

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 18 OF 2022

(Arising from Misc. Application No. 63 of 2019 in the district land and Housing Tribunal for Manyara at Babati and Original Land Disputes No. 44 of 2016 from Gehandu Ward Tribunal)

BETWEEN

SAMBARU SAMWAJA NYALANDU..... APPLICANT

VERSUS

GIDASANGA GIDAHENEK HEDA.....RESPONDENT

RULING

21.06.2022 & 26.07.2022

N.R. MWASEBA, J

This is an application for extension of time to file an appeal out of time. The Applicant is seeking for extension of time to lodge an appeal in respect of Misc. Application No. 63 of 2019 dated 24th day of November, 2021.

The application was brought under Section 41 (2) of the **Land Disputes Courts Act** [Cap 216 R.E 2019] and Section 14 (1) of the **Law of**



Limitation Act [Cap 89 R.E 2019]. It was supported by an affidavit sworn by the applicant and contested by a counter affidavit sworn by the respondent.

When the application was called for orders on 16.05.2022, parties agreed to dispose of the application by way of written submission and the court granted their prayer. The applicant was present in person, unrepresented whereas Mr Ephraim Koisenge, learned counsel represented the respondent.

In support of the application, the applicant prayed to adopt the content of his affidavit to be part of his submission. He added that his delay was contributed by some reasons as follows: **First**, ignorance regarding the appeal procedures since he was a layman who was unable to engage an advocate to represent him. He cited the case of **Yuasa battery (EA) Ltd Vs Conciliation Board of Dsm and Others** [1996] TLR 367 (HC) and **Martha Daniel Vs Peter Thomas Nko** [1992] TLR 359 (HC) to buttress his argument. **Second**, the delay to be supplied with copies of ruling and drawn order, he submitted further that a ruling was delivered on 24.11.2021 and the copies of ruling and drawn order were collected in January 2022 while the time had already lapsed. He supported his

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argument with the case of **Saida Said Vs Saidi Mohamed** [1989] TLR 206.

The **third** reason was illegality on the ground that the application was *res judicata* as it was already tried via Misc. Land Application No. 184 of 2015 originated in Application No. 11 of 2014. Moreover, even the disputed boundaries were not described in terms of its boundaries. Lastly, the act of dismissing the application is the same as denying his rights to be heard and cited the case of **Fredrick Selenge and Another Vs Masele** [1985] TLR 99. So, he prays for the application to be granted.

Responding to the submission made by the applicant, the counsel for the respondent argued that the applicant is not an old man as he is of 40 to 45 years of age. The fact that he does not know how to read and write does not suffice to be a reason for extension of time. He added that all the cited cases by the applicant are distinguishable since the story are quite different. Regarding the second reasons, he submitted that the certified copies of ruling and drawn order were ready for collection since 17.01.2022 but the application was filed on 17.02.2022 without any sufficient reasons as to why he failed to collect the same within the time.

As to the issue of illegality the same was strongly contested by the respondent on the ground that the issue of *res judicata* was already

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determined by the tribunal in an application for execution and held that Misc. Application No. 184 of 2015 and Misc. application No. 63 of 2019 are not the same. On the issue of value and boundaries of the suit land it was the duty of the parties filing the case to disclose it not the tribunal. Being mute during the trial means he was satisfied with the proceedings and the same cannot be raised at this stage. Further to that the alleged issue need to be raised at the appellate stage not in this application.

On the issue of right to be heard, the counsel for the respondent submitted that there is nowhere the applicant was denied his right to be heard since he was accorded a right to be heard from the ward tribunal up to the instant application. In the end, he prayed for the application to be dismissed in its entirety with costs for want of merit.

In his short rejoinder the applicant reiterated what was submitted in his submission in chief and disputed the submission made by the respondent.

Having duly considered the rival submissions of the applicant and the counsel for the respondent, and having gone through the record, this court finds it pertinent to determine the issue as to whether the application has merit.

The applicant is seeking for an extension of time to appeal against the decision of Misc Application No 63 of 2019 which is an application for

execution of a decree. To my understanding, execution orders are not among the appealable orders to this Court. The appealable orders to this court are listed in **Section 74 and Order XL of the Civil Procedure Code**, Cap. 33, R.E. 2019.

The position that an execution order is not subject to appeal has been stated by this Court in a number of cases including the case of **Ignasio Ignas Vs Rose Hanselem Mpangala**, Civil Appeal No. 65 of 2017, HCT at Dar es Salaam (unreported) and **Joseph Mwita Magige Vs Mokami Werema Gesaya**, Misc. Land Application No 36 of 2020 HCT at Musoma. In these cases, it was stated that the orders which are not appealable under **Section 74 and Order XL of the CPC** can be challenged by way of revision.

That being the legal position, I hesitate to grant an order for extension of time to appeal because it is not appealable orders listed under the above provisions. Even if I will grant it for having good cause for delay, his appeal will be struck out for being incompetent before the court as it was held in the case of Joseph **Mwita Magige Vs Mokami Werema Gesaya (supra)**. The applicant ought to apply for extension time to file a revision and not an appeal as the order he wishes to challenge is not appealable.



For the foregone reasons, this application has been misconceived. The same is struck out with no order as to costs. The applicant is at liberty to file a proper application.

Ordered Accordingly.

DATED at **ARUSHA** this 26th day of July, 2022.



N.R. Mwaseba

N.R. MWASEBA

JUDGE

26.07.2022