

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(MOROGORO DISTRICT REGISTRY)**

**AT MOROGORO**

**MISC. LAND APPLICATION NO. 55 OF 2021**

*(Originating from Land Application No. 64/2020 the District Land and Housing Tribunal  
for Ulanga at Mahenge)*

**MOHAMED KASSIM NKWITA..... APPLICANT**

**VERSUS**

**ABDU FADHILI CHINTUNGANI (Administrator of Estates for  
FADHILI CHINTUGANI.....RESPONDENT**

**RULING**

*Hearing date on: 12/07/2022*

*Ruling date on: 29/07/2022*

**NGWEMBE, J:**

The applicant being unrepresented, lodged an application for extension of time on 16<sup>th</sup> May, 2022. Among other prayers as per the Chamber Summons the applicant is seeking court's indulgence, to extend time within which to file an appeal out of time. The alleged impugned

judgement was delivered on 06/07/2021. The evidence in support to the prayer is contained in his affidavit. Mr. Mohamed Kassim Nkwita briefly argued that, he is praying for extension of time because he filed his appeal within time at the High Court of Tanzania Dar es Salaam District Registry, but later was transferred to Morogoro and that he has receipts of filing the appeal timely. Lastly, he prayed the application be granted.

In turn the respondent also being unrepresented, did not file counter affidavit, but appeared on the hearing date. When he was asked to say a word, he submitted that the suit land belong to him and on 30<sup>th</sup> June 2022 the same was handed over to him by the Court Brokers. Hence, the application is overtaken by event because the execution is already done. Therefore, he prayed the application be dismissed.

Under the existing laws and procedural rules, the respondent lacked *locus standi* to say a word during trial because he failed to file the corresponding counter affidavit if he wished to challenge the application. As such whatever he said will not be considered, rather this court will determine this application based on the applicant's affidavit.

The applicant through his affidavit has disclosed one reason for his delay to appeal against the judgement of the District Land and Housing Tribunal within time. That the delay was due to transfer of his appeal from Dar es Salaam to Morogoro which was registered as a new case. Added that his appeal was admitted in this court timeously on 7<sup>th</sup> August, 2021 but was instructed to wait for the court assignment. That despite several follow ups over the matter, at last on 10<sup>th</sup> May, 2022 he was informed by



the Deputy Registrar of Morogoro High Court that his appeal was not registered.

Perusing deeply in his affidavit with a view to find the attached documents, obvious the applicant attached three annexures, that is, copy of the impugned judgement and decree marked M-1, M-2 and M-3 (Memorandum of appeal) respectively.

Despite the fact that the applicant alluded that his memorandum of appeal was admitted in this Court in Dar es Salaam registry, yet there is no evidence supporting his assertion. Further, the Memorandum of appeal attached in his affidavit has no court seal indicating that it was admitted by this Court, be it at Dar es Salaam District Registry or in Morogoro High Court District Registry. Above all, he did not attach exchequer receipt proving payment of filing fees of that memorandum of appeal. In his submission he alleged to have receipt of payment of filing fees of his memorandum of appeal, but same was not attached. Therefore, there is no corresponding evidences proving what he alleged on the hearing of this application.

Notably, the powers of this court to extend time is unlimited, the only limiting fact is to exercise those powers judicially. This court is always conscious on exercising its discretion. In the absence of reasonable grounds in terms of factual and circumstances warranting consideration for extension of time, same cannot be granted lest may amount into ultra vires exercise of powers or arbitrary exercise of powers.



The applicant, not only failed to assign satisfactory reasons for delay but also failed to justify what he argued on the hearing date of his application. Even after perusing inquisitively on his affidavit, nothing useful came up to justify his long delay from the date of judgement that is, on 6/7/2021 to 16/5/2022. As such, the application lacks justifiable reasons for such long delay. Accordingly, this application must fail. Same is dismissed with no order as to costs.

**Order accordingly.**

**DATED and Delivered at Morogoro this 29<sup>th</sup> July, 2022.**



**P. J. NGWEMBE**

**JUDGE**

**29/7/2022**

**Court:** Ruling delivered at Morogoro in Chambers on this 29<sup>th</sup> July, 2022 in the presence of the Respondent but in absence of the Applicant.



**P. J. NGWEMBE**

**JUDGE**

**29/7/2022**