

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**LAND APPLICATION NO. 16 OF 2022**

*(Arising from Application No. 14 of 2018 at District Land and Housing Tribunal for Tanga at  
Tanga)*

**HAMZA JUMA RUWA**

*(Administrator of the estate of the late DEVU RUWA).....***APPLICANT**

**-VERSUS-**

**MECKY DOMINICK ONYANGO.....1<sup>st</sup> RESPONDENT**

**DANIEL DOMINICK ONYANGO.....2<sup>nd</sup> RESPONDENT**

**RULING**

*Date of last order: 17/08/2022*  
*Date of judgment: 18/08/2022*

**AGATHO, J.:**

This is an application for extension for time as per Section 14(1) of the Law of Limitation Act [Cap 89 R.E. 2002]. Applicant prayed this Court to enlarge time to file an application in this Hon Court for setting aside dismissal of Application No. 14 of 2018 of the Tanga District Land and Housing Tribunal. Before hearing of that application Respondent raised Preliminary Objection on the issue of jurisdiction of this Court to determine this matter at hand. Respondent presented

that the application is bad in law for being instituted in a Court that has no jurisdiction.

The parties agreed to dispose the P.O. by way of written submission, and successfully filed their submissions timely. While the Respondent filed his submission in support of his point of Preliminary Objection through his advocate on Yona Lucas, the Applicant enjoyed legal services from Mr. Changarika (Advocate) who draw and filed Applicant's submission in opposing the Preliminary Objection.

In supporting his Preliminary Objection Respondent's counsel had this to say, the Applicant moved this court for the order that the Applicant be granted an extension of time to file an application in this Honourable Court for setting aside dismissal of the Application No. 14 of 2018 of the Tanga District Land Tribunal (DLHT). The latter shall be referred as trial tribunal. Referring to the Applicant's affidavit supporting this application, he submitted that as per paragraph 3 averment the Applicant's Application before the trial tribunal was dismissed on 15<sup>th</sup> February, 2022 on the reasons alleged to be unknown by the Applicant. It is from this averment that the present application is made. The counsel cited the provision of Land Disputes

Courts Act (District Land and Housing Tribunal) Regulations, 2003(GN No. 174 Of 2003), specifically Regulation 11(1) and (2).

He submitted further that the application is made within 30 days. If the application for setting aside dismissal is refused the law provides for the right to appeal to this Hon Court.

He went on to state that by preferring this application for extension of time before this Court to enable the Applicant to apply for setting aside the dismissal order of the tribunal dated 15<sup>th</sup> February 2022 he has approached a wrong forum. He argued that this Court has no jurisdiction, but the tribunal has. The High Court has no power to set aside the dismissal order of the trial tribunal and thus it cannot extend time for the relief that is not within its power. He finally prayed for his Preliminary Objection to be sustained and this application be struck out with costs.

Turning to the Applicant's submission in replying to what has been submitted by the Respondent, he submitted that the Respondent's Preliminary Objection is based on **Regulation 11 (1) (b) & (2) of the Land Disputes Court Act (District Land and Housing Tribunal) Regulations 2003 (GN No. 174 of 2003).**



He stated that, the above provision is applicable only where the Applicant is absent in Court when the application was coming for hearing without good cause. This is different to the case at hand. In the application that was before the trial tribunal the applicant and his Advocate Mr. Mramba were present on 15<sup>th</sup> February 2022 when the case was coming for hearing. On that day applicant was present when the case was called for hearing Applicant's Advocate was not ready for hearing and prayed for adjournment. The tribunal chairman ordered the Applicant to continue with his case. The Applicant told the tribunal he was not ready to proceed as he depended on his advocate. The tribunal chairman dismissed the Applicant's application. The Applicant's counsel is of the view that the Application at hand is proper before this Court instead of filing it before the District Land and Housing Tribunal. This application was thus properly filed before the honourable Court and it has jurisdiction to entertain the application. He concluded his submission by praying for dismissal of the Preliminary Objection.

In rejoinder the Respondent's counsel had nothing to say than insisting that, the issue of jurisdiction of this Court is matter of law.

The power of setting aside dismissal order of the trial tribunal is nowhere specified by the Applicant to be existing in this Court, rather it is the power that is enjoyed by the same trial Tribunal under Regulation 11(1)(b) of the Land Disputes Courts Act (District Land and Housing Tribunal) Regulations, 2003 (GN No. 174 of 2003).

