

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)**

AT MTWARA

MISC. LAND APPLICATION NO. 6 OF 2022

*(Originating from the District Land and Housing Tribunal for Mtwara at
Mtwara in Land Application No. 27 of 2019)*

THE REGISTERED TRUSTEES OF DEEPER

LIFE CHURCHAPPLICANT

VERSUS

FREDRICK SELEKWA..... 1ST RESPONDENT

KANISA HALISI LA MUNGU BABA 2ND RESPONDENT

RULING

Muruke, J.

Sometimes in 2019, the applicant instituted land case, against the respondents, at the District and Housing Tribunal for Mtwara at Mtwara namely, Land Application 27 of 2019, in which she claimed ownership of the suit land among other things. The suit was heard and decided in favour of the respondent. The applicant was not satisfied with the decision of the District Land and Housing Tribunal for Mtwara and to that effect she preferred an appeal, on 28th December, 2021. Appeal was prepared and titled the details of this court, but instead of filing to this court it was filed in



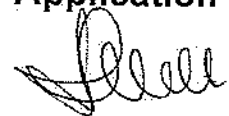
the District Land and Housing Tribunal for Mtwara the same Tribunal whose appeal was subject of challenge.

Despite the fact that the appeal was titled the details of this court the District Land and Housing Tribunal proceeded with the same and issued summons to the respondents to appear before it and fixed the matter for mention on 9th day of February, 2022. The applicant notified the defects when matter was called for mention on 9th February, 2022 before the trial Tribunal and that is when she realized that the suit was lodge in an improper forum for the reason that the trial Tribunal cannot turn into an appellate court to determine the matter which has already been determined by the same. Wrongly preferred appeal was then struck out by the Tribunal.

Upon filling present application for extension of time, respondent filed counter affidavit to refute contents of affidavit in support of the application. On the date set for hearing, applicant was represented by Steven Lekey Learned counsel while respondents had the service of Issa Chiputula.

Applicant counsel submitted along lines contents of affidavit in support of the application and added further that, Section 41(2) of the Land Dispute Act Cap 216 R.E 2019, empowers this court to grant extension upon good cause. Same good cause has been started at paragraph 5,6,7,8,9,10 and 11 of affidavit in support of application. Main ground for delay being technical delay, explained in the case of Fortu natus Masha Vs William Shija, in which Court of Appeal emphasized on distinction to be drawn between cases involving real or actual delay and those involved technical delay.

On the other hand, Respondent submitted that, to grant or to refute extension of time court had to be guided by principal set by the court of appeal in the case of **Ngao Gdwin Losero Vs Julias Mwarabu Civil Application no**

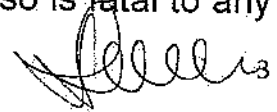
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10/2015 and Lyamuya Construction Ltd vs. Young Women Christian Association, Civil application no 2/2010 both (unreported). Principals enunciated by the court are period of delay, delay not inordinate, diligent not sloppiness, illegality of decision and any other sufficient cause.

Advocate Chiputula argued that none of the conditions exist in the case at hand. At paragraph 5, applicant counsel insisted on technical delay, which there is none, apart from applicant own negligence to file appeal, in an appropriate forum. Thus, no good cause shown, insisted respondent counsel. In Rejoinder, applicant counsel insisted that principle laid down in Lyamuya construction company, they do support applicants case, and more so, they are not exhaustive to be read as Bible or Quran. Court has to apply facts of each case reasonably. Issue of jurisdiction raised in this application, need to be taken seriously.

Having heard both parties' submission, it is worth noting that, extension of time is a discretion of the court that need to be exercised judiciously. It is not disputed by respondent that, Annexure AP – 2 attached to the affidavit in support of the application is titled in the High Court of Tanzania, Land Division at Mtwara. Although the document was titled so, it was submitted, received, and registered as Land Appeal number 135/2021 at District Land and Housing Tribunal of Mtwara at Mtwara. Summons was issued by the tribunal calling parties to appear until March 2022.

Filing of the appeal in the same Tribunal that determined land case was wrongly done by the applicant. Equally so, trial Tribunal wrongly received and registered the appeal, which had no jurisdiction. Jurisdiction is first and foremost in any court/ tribunal that determine any disputes. Court or tribunal has to ascertain jurisdiction of any case filed. Failure to do so is fatal to any



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proceedings, that will be conducted, and of course, same will be quashed on appeal.

As said earlier land District and Housing tribunal wrongly received, registered and issued summons for parties to appear. Equally so, applicant wrongly filed appeal titled in the High Court of Tanzania at Mtwara to the trial tribunal. After almost 75 days from when it was registered, it was struck out. Applicant filed present application on 8th March 2022. All these efforts by applicant is struggle to be heard on her appeal. Right to be heard is one of the fundamental principles of natural justice. Failure to observe the same, is fatal to any proceedings. Obvious it is a mistake done by the tribunal to receive wrongly filed appeal. Tribunal punished the appellant, now applicant by striking the same, Tribunal by receiving appeal that had no jurisdiction, is committed a wrong.

I understand parties to the proceedings have come to court/tribunal to seek redress. They have not come to be punished for small irregularities that can be quired without causing injustice to the other parts. Courts of law are custodians of justice. By this court not granting extension sought, will be punishing the applicant for the second time. I have considered, prejudice if any to the respondents, there is none, as, their rights to be heard will not be prejudiced if applicant is granted leave to file appeal. Thus, application for extension of time is granted. Applicant is granted 30 days from 1st August 2022, to file intended appeal. From the nature of this dispute each party to bear own costs.


Z.G. Mwiru

Judge

28/07/2022

Ruling delivered in the presence of Jenipha Kivuyo for the applicant and Aclara Blanket for the respondent.



Z.G. Muruke

Judge

28/07/2022

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