

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO 10 OF 2022

(Arising from Land Application No 398 of 2020 and Misc. Land Application No 83 of 2020 in the District Land and Housing Tribunal for Mara and Originating from Land Case no 07 of 2019 at Ling'wani Ward Tribunal)

CHRISTOPHER MOREMI WAMBURA APPELLANT

VERSUS

CHARLES MUSYANGI RESPONDENT

JUDGMENT

3rd October & 31st October 2022

F. H. Mahimbali, J.

This is an appeal against the decision of the District Land and Housing Tribunal for Mara at Musoma in Misc. Land Application No 298 of 2022 which granted the application, for extension of time to set aside dismissal order in Misc. Land Application No 83 of 2020 from the same DLHT.

It appears that the respondent lost a suit in the trial Ward Tribunal of Ring'wani which was registered as Land Case No 7 of 2019. He was

have reasonable grounds and also that there must be accounting for each day of delay. In the current case, there are neither valid reasons nor accounting for each day of delay. He is of the view that since all this has been the applicant's negligence, the law is, such a negligence has never been good ground for the extension of time the DLHT then erred in granting the same.

On his part, Mr. Gervas considered the appeal as against interlocutory orders therefore not appealable as per law in the line of section 74 (1) of the CPC. He relied his position making reference in the case of **Tanzania Motor Service Ltd and Another vs Mehar singh t/a Thaller Singh**, Civil Appeal No 113 of 2003 CAT at Dar es Salaam and the case of **Merengo Gesawani vs Raphael Matiko Makolon**, Misc. Land Appeal No 64 of 2021, High Court Mwanza. He therefore prayed that this court to dismiss this appeal with costs.

I have carefully digested the submissions of the both counsel in respect of this appeal. I agree that to grant or refuse granting the application of extension of time is purely a trial court's discretionary power. It can hardly be challenged before a superior court as challenging it is considered as appealing against the interlocutory order.

(i) any order made under rules from which an appeal is expressly allowed by rules.

(2) Notwithstanding the provisions of subsection (1), and subject to subsection (3), no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of the District Court, Resident Magistrate's Court or any other tribunal, unless such decision or order has effect of finally determining the suit.

In my digest to the ruling granting the respondent extension of time to file an appeal out of time has no nature of determining the suit finally as per law.

In the persuading decision in the case **Merengo Gesawani V. Raphael Matiko Makolom**, Misc. Land Appeal No. 64 of 2021, High Court Musoma, Kahyoza, J while interpreting section 74(1) and (2) of the CPC, was faced with a similar matter and ruled that the ruling of the trial tribunal was not appealable as it was merely an interlocutory ruling which had not determined the rights of the parties as per law. Relying in the decision of **Tanzania Motor Service Ltd and Another vs Mehar singh t/a Thaller Singh**, Civil Appeal No 113 of 2003 CAT at Dar es Salaam which quoted Lord Anderson in **Bozson V. Altrinchman Urban District Council**, [1903] I KB 574 at 548, it was held:

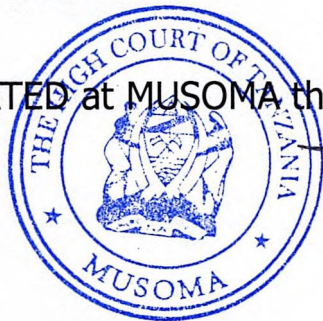
Advocates are highly advised to be justice conscious than being advocates embracing matters being buried without justice in it. Embrace justice and avoid technicalities.

Since the appellant opted to appeal on a decision that had not granted parties with rights, that is equal to appealing against interlocutory order. The same is barred by law pursuant to section 74(2) of the CPC.

Consequently, appeal is dismissed. Parties shall bear their own costs.

It is so ordered.

DATED at MUSOMA this 31st day of October, 2022.



F.H. Mahimbali

Judge

Court: Judgment delivered this 31st day of October, 2022 in the presence of Mr. Gervas Emmanuel, Gidion Mugo, RMA and appellant being absent.

Right of appeal is explained.

F.H. Mahimbali

Judge