He rejoined further by emphasizing that, the application for extension of time to file application for setting aside dismissal order is bad in law because this Court has no jurisdiction. He prayed the present application to be struck out.

To dispose the P.O. I have looked at the record of proceedings at the DLHT, I have heard the parties submissions and examined the relevant law. There is no doubt that on 15<sup>th</sup> February 2022 Application No. 14/2018 was dismissed for want of prosecution. On the material day Applicant together with his Advocate were present unfortunately their case was dismissed for want of prosecution simply because Applicant side were not ready to proceed with the hearing.

The matter at hand requires the attention of this Court. And a key question is whether it is proper to bring application for extension of time to apply for setting aside dismissal order entered by the trial

tribunal? Under Regulation 11(2) of the Land Courts Act (District Land and Housing Tribunal) Regulations, 2003 (G.N NO174 OF 2003) Provides that,

*A party to an application may, where he is dissatisfied with the decision of the tribunal under sub-regulation (1), within 30 days, apply to have the orders set aside and the Tribunal may set aside its order if it thinks fit so to do and in case of refusal appeal to the High Court.*

Basing on the above provision this Court has power to deal with the application of the like upon the refusal of the said by the trial tribunal. That decision should be challenged by way of appeal preferred before this Court, and not to bring an application. This court lacks jurisdiction to deal with the issue for extension of time.

It is imperative to discuss the issue of jurisdiction since nothing can be decided before determining the jurisdiction of this Court in the case **Tanzania Revenue Authority V. Tango Transport Company Ltd. Civil Appeal no.84 of 2009, Court of Appeal of Tanzania at Arusha, (unreported).** Court of Appeal applied **Halsbury's Laws of England, Vol.10 para 314** to define



Jurisdiction as *"the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decision. The limits of this authority are imposed by the statute; charter or commission under which the Court is constituted and may be extended or restrained by similar means. A limitation may be either as to the kind and nature of the claim, or as to the area which jurisdiction extended, or it may partake of both these characteristics"*.

In the case of **Balthazary Kinasha Vs. Paula Bernad Nind Misc. Land Appeal No. 69 OF 2020 High Court of Tanzania at Dar es Salaam**, stated that;

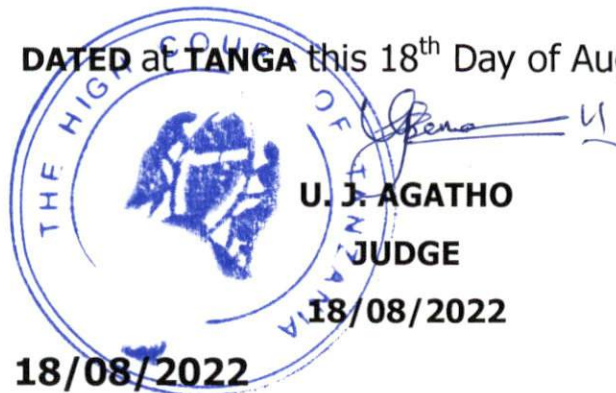
*"Jurisdiction is therefore a creature of statute and not discretion of the court/tribunal to confer on itself"*.

The Tribunal is dressed with an authority to deal with the application to set aside as per **Regulation 11(2) of the Land Courts Act (District Land and Housing Tribunal) Regulations, 2003 (G.N NO 174 OF 2003)**. For that purpose, it has power to grant extension time to file that an application. Therefore, the tribunal has supremacy to grant an order for extension of time.

For the foregoing reasons this Court lacks jurisdiction to deal with the present application. The same is dismissed with costs.

It is so ordered.

**DATED at TANGA** this 18<sup>th</sup> Day of August 2022.



**Date:** 18/08/2022

**Coram:** Hon. Agatho, J

**Applicant:** Present with his advocate Chanjarika

**2<sup>nd</sup> Respondent:** Present with his advocate Yona Lucas

**B/C:** Zayumba

**Court:** Ruling delivered on this 18<sup>th</sup> day of August, 2022 in the presence of the Applicant and his advocate Chanjarika, and 2<sup>nd</sup> Respondent and his advocate Yona Lucas.

**U. J. AGATHO**

**JUDGE**

**18/08/2022**

**Court:** Right of Appeal fully explained.

