

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**MISC. LAND APPLICATION NO. 113 OF 2021**

*(Arising District Land and Housing Tribunal in Land Appeal No. 117 of 2017 original from  
Case No. 04 of 2016 of Kitongosima Ward Tribunal)*

**YOHANE NTOROKI.....APPLICANT**

**VERSUS**

**MARIETHA MACHIBULA.....RESPONDENT**

**R U L I N G**

9<sup>th</sup> & 28<sup>th</sup> June, 2022

**DYANSOBERA, J:**

This is an application for extension of time in which to appeal against the decision of the District Land and Housing Tribunal for Mwanza in land Appeal No. 117 of 2017. The applicant is moving this court under section 38(1) of the courts (Land District Settlement Act Cap. 216 R.E. 2019).

The application has been supported by his affidavit sworn on 4<sup>th</sup> day of November, 2021.

According to the affidavit, it is averred there in that the impugned judgment that is Land Appeal No. 117 of 2017 was delivered on 27.08.2021.

On 29.08.2021 he wrote a letter requesting to be supplied with a copy of judgment but the same was supplied to him on 1<sup>st</sup> day of November, 2021 which means that sixty-five days had elapsed from the

date the judgment was pronounced and, therefore, the stated period for him to lodge an appeal and lapsed.

According to him, the reasons for extension of time are that the said judgment is tainted with irregularities, illegalities in that he was denied of the right of being heard as when the locus in quo was visited, he was not there.

Further that the Ward Tribunal had no jurisdiction to entertain the matter *ex parte*.

The applicant explained in the affidavit that he was sick when the matter proceeded *ex parte* and that he reminded the Tribunal of this concern but the tribunal did not heed him.

At the hearing of this application, the appeared in person and was unrepresented. The respondent was absent it being alleged that the was served but refused the receipt of the summons. The hearing of this application proceeded *ex parte* against her.

I have considered the application and the supporting affidavit.

As the chamber summons depicts this application has been preferred under section 38(1) of the courts (Land District Settlement Act Cap. 2016 R.E. 2019). That law does not exist. Probably the applicant had in mind the courts (Land Disputes Settlements) Act, 2002.

Even then this law is no longer in our books, for it was amended by the Rectification of Printing Errors (the Land Disputes Courts) Act, 2002, Order, 2003, GN No. 225 published on 8<sup>th</sup> day of August, 2003.

At paragraph 2 of the said order it is provided thus:-

*"The errors appearing in the Land Disputes Courts Act, 2002 are hereby rectified as follows:-*

*"By deleting title courts (Land Dispute Settlements) appearing at the top of every page of the Act and substituting for it the title. Land Dispute Courts"*

So, the current and existing law is the Land Dispute Courts Act [Cap. 216 R.E. 2019].

This means that this application has been filed under the wrong and non-existent law. This court has not been properly moved, so to say.

Even if, for the sake of argument, the court was properly moved, still the application would fail for want of merit. Section 38(1) of the Land Dispute courts Act under which the application has been purportedly made stipulates:-

*"Any person who is aggrieved by a decision the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may, within sixty days after the date of the decision or order, appeal to the High Court".*

*Provided that, the High court may for good and sufficient cause extend time for filing an appeal either before or after such period of sixty days has expired”.*

The issues for determination are whether there are adequate grounds amounting to good and sufficient cause to explain the delay and whether therefore adequate grounds to justify an order extending time under section 38(1) of the Act.

On the first issue, the applicant’s complaints are that he was denied of the right to be heard when the locus in quo was visited and that the Tribunal lacked jurisdiction to proceed exparte. The record of the Kitongo Sima Ward in Land Case No. 4 of 2016 has however, in its judgment the reflection of the following:-


*"Shauri limeanza kusikilizwa tangia tarehe 1.11.2016 Baraza limesikiliza pande zote yaani kwa mlalamikaji na mlalamikiwa. Pia limesikiliza pange zote kwa mashahidi, mashahidi walitoa Ushahidi ni watu wanne (4) upande wa mlalamikaji tu, kwa upande wa mlalamikiwa walisusia kikao, hivyo hawakuleta Ushahidi”.*

This means that both sides were heard and the respondent called her witnesses who gave their testimonies but the applicant’s witnesses refused to attend (*walisusia kikao*). The applicant is to blame for this. Further, it was observed in the decision of the Tribunal thus,

4. *Kutokana na walalamikiwa kususia shuari, Baraza limejiridhisha wazi hawana Ushahidi wa kutosha juu ya uhalali wao wa kudai shamba la Machibula Kafula.*

It appears that the applicant and his witnesses failed to lead evidence to prove the claims against the respondent. Second, the applicant's argument that he fell sick is not supported anywhere. It is not stated from which disease he was suffering. With those reasons, there is no material upon which this court can act to grant the extension of time. This disposes the second issue.

In other words, the applicant has failed to adduce adequate grounds to explain the delay and justify an order for extension of time under section 38(1) of the Act. The application fails and is dismissed with no order as to costs.

  
**W.P. Dyansobera**  
**Judge**  
**28. 06. 2022**

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 28<sup>th</sup> day of June, 2022 in the presence of both the applicant and respondent



  
**W.P. Dyansobera**  
**Judge**