

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

APPELLATE JURISDICTION

MISC. LAND APPLICATION NO. 13 OF 2022

(Arising from Misc. Land Appeal No. 11 of 2021 of the Resident Magistrate's Court Kigoma - Extended Jurisdiction, originating from the District Land and Housing Tribunal for Kigoma Land Appeal No. 51 of 2021 that commenced as Land Application No. 31 of 2020 at Kalinzi Ward Tribunal).

MWAJUMA HARUNA..... APPLICANT

VERSUS

ASHERI RUTONDA.....RESPONDENT

RULING

16/09/2022 & 26/01/2023

MANYANDA, J.

A delay of 27 days from the date a copy of the impugned ruling was allegedly delivered to the Applicant to the date of filing this application has brought the Applicant to this Court seeking for extension of time within which to file an appeal to appeal out of the prescribed time. The Applicant is challenging a judgement of the District Land and Housing Tribunal for Kigoma (DLHT) dated 21/10/2021 which was struck

out on ground that it was not accompanied with a decree appealed against.

When this application was tabled before this Court for hearing on 01/08/2022, Mr. Ignatus Kagashe, learned Advocate, represented the Applicant and Mr. Sylvester Damas Sogomba represented the Respondent Both Counsel discharged their obligations by making oral submissions.

Submitting in line with the Applicant's affidavit, Mr. Kagashe stated that it is the Applicant who won the battle at the trial Ward of Kalinzi which declared her a lawful owner of the suit land in Land Application No. 31 of 2020. Then the Respondent appealed to the District Land and Housing Tribunal for Kigoma (DLHT) Land Appeal No. 51 of 2021 which on 21/10/2021 reversed the trial Ward Tribunal decision.

Aggrieved by the DLHT decision, the Applicant appealed to this Court which transferred the appeal case to the Court of the Resident Magistrate with Extended Jurisdiction (RM's Court) where it was registered as Land Appeal No. 11 of 2021. As stated above, the said RM's Court – Extended Jurisdiction struck out the appeal on 27/04/2022 for want of a decree.

The Applicant still aggrieved intends to assail the judgement of the DLHT, however, she found herself out of time after her first appeal been struck out, hence the current application for extension of time to file a fresh appeal.

The reason given by Mr. Kagashe is that the Applicant delayed to file her appeal on technical delay because her earlier appeal was filed in time only that it was struck out on technical ground for want of a decree accompanying the impugned judgement. This being a good ground for extension of time, Mr. Kagashe invited this Court to exercise its discretionary powers by extending the time within which the Applicant to file her appeal in order to assail the DLHT judgement.

On his side, Mr. Sogomba argued that the principle of technical delay does not assist the Applicant. He was of the view that since the application for extension of time was filed well out of time without any good cause, after inordinate delay, then the Applicant cannot benefit from the principle of technical delay. Moreover, he argued that the Applicant also delayed to file this application even after been supplied with the requisite documents, she still delayed for 11 days which she didn't account for.

In rejoinder, Mr. Kagashe simply reiterated his submissions in chief.

In this matter I must confess that I will go without the in-puts from the parties Counsel on one legal issue that is whether this Court is seized with jurisdiction to entertain this application. I say so because, I am writing this ruling while at Tanga, the parties are far away from me as I have been transferred from Kigoma, In order to avoid unnecessary delay, I find expedient to deliberate on this point of law.

I believe the Counsel would have said the same because the law is now settled that once a case, for this matter, an appeal, has been transferred to the Court of the Resident Magistrate with Extended Jurisdiction, then a court which become seized with jurisdiction to handle applications such as extension of time originating from a decision of the said Resident Magistrate with Extended Jurisdiction is the same Resident Magistrate with Extended Jurisdiction.

I am fortified by a decision of the Court of Appeal of Tanzania in the case of **Alonda Ekela vs Republic**, Criminal Appeal No. 1 of 2020 (unreported) in which it held that where an appeal lies from a subordinate court exercising extended jurisdiction, the subordinate court concerned, has exclusive jurisdiction to extend the time for giving notice

of appeal from a judgment of the subordinate court concerned. The Court of Appeal went on elaborating by stating as follows: -

We agree with the appellant that the High Court registry at Kigoma, upon receiving the application for extension of time to file a notice of appeal **should have ordered a transfer of the application to a Magistrate with Extended Jurisdiction to hear the application for an extension of time.**

*We say so because it was the Judge in-Charge of the High Court at Tabora (S.M. Rumanyika, J.) who, on 02/03/2016, issued the order transferring the appellant's first appeal to Kigoma Resident Magistrate's Court under **section 45(1) and (2)** of the Magistrates Courts' Act, Cap 11 R.E. 2002. The order assigned Hon. Anna Magutu—SRM to hear that first appeal with extended jurisdiction.*

Similarly, in the case of **Lukelo Uhahula vs Republic**, Criminal Appeal No. 333 of 2016 (unreported), the Court of Appeal raised jurisdictional issue regarding an extension of time to file a notice of appeal, which the High Court Judge granted over an appeal against a decision of a Resident Magistrate with extended jurisdiction. The Court concluded as follows: -

*"It was improper for the High Court to entertain the application for extension to file the notice of appeal **on a***

matter which was not in the High Court Registry following its transfer to the Resident Magistrates' Court."(emphasis added)

From the authorities above, it follows, by analogous reasoning, that this Court does not have jurisdiction to entertain this application for extension of time as the case was transferred to the Court of the Resident Magistrate to be handled by a Magistrate with Extended Jurisdiction. The Registry ought to have placed the file to the Judge In-charge for the requisite transfer order to remitted the case file to the Court of the Resident Magistrate with Extended Jurisdiction for it to entertain the application for extension of time for filing an appeal out of time, since the first appeal was struck out for incompetency.

Moreover, there is the Judicature and Application of Laws (Transfer and Management of Cases Assigned to Magistrates with Extended Jurisdiction) Rules, 2023. Government Notice No. 11 published on 20/1/2023. Rule 13 require applications concerning matters that were transferred to Resident Magistrates with Extended Jurisdictions to be filed in the High Court and then transferred by the Judge In-charge to the Resident Magistrates with Extended Jurisdiction, save for applications for taxation of bill of costs and execution of matters arising

in exercise of the extended jurisdiction which are to be heard by the Deputy Registrar.

It is on this reason that I find this application is misplaced. Consequently, I do hereby remit the file to the Judge In-charge for him to order transfer of the file to the Court of the Resident Magistrate with Extended Jurisdiction according to the law. No order as costs. It is so ordered.

Dated at Kigoma this 26th day of January, 2022




F.K. MANYANDA

JUDGE

