

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

**MISC. LAND CASE APPLICATION NO. 520 OF 2020**

*{Arising from the District Land and Housing Tribunal for Temeke in  
Land Application No. 29 of 2013, dated 25/11/2016}*

**ALLEN E. MVUNGI.....1<sup>ST</sup> APPLICANT**

**GHUHENI G. MRAMBA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**IBRAHIM KOMBA.....RESPONDENT**

**RULING**

*Date of Last Order: 23.07.2021*

*Date of Ruling: 20.08.2021*

**M. OPIYO, J**

The applicants are seeking for an order of extension of time so that they can lodge their Appeal out of time, against the judgement and decree of the District Land and Housing Tribunal for Temeke District delivered by A. Kirumbi, the learned Chairperson of the tribunal vide Land Application No. 29 of 2013, dated 25/11/2016. The application was brought under section 41 (2) of the Land Disputes Courts Act, Cap 216, R.E 2019 and accompanied by the joint affidavit of the applicants, Allen E. Mvungi and Ghuheni G. Mramba. The application was heard orally and ex-parte against the respondent. Both applicants appeared in person.

In their joint submissions, the applicants were of the view that, the reasons for their delay to file their intended appeal within time is the fact

that, the Temeke District Land and Housing Tribunal failed to supply them with the copies of judgment and decree on time. That, the impugned decision was made on 25/11/2016. They wrote a letter on 28/11/2016 requesting the said documents, but the same were supplied to them on the 14<sup>th</sup> of December 2020 when the time to file their intended appeal had already been expired. Another reason the applicants stated is financial problems as they were not capable of paying the Advocate who would have helped them to prepare the documents for the appeal in time. Therefore, they had to seek for legal aid facilities to enable them to pursue their intended course. That is the reason, after obtaining legal aid they filed their application on the 20<sup>th</sup> January 2017.

I have considered the submissions of the applicants' submissions and their joint affidavit in support of this application. The issue for determination is whether the instant application has merits or not. On records I found a decision on appeal, Land Appeal No. 20 of 2016 dated 15<sup>th</sup> day of December 2017 that was originating from the Land Application No. 29 of 2013. I also noted a notice of appeal dated 28<sup>th</sup> December 2017, showing the intention of the applicants to challenge the decision of Mgonya J. before the Court of Appeal of Tanzania. Upon that revelation I had to pose and asked the parties to address me on the status or competency of their application in presence of a notice of appeal against the Judgment and decree of Mgonya J, which dismissed the applicants' appeal for being time bared.

Being lay persons, they ended up admitting the fact of existence of the notice found in the records only. It is settled already in a number of authorities that, a notice of appeal to the Court of Appeal, until withdrawn

by the order of the court, the same remains operative and precludes the High Court to entertain any issue in respect of the matter upon which the appeal is intended, save for an application for a leave to appeal or for a certification on point of law, **see East African Development Bank v. Blueline Enterprises Limited, Civil Appeal No. 101 of 2009 (unreported).**

Since the said notice is still operative as it is in the case at hand, this court lacks jurisdiction to entertain the instant application as it is not falling in the category mentioned in the above case (Also **see Matsushita Electric Co. Ltd v Charles George t/a C.G. 8 Travers, Civil Application No. 71 of 2001 (unreported),** and **Mohamed Enterprises Tanzania Limited versus the Chief Harbour Master and Another, Civil Appeal No. 24 of 2015, Court of Appeal of Tanzania, at Dar Es Salaam, (unreported).**

Deeper scrutiny reveals that, even if there were no a pending notice of appeal, still the current application could have not been attainable. This is because the records shows that the parties had applied for and were granted leave to appeal to the court of appeal vide Misc. Land Application no 408 of 2019, Maghimbi J dated 13<sup>th</sup>/8/2020, but could not appeal, instead they made a U-turn to desire application for extension of time to re-file the appeal to this court that was already dismissed for being time bared by this same court. Dismissal finally determines the matter in that court, making the order appealable. Therefore, by changing mind, it is vivid that the applicants decided to leave the right course by filing this

unattainable application. That being the reason, this application is dismissed for being unattainable. No order as to costs.



A handwritten signature in black ink, appearing to read "M.P. OPIYO", is written over a horizontal line.

**M.P. OPIYO,  
JUDGE  
20/08/2021**