasons for the delay the applicant may have had.

With greatest respect the out of place application is dismissed with costs. The applicant is accordingly ordered and advised. It is so ordered.

Right of appeal explained.


S.M. RUMANYIKA

JUDGE

07/09/2021

The ruling delivered under my hand and seal of the court in chambers this 15/09/2021 in the absence of the parties.




S.M. RUMANYIKA

JUDGE

15/09/2021