

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPLICATION NO. 35 OF 2021

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 123 of 2018. Originating from Utengule Usongwe Ward Tribunal in Land Case No. 19 of 2018.)

SIMONI ASAJILE MBOGELA.....APPLICANT

VERSUS

JUMA NJATE.....RESPONDENT

RULING

Date of Last Order: 27/01/2022
Date of Ruling : 16/03/2022

MONGELLA, J.

The application at hand is for extension of time within which to file an appeal out of time against the decision of the District Land and Housing Tribunal for Mbeya at Mbeya (the Tribunal) rendered in Land Appeal No. 123 of 2018. Both parties appeared in person and the application was argued by written submissions.

In his affidavit and submission, the applicant gave a reason that the copies of judgment and decree from the Tribunal were delayed to be issued to him. He said that the judgment was delivered on 19th February



2019, but availed to him on 28th April 2019, which was late. He further argued that there are illegalities in the lower tribunals' decisions which need to be rectified on appeal. He listed the illegalities as: One, that, the suit was filed out of time; two, that, the respondent had no *locus standi* as he had not obtained letters of administration to sue on the deceased's property.

He added that he filed an appeal in this Court, being Land Appeal No. 19 of 2019, but the counsel for the respondent raised a preliminary objection to the effect that the suit was time barred. He saw the reasons advanced being sufficient and prayed for the Court to grant his application.

The respondent on the other hand vehemently opposed the application. He saw that the reason advanced regarding delay in issuance of the copies of judgment and decree is baseless as the law does not compel an appeal on a case emanating from Ward Tribunal to be accompanied by copies of judgment and decree. In support of his argument he referred to **section 38 (2) and (3) of the Land and Disputes Courts Act, Cap 216 R.E. 2019.**

The respondent further argued that the applicant negligently delayed in collecting the copies of judgment and decree as the same were ready from 04th April 2019. He said that he collected his own copies on 17th April 2019, but the applicant who intended to appeal against the Tribunal decision went to collect his copies on 28th April 2019.



Replying on the point of illegality on the *locus standi* to sue, he contended that the ground does not meet the criteria to be entertained as an illegality for extension of time. Referring to a decision by this Court in ***Ephraim Mdeka vs. Ephraim Mbenja & 2 Others***, Miscellaneous Land Application No. 55 of 2019 (HC at Mbeya, unreported), he argued that the illegality raised is not apparent on face of record, it is not of sufficient importance, and shall involve long drawn process of argument. He added that he needed no letter of administration because the suit land belonged to him after being gifted by his father before his death.

He as well disputed the claim on limitation of time on the ground that the arguments advanced by the appellant are not clear. He argued that it was found in the Tribunal that the appellant furnished forged sale agreement thus could not prove that he was on the land in dispute for a long time. He disputed being time barred.

After considering the arguments by the parties, I shall only address the fact raised by the applicant to the effect that he filed Land Appeal No. 19 of 2019, which was confronted by a preliminary objection by the respondent. Though the appellant never stated the decision on the preliminary objection, it is apparent that the appeal was dismissed for being time barred and that is why he filed the application at hand.

It is a settled position of the law that once a matter is dismissed for being time barred a party is barred from refilling the matter or seeking extension of time. This position was settled by the Court of Appeal in a number of cases. For instance, in the case of ***East African Development Bank vs.***

Blueline Enterprises Limited, Civil Appeal No. 101 of 2009 (CAT at DSM, unreported), the Court of Appeal held:

“...once an order of dismissal is made under section 3 (1) of the Law of Limitation Act, it is not open to an aggrieved party to go back to the same court and institute an application for extension of time. The remedy is to seek review before the same court or to lodge an appeal or a revision before a higher court. The rationale is simple. That is, as far as the court is concerned the issue of time limitation has been determined. So, a party cannot go back to the same court on the same issue. It follows that, after the order of dismissal was made by Mandia, J. on 22/06/2007 it was not open to the appellant to go back to the same court and institute the application for extension of time before Sheikh, J. In short, the application before Sheikh, J. was res judicata.”

Further, in the case of **MM Worldwide Trading Company Limited & 2 Others vs. National Bank of Commerce Limited**, Civil Appeal No. 258 of 2017 (CAT at DSM, unreported) the CAT while referring to its previous decision in the case of **Olam Uganda Limited suing through its Attorney United Youth Shipping Company Limited vs. Tanzania Harbours Authority**, Civil Appeal No. 57 of 2002 (unreported), discussed the effect of dismissal order and stated:

“In our considered opinion then, the dismissal amounted to a conclusive determination of the suit by the High Court as it was found to be not legally sustainable. The appellant cannot re-file another suit against the respondent based on the same cause of action unless and until the dismissed order has been vacated either on review by the same court or on appeal or revision by this Court...”



See also: **Hashim Madongo and Two Others v. Minister for Industry and Trade and Two Others**, Civil Appeal No. 27 of 2003 (unreported), referred by the Court in the above cited cases.

In consideration of the above referred authorities the application is found to be untenable before this Court and therefore dismissed with costs.

Dated at Mbeya on this 16th day of March 2022.




L. M. MONGELLA
JUDGE