

**IN THE HIGH COURT OF TANZANIA**

**SHINYANGA REGISTRY**

**AT SHINYANGA**

**MISC. LAND APPLICATION NO. 11 OF 2021**

*(Arising from Misc. Land Application No. 59 of 2019 DLHT Shinyanga, original Land Application No. 13 of 2017, Didia Ward Tribunal)*

**MOHAMED OMARY.....APPLICANT**

**VERSUS**

**MAYANDA SHIJA.....RESPONDENT**

**RULING**

21<sup>st</sup> September, 2021 & 28<sup>th</sup> March, 2022.

**S. M. KULITA, J.:**

This is a civil application for Extension of time to appeal against Misc. Land application No. 59 of 2019 of the District Land and Housing Tribunal for Shinyanga. It has been filed by the Applicant by way of chamber summons in terms of the provisions of sections 41(2) of the Land Disputes Courts Act [Cap. 216 RE 2019]. The application is supported by an affidavit sworn by Mohamed Omary on 12<sup>th</sup> February, 2021.

In a nut shell, the parties had a land dispute. The respondent decided to institute a Land Application No. 13 of 2017 at Didia Ward Tribunal. Its judgment was delivered in his favor on 18<sup>th</sup> December, 2017.

Aggrieved and while out of time, the Applicant decided to seek for extension of time through Misc. Civil Application No. 59 of 2019, at the District and Land Housing Tribunal of Shinyanga. The same application was dismissed, that was on 25<sup>th</sup> July, 2019. For a second bite, the Applicant decided to appeal against that decision of the District Land and Housing Tribunal. He appealed to the High Court through Misc. Land Appeal No. 03 of 2020. The same was ambushed with a preliminary objection on time limit. Again, after full hearing of the same, the preliminary objection sustained. That was on 21<sup>st</sup> October, 2020. Here now, the applicant has come, applying for extension of time to challenge the same, Misc. Civil Application No. 59 of 2019 of the District and Land Housing Tribunal of Shinyanga

In this Application, both parties were unrepresented. On 21<sup>st</sup> September, 2021, the matter was scheduled for hearing through written submissions. Both parties complied with.

Submitting in support of the application, Mr. Mohamed Omary stated that, the court should extend time for appeal as there are illegalities on decision of the Didia Ward Tribunal. He pointed them as, **first**, that the ward tribunal was not properly constituted. He was of views that, it is contrary to section 11 of the Land Disputes Courts Act Cap 216

when read together with section 4 of the Ward Tribunal Act. He argued that, the ward tribunal's proceedings show that, its corum consists of only one woman and three men. But the requirement of law is at least 8 members of whom 3 should be women.

Secondly, Mr. Mohamed Omary submitted that, the decision of Didia Ward Tribunal was signed by an improper person not authorized by law. To this end, he prayed to be granted extension of time. To buttress his argument on both points, he cited the case of **Tumsifu Kimaro (the Administrator of the Estate of the Late Eliamini Kimaro) v. Mohamed Mshindo, Civil Application No. 28 of 2017** (unreported)

In reply, Mr. Manyanda Shija submitted that, the Didia Ward Tribunal was properly constituted and its judgment was signed by a proper person as well. He urged this court not to extend time as the applicant has not shown good cause. He added that, all the applicant has submitted is a lie.

I have taken into consideration both parties' submissions, pleadings, annexures, cited authorities together with the entire records. The issue for determination is whether the applicant's application may be granted.

From the submissions and the available records, it is vivid that, the applicant approached the High Court through Misc. Land Appeal No. 3 of 2020 to challenge Land Application No. 59 of 2019 of DLHT - Shinyanga. The same was determined by the Magistrate with Extended Jurisdiction. The record is clear that, the applicant filed the appeal without first seeking for extension of time to file the same. As a result, the same was incompetent before the court hence dismissed. It thus goes without saying that, the applicant has started following the proper channel of seeking for extension of time after his appeal was disqualified for being out of time.

Before going to the merit of appeal, the crucial question for determination is, was it proper for the applicant, after dismissal of his appeal for being filed out of time to round and seek now for extension of time to file the same appeal that was actually once dismissed?

Confronted with the same situation, my learned sister Mkwizu J, in the case of **Abdi Rahmani Mohamud Darma V. Hersi Warsama Mohamedi, Misc. Land Application no. 28 of 2018, HC, Shinyanga** (unreported), the case which is similar to our case at hand, held that, the application for extension of time is nothing but a misconception of law and proceeded to dismiss the same.

While holding the same, she supported her decision with so many cases of court of appeal. These are, **The east African development Bank v. Blueline Enterprises Ltd, Civil appeal No.101 of 2009, Regnold George Malyi v. Jazira Athuman Nguluko, High Court Misc. Civil Application No. 343 of 2019, Tanzania Cotton marketing Board V, Cogecot Cotton Company (1997) TLR 63, Olam Uganda limited suing through its Attorney United Youth Shipping Co Limited v. Tanzania Harbours Authority, Civil Appeal No. 57 of 2002 (unreported) and Hashim Matengo and Two Others v. Minister for industry and trade and two others, Civil Appeal No. 27 of 2003**, in those cases, it was held that; -

*Applying the principles discerned from the above authorities. it follows that once an order of dismissal is made under section 3(1) 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 the Higher Court. The rationale is simple, that is, as far as the court is concerned the issue*


*of time limitation has been determined. So the party  
cannot go back to the same court on the same issue.*

On account of the above quoted authorities, I am of firm views that,  
the applicant's application for extension of time is a misconception of the  
law and I proceed to dismiss the same, with costs.

It is so ordered.

  
**S.M. Kulita**  
**JUDGE**  
**28/03/2022**

**DATED** at **SHINYANGA** this 28<sup>th</sup> day of March, 2022.

  
  
**S.M. Kulita**  
**JUDGE**  
**28/03/2022**