

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**  
**MISC. LAND APPLICATION NO. 412 OF 2022**  
*(Originating from Land Application No. 397 of 2018)*

**VAILETH MBELE( Appointed Attorney of  
TARIQ SALIM BARAJASH) ..... APPLICANT**

**VERSUS**

**KHADIJA KASSIM AHMED ..... RESPONDENT**

**RULING**

*Date of Last Order: 28.09.2022*

*Date of Ruling: 28.09.2022*

**A.Z. MGEYEKWA, J**

I am called upon in this matter to decide whether this court should exercise its discretion under section 41 (1) & (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] to extend the time to file a Memorandum of Appeal out of time. The application is supported by an affidavit deponed by Vaileth Mbele, appointed Attorney of Tariq Salim Barajash, the applicant. The respondent filed a counter affidavit deponed by Mr. Nestory Peter Wandiba, counsel for the respondent.

When the matter was called for hearing on 28<sup>th</sup> September, 2022, the applicant enjoyed the legal service of Ms. Irene Mchau, learned counsel, and the respondent had the legal service of Mr. Nestory Peter Wandiba, learned counsel.

When Ms. Irene paraded the matter. Mr. Nestory Peter Wandiba learned counsel had no time to waste, he went straight to the point that they concede with the applicant's application with no order to costs. Cherishing the precious time of the court, Ms. Irene Mchau had nothing to add rather she urged this Court to grant the applicant's application without costs, considering the fact that the applicant has adduced sufficient reasons for her delay to file the Memorandum of Appeal within time.

I have given due consideration to the submissions of both learned counsels, whereby the learned counsel for the respondent has conceded the applicant's application. The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93. I have gone through the applicant's affidavit and found that the applicant has demonstrated her delay in paragraphs 5, 6, 7, 8, and 9 of her affidavit. The applicant delayed to file the appeal within time because she delayed to receive the copies of the impugned Judgment Decree, Proceedings, and Exhibits tendered during

the hearing of the case. The Judgment District Land and Housing Tribunal was delivered on 24<sup>th</sup> May, 2022, and the applicant obtained the said copies on 11<sup>th</sup> July, 2022. Immediately after receiving the said copies, the applicant took initial measures to file an appeal, however, she found that she was out of time. Hence, she filed the instant application on 25<sup>th</sup> July, 2022.

Having briskly reviewed the depositions in the affidavit and considering the fact that Mr. Nestory Peter Wandiba concedes to the application. I am convinced that the applicant has adduced sufficient cause capable of exercising this Court's discretion and extending the time within which to file a Memorandum of Appeal within 21 days from today. The application is hereby granted without costs.

Order accordingly.

Dated at Dar es Salaam this date 28<sup>th</sup> September, 2022.



  
A.Z.MGEYEKWA  
**JUDGE**  
28.09.2022

Ruling delivered on 28<sup>th</sup> September, 2022 via video conferencing whereas Ms. Irene Mchau, learned counsel for the applicant, and Mr. Nestory Peter Wandiba, learned counsel for the respondent were remotely present.



<sup>XIF</sup>  
A.Z.MGEYEKWA  
**JUDGE**  
28.09.2022