

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISCELLANEOUS CIVIL APPLICATION No. 01 of 2022**

*(Arising from PC. Civil Appeal No. 126 of 2004 before Hon. Mwangesi, J (as he then was))*

**MAPESA JUMA SAID .....APPLICANT**

**VERSUS**

**JUMANNE MATOKA ..... RESPONDENT**

**RULING**

**ITEMBA, J.**

The applicant herein has filed this application under section 54(3) (4) of the Land Dispute Courts Act, Cap. 216 [R. E 2019] herein (Cap 216) and S. 95 of the Civil Procedure Code, Cap 33 R. E 2019 praying for the court to restore and determine PC Civil Appeal No. 126 of 2004.

The application is supported by an affidavit sworn by the applicant himself, Mapesa Juma Said. In his affidavit he states that he is the administrator of estate of the late Hassan Matambo and that in the year 2002 the Respondent instituted a Civil Case No. 93 of 2002 against the Applicant before Urban Primary Court of Musoma claiming for a piece of land located at Buruti Musoma. The said Primary Court ruled in favour of the Respondent and among other things it ordered the Respondent to pay compensation to

applicant. The applicant states further that, he unsuccessfully appealed against the said decision before the District Court of Musoma vide the Civil Appeal No. 32 of 2002 and later he filed before this court PC Civil Appeal No. 126 of 2004 which was struck out on 02<sup>nd</sup> July, 2013 on grounds that there was no any record in respect to the Appeal in terms of section 54 of Cap. 216.

The applicant explained that as the said appeal was struck out because it was time barred, he requested the Registrar to apply to the Chief Justice for an extension of time whereas the Honorable Chief Justice has issued an extension of time for a period of 12 months from 23<sup>rd</sup> November, 2021. Therefore, the Applicant had filed this application requesting the Appeal be restored.

There was no counter affidavit filed by the respondent.

When the application was scheduled for hearing the applicant was represented by Alhaji Majogoro and Julius Kirigiti while Ms. Hellena Mabula represented the respondent.

Upon being inquired for clarification Mr. Majogoro explained that the application is for restoration of PC Civil Appeal No. 32 of 2002 and not for determination of the said appeal as it appears in the chamber summons.

The learned counsel explained that this appeal was delayed because sometimes before hearing the original file was lost and when it was found the appeal was already out of time.

He submitted that the respondent does not oppose the application and he has not filed any counter affidavit. Mr. Majogoro further submitted that the respondent Jumanne Matoka is now a deceased and there is already an administrator of estate in place, namely Halima Jumanne Hamis and prayed for the name of respondent to be substituted to that of the administrator of Estate.

In reply, Ms. Mabula supported the application and prayers thereof as advanced by the applicant's advocate.

Section 54(3) and (4) of the Land Disputes Courts Act Cap 216 [R. E. 2019] states that:

*"(3) All proceedings or appeals under this section shall be concluded within the period of two years from the date of commencement of this Act.*

*4 Where the High Court or the Magistrates' Court fails to hear and conclude the proceedings or appeals within the period specified in subsection (3), the Chief Justice may, upon application by the Registrar extend the time to such other time as he may determine."*

It is in evidence that this appeal was struck out for contravening section 54(3) of CAP 216. It is also in evidence that on 23<sup>rd</sup> November, 2021 the Honorable Chief Justice had issued an extension of time for hearing of PC Civil Appeal No. 126/2004, of which this court is being guided so.

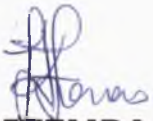
I have considered the grounds of application in the applicant's affidavit; I have also noted that the application is not opposed by the respondent.

Therefore, the order which struck out the Civil Appeal No. 126/2004 is hereby set aside. Subsequently, Civil Appeal No.126 of 2004 is hereby restored.

The respondent is substituted by Halima Jumanne Hamisi as an administratrix of estate of Jumanne Matoka who is the deceased. Pleadings to be amended accordingly.

It is so ordered.



  
**L. J. ITEMBA**  
**JUDGE**  
**10/2/2022**