

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 189 OF 2019

(Arising from Land Appeal No. 44 of 2017)

MOHAMED HAMISI MADEBE APPLICANT

VERSUS

ANNAMECIA MAEDA RESPONDENT

RULING

Date of Last Order: 30/03/2021 &

Date of Ruling: 21/05/2021

S.M KALUNDE, J:-

Aggrieved by the Decision of District Land and Housing Tribunal for Kinondoni (“**the Tribunal**”) in **Application No. 337 of 2010**, the applicant appealed to this Court vide **Land Appeal No. 44 of 2017**. The appeal before this Court, that is Land Appeal No. 44 of 2017, was dismissed for want of prosecution under **Order XXXIX Rule 17 (1) of the Civil Procedure Code Cap. 33 R.E 2019**.

According to Item 9 of Part III to the schedule of **Law of Limitation Act Cap. 89 R. E 2002**, the time limit to apply for re- admission of an appeal is thirty days from the date of dismissal order. The applicant failed to adhere to the time required to file the application for re-admission of his appeal and he is therefore filed the current application for an order of extension of time to re admit his appeal. The application has been brought under Section 14(1) of Cap. 89 being accompanied by the Affidavit of **Mohamed Hamisi Madebe**.

On **24th November 2021**, the Court ordered the matter be disposed of by way of written submission, the Applicant to file his submission in chief not later than 08/12/2020, the respondent to file reply by 22/12/2020 and rejoinder if any by 29/12/2020. The Applicant filed his submission on time but the respondent remained mute. Under the circumstances, the position of law is that failure to file submission in accordance with schedule provided by the court amounts to non-appearance. And it is from respondent conduct that this Court is arriving into ex-parte ruling against him. During prosecution of this Application the Applicant appeared unrepresented.

In his submissions the applicant stated, that he intends to file application to restore Land Appeal No. 44 of 2017 which was dismissed for want of prosecution, he shifted the blame to his Advocate for contributing to such dismissal for failure to file submission on time. And being a layman with no information from his advocate about the dismissal, he was surprised with summons from DLHT for Kinondoni to appear for **Execution No. 156 of 2019**. By the time he realized his appeal was dismissed time to file re-admission lapsed hence this application.

He further stated that, the decision of the Tribunal is tainted with illegality in the sense that, the assessors were not engaged to give their opinion in accordance with **Section 24 of The Land Disputes Courts Act, Cap 216 R. E 2002**. According to him, the illegality alleged is sufficient to demonstrate that good cause has been established to warrant the reliefs sought to this Court. He cemented his position by citing to the Case of **Michael Lessani Kweka vs. John Eliafye (1997) TLR 152 (CA), Principal Secretary, Ministry of Defence, National service vs. Deuram Valambia (1992) TLR 185** and **Amour Habib Salim vs. Hussein Bafagi Civil Application No. 52 of 2009**.

On my part I have gone through the applicant affidavit and his submission and the record of Land Appeal No. 44 of 2017 on 18th October 2018. It is without dispute that the Appeal was

dismissed for want of prosecution under Order XXXIX Rule 17 (1) of the Civil Procedure Code, Cap 33 R.E 2002. In accordance with Order XXXIX Rule 19 of Cap 33 an appeal dismissed under Order XXXIX Rule 17 (1) may be re-admitted upon demonstration of sufficient cause. The relevant provision reads:

*"Where an appeal is dismissed under sub-rule (2), of rule 11 or rule 17 or rule 18, the appellant may apply to the Court for the re-admission of the appeal; and, **where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.**" [Emphasis added]*

In light of the above section, all the applicant was required to do is to demonstrate that he was prevented by some sufficient cause from appearing when the appeal was called on for hearing. His argument was that, his advocate was the one who failed to file the submissions on time. Having gone through the record of Appeal, I realized that the applicant was being represented by **Yahaya Mjama** (Advocate) who lastly appeared on 11th September, 2018 when the Court scheduled the manner of presenting submission by the parties and failed to do so. It is my opinion that the negligence and misconduct of the advocate in prosecuting the applicant right should not be the reason to deny the Applicant right to prosecute it. The reason that applicant delayed to file admission on time as he explained in his affidavit that he was not aware of the dismissal order in respect of the Appeal hold water.

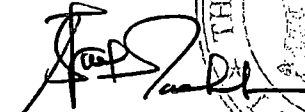
And, Since the Applicant stated to be layman in law who was failed by his advocate to the extent that he was not aware of the proceedings in the Appeal, it is my opinion the reasons

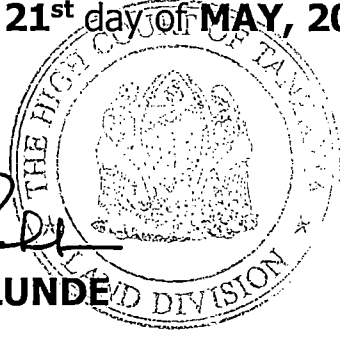
constitutes sufficient causes for extension of time to re admit Land Appeal No. 44 of 2017.

In this circumstance, I am convinced that the present circumstances calls for this Court to exercise its discretion in condoning the delay and exercise its discretion to grant the extension as sought by the Applicant. The application is thus granted, the Applicant is to file his Application to restore his appeal within 21 days from the date of obtaining certified copies of this Ruling.

It is so ordered.

DATED at DAR ES SALAAM this 21st day of MAY, 2021.


S.M. KALUNDE
JUDGE

The seal of the High Court of Tanzania, Land Division, is circular. It features a central emblem with a tree and a building, surrounded by the text "THE HIGH COURT OF TANZANIA" and "LAND DIVISION".