

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISCELLANEOUS LAND APPLICATION NO. 42 OF 2023

(Arising from Land Case No. 06 of 2019)

THE REGISTERED TRUSTEES OF CHAMA CHA

MAPINDUZI APPLICANT

VERSUS

ELIMSAAD ELIUDI KITUMA 1ST RESPONDENT
SUBIRA OMARY 2ND RESPONDENT
MACKSHADOW JACOB KIPOKOLA 3RD RESPONDENT
LAURIAN MAXWELL LEIKULE 4TH RESPONDENT
ALLY MUHAMEDI SHEMUSANGA 5TH RESPONDENT
TWALIPO SALMINI TWALIPO 6TH RESPONDENT
FLETASI PATROPA MANGOWI 7TH RESPONDENT
ISRAEL ANDIRSON MUNISI..... 8TH RESPONDENT
WILLIAM DOMINIC MLAMBO 9TH RESPONDENT
BDI SALIM KIPECHE 10TH RESPONDENT
JACKLINE CLIFF MAKIYAO 11ST RESPONDENT
MWANAID JUMA SHEMUSANGA 12ND RESPONDENT
CHENGA JACOB MHINA 13RD RESPONDENT
GEORGE EMMANUEL MAREALE 14TH RESPONDENT
VENANCE MELECK MMARY 15TH RESPONDENT
DONATILA MECKFASON WISSO 16TH RESPONDENT
RAMLA HEMED MZAVA 17TH RESPONDENT
KAFTI MICHAEL EMMANUEL 18TH RESPONDENT
ASIA ATHUMAN BENTA 19TH RESPONDENT
WILLIAM MWAKABUTA NSELELA 20TH RESPONDENT
ELIONORA SHIKIRAE M BONIKA 21ST RESPONDENT
ROBERT ELIUFOO KIMARO 22ND RESPONDENT
GERMANA E. AMARROW 23RD RESPONDENT
GRACE DAUD LYIMO 24TH RESPONDENT
STEPHEN SENKONDO 25TH RESPONDENT
FELICE RAPHAEL MAEDA 26TH RESPONDENT

BEATRICE GEORGE MAREALLE	27TH RESPONDENT
MARTIN ALOYCE TESHA	28TH RESPONDENT
PAUL Y. SHIRIMA	29TH RESPONDENT
GEORGE HENRY KAWICHE	30TH RESPONDENT
MWANAHURU AMIRI SHEMBILU	31ST RESPONDENT
SERAPHIN JOSEPHAT MOSHA	32ND RESPONDENT
KENNEDY KUNDAEL MUNISI	33RD RESPONDENT
JUMA GOLIATI MMANGA	34TH RESPONDENT
MANENO LIYEJE MGAZWA	35TH RESPONDENT
HERMAS H. KIONDO	36TH RESPONDENT
NIMROD LOCKEN URONU	37TH RESPONDENT
WILLIAM MGAYA LEMA	38TH RESPONDENT
JONATHAN SHAO	39TH RESPONDENT
FLOMENA PAUL MREMA	40TH RESPONDENT
ELIAICHI ISAYA MWENDA	41ST RESPONDENT
ALBAT MKINDI SHAYO	42ND RESPONDENT
WITNESS NDELILIO MAFIE	43RD RESPONDENT
AMEN PARADISO URASSA	44TH RESPONDENT
JUDITH ALOYCE KUNDI	45TH RESPONDENT
LUCY J. MAINS	46TH RESPONDENT
JOSEPH ALONDWA KAGIRO	47TH RESPONDENT
FRANCIS EDWARD SAUWA	48TH RESPONDENT
FIRMAN JOHN LYRUU	49TH RESPONDENT
MWINHUMA KIAZE MWENDA	50TH RESPONDENT
RICHARD MASIKA	51ST RESPONDENT
GODWIN RUMISHAEL KWEKA	52ND RESPONDENT
CHARLES BANO KUDEMA	53RD RESPONDENT
SAMUEL LEVIS NJAU	54TH RESPONDENT
MARTINA SABAS MASSAWE	55TH RESPONDENT
MARIETH F. KISAKA	56TH RESPONDENT
DELPHINA ZAKARIA MAVERE	57TH RESPONDENT
IBRAHIMU SHABANI MWANAJA	58TH RESPONDENT
FERDINAND S. NDAKIDEMI	59TH RESPONDENT
LAMECK LOCKEN URONU	60TH RESPONDENT
AISHA HAMISI NKYA	61ST RESPONDENT
FROMINI THOMASI MUSHI	62ND RESPONDENT
COLMAN STEPHEN TARIMO	63RD RESPONDENT
CONSTANTINE MARIKI	64TH RESPONDENT
ANTHONY AUGUSTINO MASSAWE	65TH RESPONDENT

HAPPY A. KOMBE	66TH RESPONDENT
EMILLIANI M. TEMU	67TH RESPONDENT
ASHA JUMA OLOTU	68TH RESPONDENT
JANE FLORA NYOMBI	69TH RESPONDENT
ESTHER EZRA MMARY	70TH RESPONDENT
BETTY MACHARI	71ST RESPONDENT
FLORA JOHN MSANGI	72ND RESPONDENT
CELLINE ELIAS LYIMO	73RD RESPONDENT
MICHAEL JOHN MLAY	74TH RESPONDENT
PETER DAVID MAGANGA	75TH RESPONDENT
REV. GOODLUCK SALIM MASAWA	76TH RESPONDENT
DEOGRATIUS DAMIAN MUGISHAGWE	77TH RESPONDENT
PAUL MICHAEL	78TH RESPONDENT
VERDIANA LAURENCE	79TH RESPONDENT
AMEN JEFFREY SAWAYAE	80TH RESPONDENT
MARIETH JOHN KIHUMA	81ST RESPONDENT
ALLY SHABANI KASHINDO	82ND RESPONDENT

