

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE SUB - REGISTRY OF SHINYANGA**  
**AT SHINYANGA**

**MISC. LAND APPLICATION NO. 43 OF 2022**

**JOSEPH GAPANI (*Administrator of***  
***estates of the late Gapani Selemani*) ..... APPLICANT**  
**VERSUS**

**1. SALU IYONDI ]**  
**2. MAYUNGA IYONDI ..... RESPONDENTS**

[Application from the Decision of the District Land and Housing Tribunal  
for Maswa at Maswa.]

(Hon. J.F. Kinyerinyeri, Chairman)

dated the 11<sup>th</sup> day of February, 2021  
in  
Land Application No. 7 of 2019

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**RULING**

*12<sup>th</sup> October & 28<sup>th</sup> December, 2023.*

**S.M. KULITA, J.**

This is a Land Application for Extension of time to file an appeal against the Land Application No. 7 of 2019 and 29 of 2019 of the District Land and Housing Tribunal for Maswa. It has been filed by the Applicant by way of chamber summons in terms of the provisions of section 41(2)

of the Land Disputes Courts Act [Cap. 216 RE 2019]. It is supported with the affidavit sworn by the applicant on the 15<sup>th</sup> day of August, 2022.

In a nut shell, the information as can be gathered from the available records provides that, the applicant herein had sued the respondent for land trespass at the above said Tribunal through Land Application No. 7 of 2019. The same was before Hon. Lekamoi. It was later on re-assigned to Hon. Kanyerinyeri on the 5<sup>th</sup> day of August, 2019. The said record shows that, on that date the trial Chairman ordered the same to proceed *ex-parte* as against the respondent. However, on 3<sup>rd</sup> December, 2019 the trial Chairman vacated his earlier *ex-parte* hearing order and allowed the respondent to file his written statement of defense. Then, on 11<sup>th</sup> February, 2021 the trial tribunal struck out the application for the reasons that, the administrator of the estates for the Respondents had not been joined. The applicant stated further that, he again instituted his application though it got struck out on technicalities. To the applicant, the act of striking out his application for the reason that, the respondents' administrator has not been joined is tainted with illegalities. He is thus, seeking for extension of time to lodge his appeal.

In this Application, Mr. Paulo Kaunda, learned Advocate represented the Applicant, whereas Respondents were unrepresented. On 21<sup>th</sup>

February, 2023 the matter was scheduled for hearing through written submissions. Both parties complied with.

Submitting in support of the application, Mr. Kaunda adopted the applicant's affidavit and made this court take note on paragraphs 10, 11, 12, 13 and 14. He also added that, the act of the trial tribunal to vacate its *ex-parte* order without giving parties chance to address on it amounts to blatant illegality in the eyes of the law for violating the right to be heard. On that account, he wanted this court to extend time.

In their joint reply submission, the respondents admitted that, the trial tribunal ordered *ex-parte* order as against the 2<sup>nd</sup> respondent who happened to have faulted appearance. They however said nothing on whether the parties were given chance to address the tribunal before vacating its *ex-parte* order.

I have earnestly gone through the pleadings, records available and taken into consideration both parties' submissions together with their entire authorities. The issue before me is whether the Applicant has shown sufficient cause for extension of time.

Parties are not in dispute that, proceedings in the Land Application No. 7 of 2019 transpire that, the trial Chairman had ordered *ex-parte*

hearing as against the 2<sup>nd</sup> respondent. The same goes on showing that, the trial tribunal vacated such order without giving parties chance to address before taking that course. To me this is a serious illegality as it denied parties' right to be heard.

In the case of **Principal Secretary, Ministry of Defence and National Service V. Devram Valambhia [1992] TLR 182** it was stated as under;

*"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right".*

The position was reiterated in **VIP Engineering and Marketing Limited and Three Others v Citibank Tanzania Limited, consolidated Civil Reference No. 6, 7 and 8 of 2006 CA (unreported)** where it was stated thus;

*"We have already accepted it as established law in this country that where the point of law at issue is the*

*illegality or otherwise of the decision being challenged  
that by itself constitutes "sufficient reasons" within the  
meaning of rule 8 of the Rules for extending time"*

In view of the fact that there is an alleged illegality on the procedure followed in respect of the decision of the Tribunal for vacating its *ex-parte* order without giving the parties right to be heard, I find it appropriate to allow the application on the basis of this point.

For the reason stated herein above, as the illegality has been noted in the said Land Application Case No. 7 of 2019, then this **application is hereby granted**. The applicants have to file appeal in respect of the said case within a period of thirty (30) days from the date of delivery of this Ruling. Costs to be regarded in the main cause.



**S.M. KULITA**  
**JUDGE**  
**28/12/2023**

**DATED at SHINYANGA** this 28<sup>th</sup> day of December, 2023.



**S.M. KULITA**  
**JUDGE**  
**28/12/2023**

