

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 1006 OF 2016**

**HUSSEIN NDUGUTA KASONGELO.....APPLICANT**

**VERSUS**

**ABEL PEA.....RESPONDENT**

*Date of last order: 12/03/2018*

*Date of Ruling: 08/05/2018*

**RULING**

**Makuru, J.**

This application has been sought under section 38 of the Land Disputes Courts Act, Cap 216 R.E. 2002 and section 14 of the Law of Limitation Act, Cap 89 R.E. 2002. The Applicant is praying for extension of time within which he can file an appeal out of time from the decision of the District Land and Housing Tribunal for Kinondoni at Myananyamala delivered on 29<sup>th</sup> August, 2016.

The application has been taken at the instance of Maira and Adhis Company Advocates. As usual, it has been supported by the affidavit of the Applicant, Hussein Ndunguta Kasongelo. Basically, the Applicant deposed that he was declared the lawful occupier of landed property located at Salasala RTD in Land Application No. 143 of 2007 at Kinondoni District Land and Housing Tribunal between the Applicant, among others, and the Respondent.

Aggrieved by the decision of the said Tribunal the Respondent in this application filed Land Appeal No. 28 of 2009 in this Court (Mgetta, J.) which was dismissed. Again, the Respondent was dissatisfied with the decision of the High Court. Thus, he filed a notice of appeal to the Court of Appeal.

He further deposed that when he was waiting for the decision of the Court of Appeal the Respondent invaded the suit premises which necessitated reporting the matter to the Ward Tribunal in Land Dispute No. 97 of 2014. The Ward Tribunal held in favour of the Applicant. The Respondent appealed to the District Land and Housing Tribunal of Kinondoni which held in favour of the Respondent.

The Applicant stated that he was advised by his legal counsel that the second application, No. 97 of 2014 and the subsequent appeal is *sub judice* due to the pending notice of appeal in the Court of Appeal. Hence, the District land and Housing Tribunal lacked jurisdiction to entertain the matter.

On his part, Mr. Massawe learned counsel for the Respondent submitted that there is no illegality pointed out by the Applicant. Regarding the notice of appeal filed in the Court of Appeal, he contended that the Applicant in this case is not a party and also the subject matter is not the same.

He further argued that the Applicant is the one who initiated the application in the Ward Tribunal of Wazo. He was surprised that the one who initiated the matter from the Ward Tribunal to this court is raising the issue of *sub judice*. He was of the view that it does not make sense.

For applications of this nature, he was of the view that reasonable and sufficient cause must be established before granting the application. According to him, there is no sufficient cause established in the affidavit. As for the notice of appeal, he submitted that it is applicable in the Court of Appeal only and no other courts. He concluded by submitting that there is no sufficient cause to enable this court to grant the application. He prayed the same be dismissed with costs.

In rejoinder, Mr. Ayall reiterated his submission in chief. He maintained that there is sufficient or reasonable cause as the affidavit clearly states that the matter is *sub judice*. He prayed for the application to be granted.

In the case of **Yusufu Same and Another Vs Hadija Yusufu**, Court of Appeal Civil Appeal No. 1 of 2002 (Dar es Salaam Registry, unreported) it was held that:

*"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to "sufficient cause" has not been defined".*

In the instant case the Applicant is alleging that he has been advised by his legal counsel that the second application No. 97 of 2015 and the subsequent appeal is *sub judice* due to the pending notice of appeal in the Court of Appeal. A thorough perusal of the court records shows that there is a supplementary affidavit sworn by the Applicant to the effect that he has been using three names interchangeably which are Hussein Nduguta Kasongelo, Hussein Bijumugumi Nduguta and Hussein Bijumugumi. Annexure "HNK 2" to the Applicants' affidavit, which is a notice of appeal to the Court of Appeal clearly shows that Hussein Bijumugumi is one of the Respondents. As the Applicant has sworn as Affidavit which has been attached to the supplementary affidavit that he also uses that name of Hussein Bijumugumi, and considering that it is not in dispute that the matter is pending in the Court of Appeal, I am of the view that this is sufficient cause for this court to exercise its discretion to grant the application so that the issue of *sub judice* can be considered.

In the end, for the reasons stated, the application is granted with costs. The appeal to be filed within 30 days from the date of this decision.

  
**C.W. Makuru**  
**JUDGE**  
**08/05/2018**

**Court:** Ruling delivered in court this 08<sup>th</sup> day of May, 2018 in the presence of Mr. Mohamed Majaliwa holding brief for Mr. Yohana Ayall, learned counsel for the Applicant and the Respondent in person.



**C.W. Makuru**  
**JUDGE**  
**08/05/2018**