

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

**MISC. LAND CASE APPLICATION NO. 618 OF 2017**

(Arising from Kinondoni District Land and Housing Tribunal in Misc. Land Application No.165 of 2014)

**MATHIAS P. KATOTO..... APPLICANT**

**VERSUS**

**SOPHIA KASHAMBA .....RESPONDENT**

Date of Last Order: 28.01.2021

Date of Ruling: 08.03.2021

**RULING**

**V.L. MAKANI, J**

The applicant MATHIAS P. KATOTO applies for extension of time to appeal to this court, against the decision of Kinondoni District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 165 of 2014 (Hon. R.B Mbilinyi, Chairperson)

The application has been made under section 41(2) of the Land Disputes Courts Act as amended by the Written Laws (Miscellaneous amendment) (No.2) Act, 2016 and any other enabling provision of the Law. The application is supported by the affidavit by Deogratius Godfrey, Counsel for the applicant. The respondent opposed the application by filing his counter affidavit.

With leave of the court the application proceeded by way of written submissions. The applicant's submissions were drawn and filed by Deogratius Godfrey, Advocate, while the respondent personally drew and filed her own submissions.

Submitting in support of the application, Mr. Godfrey prayed for his affidavit to form part of the application and added that, the delay in filing the appeal within time was due to the filing petition of appeal to the wrong jurisdiction. He said that on 21/06/2017 he filed the petition of appeal within time to the Tribunal so that they can transmit it to the High Court together with the complete record of the application proceeding to which the appeal relates. He said that the same was transmitted and lodged to this court on 11/07/2017 as Misc. Land Case Appeal No.85 of 2017 and on 18/09/2018 it was dismissed for want of prosecution. He said that he discovered that the procedure applied in filling the appeal in the Tribunal was not proper. He said that he mistakenly filed the petition of appeal under section 38(1) of the Land Disputes Courts Act which specifically deals with matters originating from the Ward Tribunal. He said that he found there is an amendment of section 41 of of the Land Disputes Courts Act which is proper for application of extension of time to appeal to the High Court. That

before the amendment, the law was silent about the application for filling a petition of appeal out of time for matters originating from the Tribunal. He relied on section 21 (2) of the Law of Limitation Act, 1971 CAP 89, RE 2019.

He further insisted that there was neither negligence on the applicant's side. He said that the judgment of the Tribunal was delivered on 02/05/2017 and on 04/05/2017 he applied for the certified copies of the proceedings, judgment and decree which were supplied on 09/06/2017. He said that on 21/06/2017 is when he mistakenly filed the petition of appeal within time in the Tribunal. He said that after knowing that he filed in the wrong jurisdiction he abandoned it and on 25/07/2017 he filed this application and therefore it shows that the applicant had been diligent throughout. He relied on the case of **Elibariki Asseri Nnko vs. Shifaya Mushi and Lewanga Kinando (1998) TLR 81**. He prayed for this application to be granted.

In reply, the respondent said that, the applicant's submission has no merit. She said that the delay was due to the negligence and ignorance caused by the applicant to file the petition of appeal in a

wrong jurisdiction and that does not have excuse of the law. She relied on the case of **Zuberi Nassoro Mohamed vs. Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Civil Application No.93 of 2018 (unreported). She said that section 21(2) (supra) could be applicable to this circumstance if the petition of appeal could be prosecuted with due diligence and in good faith. She said that the applicant admitted in the last paragraph of his submissions that Misc. Land Appeal No. 85 of 2017 (before Hon. S,M.Maghimbi, J) was dismissed for want of prosecution. She said that since the appeal was dismissed for want of prosecution, this means that the appeal was not prosecuted. She insisted that the applicant has failed to show this court the length of delay and to account for every day of delay as required by the law. She prayed for this application to be dismissed with costs.

In rejoinder, Counsel for the applicant reiterated his main submissions and added that, the act of filing Land Case Appeal No.85 of 2017 shows that the applicant commenced to prosecute his case with due diligence and good faith. He prayed for this application to be granted.

Having gone through the affidavits and submissions by the parties, the issue for determination is whether this application has merit.

The records reveal that the applicant filed Misc. Land Appeal No.85 of 2017 on 21/06/2017. It is an undisputed fact that the same was filed on time since the applicant herein was supplied with the certified copies of the Tribunal's decision on 09/06/2017. However, as stated

by the applicant in his affidavit and submissions, he abandoned the appeal after discovering that it was wrongly filed. He filed this application on 25/07/2017 applying for extension of time so that he could file another appeal out of time the main reasons for the delay being as stated above that he wrongly filed the previous appeal and abandoned it.

Prior to ascertaining whether the reason by the applicant is sufficient, the court has noted that the said Misc. Land Case Appeal No.85 of 2017 before Hon. S.M. Maghimbi, J was dismissed for want of prosecution on 18/09/2018 and the dismissal order has not been set aside. Further, it has also been noted that, the applicant filed this application in this court on 25/07/2017 while Misc. Land Case Appeal No.85 of 2017 was still pending in this court. In other words, the applicant applied for extension of time to file an appeal while the former appeal was still in existence and was yet to be determined. Abandoning the former appeal, as the applicant herein admits, was improper. If at all he had no intention of prosecuting it, he should have prayed to withdraw the appeal with leave to refile and not simply abandon it.

Similarly, it is improper for the applicant herein to apply for extension of time within which to file another appeal in this court while the dismissal order in Land Appeal No.85 of 2017 involving the same parties have not been set aside. The proper remedy for the applicant was first to apply to set aside the dismissal order, and if he had succeeded, he could have continued with this application for extension of time. Short of that, this court cannot entertain this application, the reasons being that in case the applicant succeeds, this application may lead to existence of two appeals with different decisions of this court. The dismissed one (Misc. Land Appeal No.85 of 2017 which has not been set aside) and the intended appeal.

It is on the above basis that I proceed to strike out this application with costs.

It is so ordered.



A handwritten signature in blue ink, which appears to read 'V.L. Makani', is written over the printed name and title.

**V.L. MAKANI**  
**JUDGE**  
**08/03/2021**