

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

MISCELLANEOUS LAND CASE APPLICATION NO. 15 OF 2013

(From the decision of the District Land and Housing

Tribunal of Njombe District at Njombe in

Application No. 29 of 2012)

RAFAEL JOHN MCHILO APPLICANT

VERSUS

1. THOMASO RAFAEL MGIMBA	} RESPONDENTS
2. MALUMBO MSIGWA		
3. JOSEPH MWINUKA		

2/9/2014 & 3/10/2014

R U L I N G

MADAM SHANGALI, J.

The applicant Raphael John Mchilo has filed a Land Case Application No. 29/2012 before Njombe District Land and Housing Tribunal against the respondents namely, Thomaso Rafael Mgimba, Malumbo Msigwa and Joseph Mwinuka for the unlawful occupation of his piece of land measuring five acres situated at Mbolimboli village, Ludewa.

On 29/10/2013, the Land Case Application was dismissed with costs because the applicant failed to comply with the order of the trial District Land Tribunal.

Dissatisfied with that decision of the District Land Tribunal the applicant attempted to file an appeal to this court on 20/3/2013 but he was informed by the clerk of the District Land Tribunal that the time for filing his appeal had expired and therefore he was required to apply for extension of time within which to lodge his appeal.

The applicant has filed this application under Section 38 (1) of the Land Disputes Court Act, Cap. 216 and the same is duly supported by the affidavit deposed by the applicant in person.

During the hearing of this application the applicant was represented by Mr. Daimon Kilatu under the auspicious of power of Attorney while the respondents appeared in person and unrepresented.

Section 38 (1) of the Land Disputes Land Act, Cap. 216 provides as follows:-

*“Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal **in the***

exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court (Land Division).

Provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired ...”

This provision of the law mandates this court with powers to extend the prescribed limitation period of sixty days on the matters attended by the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction but not in the exercise of its original jurisdiction. The applicant matter in the Land Case Application No. 29/2012 was attended by the District Land and Housing Tribunal in the exercise of its original jurisdiction hence out of the scope of Section 38 (1) of the Land Disputes Court Act, Cap. 216.

The application has been filed under wrong provision of the law. It has been stressed time and again, that wrong citation of the law is tantamount to total failure to move the court. In the circumstances, this application is hereby

declared incompetent and struck out with costs.

M. S. SHANGALI

JUDGE

3/10/2014

Ruling delivered in the presence of both parties.

M. S. SHANGALI

JUDGE

3/10/2014