RULING

11th December, 2023

A.P.KILIMI, J.:

The applicant hereinabove through the chamber summons supported by his advocate’s affidavit has moved this court under Section 14 (1) of the Law of Limitation Act Cap 89 R.E 2019 and any other enabling provisions of the Law; praying for the following orders namely: -

1. That, the court be pleased to extend time within which the applicant to serve the respondent with letter dated 20th February, 2023 requesting for copies of judgment, decree and proceedings in respect of Land Case No. 06 of 2019 between ELIMSAAD ELIUDI KITUMA & 81 OTHERS VERSUS THE REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI.

2. An order that the costs of and incidental to this application abide the results of the said application.
3. Any other order/relief this Court may deem fit and just to grant.

When the application came for hearing, the applicant enjoyed the service of Mr. Wilhard Kitali assisted by Mr. Peter Seni both learned advocates whereas Mr. Joseph Peter appears representing the all respondents

Mr. Wilhard Kitali submitting in support of the application prayed to adopt applicant affidavit and averred that, this application for extension of time in order to serve the respondent a letter written on 20/2/2023 and received in this court on 22/2/2023, the said letter for request to be supplied copies of judgment, decree and proceeding in respect to the land case no. 6 of 2019 between **Elimsaad Eliud Kituma and 81 others versus Registered Trustees of CCM.**

The counsel further submits that, the gist of this application comes after the applicant aggrieved by the decision of this court dated 10/02/2023 of a land Case no. 6/2019. The applicant intended to appeal to Court of Appeal, on 23/2/2023 the applicant lodged a notice of appeal showing the intention to appeal to the court of appeal of Tanzania and said notice was

duly served to the respondents, also the counsel submitted that the said notice is appended in their affidavit and it was served to the respondent. On 22/2/2023 the applicant wrote a letter to the court requesting to be supplied with the copy of judgment and proceeding, the said letter was filed and received on 22/2/2023, but unfortunately the applicant failed to serve that letter to the respondent.

The said failure came to be known after the current advocate for applicant when got instruction to proceed with this case from the previous advocate revealed the notice was served properly to the respondent but the letter requesting judgment and proceeding was not served to the respondents, instead was filed only to this court. This is after the said former advocate was appointed to by the President to be District Executive Officer, and thus when he came to handle case file the said defect was revealed.

Mr. Kitali further submitted that, after the applicant discovered the said defect, the applicant diligently and reasonably acted promptly to seek the remedy of it, by filing extension of time to serve the respondents with the letter said above. To buttress his assertion the counsel referred the case of **Michael Lessani Kweka vs. John Eliafye** 1997 TLR 152. Also, Mr. Kitali added that if the they will be allowed to serve the opposite party with the

said letter, that act will not prejudiced the respondent in anyhow but rather will help enhance of justice for both parties. To fortify his view, he has cited the case of **Hassan Kibasa vs. Anelisia Chang'a** Civil Application no 318/13 of 2021 CAT at Iringa (unreported) where the court observed that the act of applicant to act promptly after discovering defect was a ground for extension of time.

Mr. Kitali also went on to submit that, the negligence of previous counsel for the applicant should not be used to penalise the applicant, as per the case of **Abdalah Juma Kambale vs. Noradi Tiliko Mongelwa** Civil Appeal no. 231 of 2018 CAT at Tabora, at page 12 the court observed that inaction or negligence of the previous advocate cannot be used to penalise the applicant. He therefore insisted even in this case the negligence should not be used to punish the applicant. He thus prayed the application be granted.

In responding to the above Mr. Joseph Peter in one sentence conceded the application but prayed to be awarded costs.

In rejoinder, Mr. Kitali prayed this court to refer the case of **Abdalla Juma Kumbare** (supra) where the court sated the issue of in action or

negligence of that advocate not to be used to penalize the applicant, thus prayed in this matter the same be applied, since the grant by cost will be penalizing to Applicant, therefore prayed each party to shoulder his costs.

I have considered the intensive submission by the applicant's counsel and the reply by the respondent's counsel who indeed did not object the application. I inclined with the argument by Mr. Kitali that inaction or negligence of that advocate not to be used to penalize his client, but in my view under the circumstances of this matter it extends to the granting of the application and not cost of this application. However, in considering the doors are already opened for applicant to enter the court of appeal arena. This application is granted as prayed and cost of this matter should be in the cause. It is so ordered.

DATED at **MOSHI** this 11th day of December, 2023.



X 

JUDGE
Signed by: A. P. KILIMI

Court: - Ruling delivered today on 11th day of December, 2023 in the presence of Mr. Wilhard Kitali assisted by Peter Seni both learned advocate for applicant, also in the presence of Mr. Joseph Peter advocate for all Respondents.

**Sgd: A. P. KILIMI
JUDGE
11/12/2023**