

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(IRINGA SUB REGISTRY)**  
**AT IRINGA**

**MISC. LAND APPLICATION NO. 17 OF 2022**

*(Arising from Land Appeal No. 6 of 2015, High Court of Tanzania, at Iringa before Justice Shangali Original Application No. 31 of 2014 of the DLHT of Iringa before Hon. A. Mapunda – Chairman)*

<b>CHESCO MKONDA</b>	.....	<b>APPLICANT</b>
<b>VERSUS</b>		
<b>THE BODY OF TRUSTEES OF CCM</b>	.....	<b>1<sup>ST</sup> RESPONDENT</b>
<b>JOHNSON DICK</b>	.....	<b>2<sup>ND</sup> RESPONDENT</b>
<b>MAJEMBE AUCTION MART</b>	.....	<b>3<sup>RD</sup> RESPONDENT</b>

**RULING**

23<sup>rd</sup> May & 23 May, 2023

**I.C. MUGETA, J:**

This is an application for extension of time to lodge notice of Appeal to the Court of Appeal against the decision of this court dated 11/7/2016. In that decision, this court (Shangali, J, as she then was) dismissed the applicant's appeal for being time barred. After this decision, the applicant filed three (3) different applications, including this one in a bid to have his grievances against the decision of the District Land and Housing Tribunal (DLHT) dated 28/1/2015 heard by this court. The last application was determined on 10/09/2019. Thereafter, he knocked the doors of the Court



of Appeal by lodging a notice of appeal dated 10/10/2019 which was struck out for incompetency on 21/3/2022. Between 22/3/2022 and 21/4/2022, according to paragraph 11 of the affidavit of the applicant, the applicant was sick and on 12/9/2022, this application was filed.

The respondents, resists the application. The counter affidavits of the 1<sup>st</sup> and 2<sup>nd</sup> respondents are similar in contents and effect. Their objections are based on the arguments that the applicant has failed to account for a six (6) years delay and that sickness did not prevent the applicant to take appropriate actions.

The third respondent's counter affidavit challenges the application on ground of negligence and sloppiness.

The applicant is represented by Jally Mongo, learned advocate while the 1<sup>st</sup> and 2<sup>nd</sup> respondents are represented by Antony Kanyama, learned advocate. Said Mbagha (Marketing Manager of the 3<sup>rd</sup> respondent represented) appeared on behalf of the third respondent. At the hearing, the parties adopted their respective pleadings and prayed the court consider the arguments therein in reaching its decision.

Jally Mongo, learned counsel, urged the court to consider the case of **Fortunatus Masha V. William Shija** [1997] TLR 154 on the issue of

technical delay and **Principal Secretary Ministry of Defence V. Divram Valambia** [1992] TLR 387 on the issue of illegality as a ground for extension of time.

It is settled that extension of time to take a particular action can be granted if the applicant accounts for each day of the delay, disclose a sufficient cause and if there are apparent illegalities on the face of the record in the impugned decision.

In this case the applicant has accounted for each day of the delay from 11/7/2016 up to 21/4/2022. Within this period, I am satisfied, the applicant was either in court litigating or sick. However, the period between 21/4/2022 to 12/9/2022 when this application was filed is completely unaccounted for. Therefore, technical delay relied upon by the applicant cannot support this application as the said period of about five months is unexplained.

On illegalities, the applicant challenges the decision of my learned sister Shangali, J. for holding that the applicant delayed to apply to be supplied with the documents *suo moto* without affording the parties the right to be heard. He also challenges that decision for failure to consider

time spend by him waiting to be supplied with court documents which ought to be excluded automatically in computing the limitation period.

I have read the impugned decision of this court, with respect to the counsel for the applicant, no part of it decided that the applicant delayed to apply to be supplied with the court documents.

Regarding the second complaint concerning the exclusion of the period of waiting for documents in computing the limitation period, I have found that the applicant applied to be supplied with documents on 23/2/2015 and the same were certified and supplied on 9/3/2015 which is 14 days later. These days, indeed, ought to be excluded in computing the limitation period. The argument of the applicant is that if this period is excluded from reckoning the limitation period, then the appeal was filed within time which makes the decision of this court that the appeal was time barred illegal. Is this true?

The judgment of the DLHT was delivered on 28/1/2015 and the appeal was filed on 25/3/2015 which is a total of 57 days after delivery of the judgment. Therefore,  $57 - 14 = 43$  days. The right to exclude the period of time requisite to obtain decree or order obtains at section 19(2) of the Law of Limitation Act [Cap. 89 R.E 2019]. The appeal period against

the decision of the DLHT is 45 days. It is on these facts the applicant challenges the decision of this court that the appeal was time barred on account of illegality. I find merits in this complaint.

In the event, I allow the application. Costs in the course.



A handwritten signature in blue ink, appearing to read "Mugeta".

**I. C. MUGETA**

**JUDGE**

**23/5/2023**

**Court:** Ruling delivered in chambers in the presence of Jally Mongo, advocate for the applicant and Antony Kanyama, advocate for the 1<sup>st</sup> and 2<sup>nd</sup> respondent and the 3<sup>rd</sup> respondent in person and Said Mbagi (Marketing Manager of the 3<sup>rd</sup> respondent).

**Sgd. I. C. MUGETA**

**JUDGE**

**23/5/2023**