

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPLICATION NO. 98 OF 2021

(Arising from Land Application No. 176 OF 2014 of the District Land and Housing Tribunal of Morogoro)

DONASIA KISANGA.....APPLICANT

VERSUS

STEPHEN J. NGOWI.....RESPONDENT

RULING

25/06/2021 & 22/09/2021

Masoud, J.

The applicant herein above had his appeal, namely, Land Appeal No. 23 of 2017 struck out for reason of being filed out of time without obtaining leave of this court. The appeal was against the decision of the Land and Housing Tribunal of Morogoro in Application No. 176 of 2014 delivered on 20/10/2016. The applicant, thereafter, applied for review of the ruling which struck out her appeal on account of being time barred. The application for review, which was eventually dismissed for lack of merit, was Misc. Land Application No. 993 of 2017.

The above facts are quite clear in the affidavit of the applicant supporting the application, as well as the counter affidavit of the respondent opposing the application. The rival submissions which were

filed by the parties mirrored the said facts and were accompanied with authorities supporting the advanced arguments.

In view of the said facts, the question is whether the application is, in the circumstances maintainable, regard being had to the fact that the applicant has had her previous appeal against the same decision of the trial tribunal sought to be appealed against once again, if extension is granted, was struck out for the reason of being filed out of time. In other words, and to be clear, the pertinent question for my determination at the outset is whether it was open for the applicant herein to come back to the same court seeking extension of time upon her petition being dismissed by this very court on account of time bar.

The applicant was generally speaking of the view that the application is maintainable. The errors which led to delay in filing the appeal was committed by the trial tribunal which delayed to avail copies of the judgment and decree to her for purposes of appeal. Her view was also based on the argument that since the appeal was only struck out, the applicant is entitled to apply for extension of time within which to file her intended appeal. As to the argument on the errors committed by the trial tribunal, this court was referred to the case of **Luswaki Village**

Council and Another vs Shibesh Abebe, Civil Appeal No. 23 of 1997, among others.

As to the respondent, his advocate, one Mr Ignas Punde, maintained in his written submissions in a nutshell that in so far as the applicant filed the appeal out of time which led to the appeal being struck out as she did not seek and obtain extension prior to filing the said appeal, the present application is merely an abuse of the court processes.

On my part, I toyed on the facts of the present application in relation to the brief arguments of the parties on the above issue. In so doing, my eyes landed on a recent decision of the Court of Appeal which dealt with a case whose circumstances were more or less similar to the present. This was the case of **MM Worldwide Trading Co. Ltd and Others vs National Bank of Commerce Ltd**, Civil Appeal No. 258 of 2017 where the Court was concerned with the issue as to whether it is open for a trial court to adjudicate on a suit founded on a subject matter already declared as time barred in a former suit before the same court. The Court of Appeal whilst referring to its previous decision answered the issue in the negative. At page 10 of the typed judgment of the Court, the reasoning of the Court was thus:

"It is clear to us that irrespective of the words used, the final order amounted to a conclusive determination by the trial court disposing of the former suit for being time barred. In our view, it was not open for the respondent to institute a fresh suit as it were, simply because the trial court struck out the former suit rather than dismissing it as mandated by section 3 (1) of the Act."

It is instructive that the previous decisions which the Court relied on included the case of **East Africa Development Bank vs Blue Line Enterprises Ltd**, Civil Appeal No. 101 of 2009, and the case of **Olam Uganda Ltd Suing through its Attorney United Youth Shipping Company Ltd vs Tanzania Harbours Authority**, Civil Appeal No. 57 of 2002. The principle emerging from these authorities is to the effect that it was not open for a party to go back to the same court seeking extension of time upon his petition being dismissed on account of time bar.

Guided by the above principle, I am satisfied that irrespective of the use of the words "striking out" in striking out the appeal, the final order amounted to a conclusive determination by the appellate court disposing of the appeal for being time barred.

I t is in the circumstances academic exercise to consider other matters transacted.

In the upshot of the foregoing and for the reasons given, I hereby dismiss the application with costs

Dated and Delivered at Dar es Salaam this 22nd day of September 2021.


B. S. Masoud
Judge

