

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.415 OF 2022**

(Arising from Misc. Land Application No. 472 of 2020 of the High Court – Land Division and from *the Judgment and Decree of the High Court of Tanzania Land Division in Land Appeal No. 17 of 2019, originating from the Ruling and Drawn Order of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Misc. Land Application No. 710 of 2017*)

**MARYLINE RICHARD RIWA (the Administratrix of the
Estate of the late MBOKA S. MBOKA) APPLICANT**

VERSUS

ERASTO ELLY SANGA1st RESPONDENT

CHISTOPHER ELLY SANGA 2ND RESPONDENT

RULING

Date of last Order: 28.09.2022

Date of Ruling: 30.09.2022

A.Z.MGEYEKWA, J

In the application at hand, the applicant is praying for an extension of time to lodge an application to set aside *an exparte* Judgment of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application

No. 469 of 2016. The application is preferred under the provisions of section 95 of the Civil Procedure Code Cap. 33 [R.E 2019]. The affidavit is supported by an affidavit deponed by Maryline Richard Riwa, the applicant. The applicant has set out the grounds on which an extension of time is sought. The 2nd respondent conceded to the application and the 1st respondent has stoutly opposed the application by filing a counter-affidavit deponed by Desidery Ndibalema, the respondent's counsel.

When the matter was called for hearing on 28th September, 2022, the applicant enlisted the legal service of Mr. Thomas Massawe, learned counsel, and the 1st respondent had the legal service of Mr. Desidery Ndibalema, learned counsel.

In support of the application, Mr. Massawe urged this court to fully adopt the affidavit to form part of his submission. He submitted that the applicant is praying for an extension of time to lodge an application to set aside the *ex parte* Judgment of the District Land and Housing Tribunal for Konondoni at Mwananyamala. It was his submission that after the delivery of the Ruling of this Court in Land Application No. 472 of 2020, on 27th June, 2022, the applicant made a follow-up and on 15th July, 2022 she received a copy, hence, there was no any delay. Mr. Massawe went on to submit that

thereafter, the applicant had to hire an advocate who prepared the instant application. He was certain that the applicant has accounted for the days of delay. Ending, he urged this court to grant the application.

In reply, Mr. Desidery opposed the application. He submitted that this Court granted an extension of time on 12th October, 2021 by that time the applicant was already passed away. He claimed that the applicant did not inform the Court to proceed with appointing an administrator. The learned counsel for the 1st respondent urged this Court to examine the application and find out its appropriateness before this court. It was his submission that the application at hand is in relation to an *ex parte* Judgment of District Land and Housing Tribunal, therefore, it was his view that the same should have been filed at the same Tribunal.

In conclusion, Mr. Desidery beckoned upon this Court not to grant the applicant's application.

In his rejoinder, Mr. Massawe reiterated his submission in chief and added that during the proceeding in Land Application No. 472 of 2020, they informed this Court that the deceased passed. He added that in the previous application Mr. Desidery was not present but the 1st respondent's counsel conceded to the application. Mr. Massawe further submitted that the

application is properly before this Court because the applicant exhausted all remedies. He added that the applicant filed an appeal before this Court against the decision of the tribunal refusing to set aside the *ex parte* Judgment and this Court allowed the applicant's appeal. He stressed that they could not file the instant application in absence of an administrator.

In conclusion, the learned counsel for the applicant urged this court to grant the applicant's application.

Having carefully considered the submissions made by the learned counsels in their oral submission and examined the affidavit and counter-affidavit, I find the issue for determination is, *whether the applicant adduced sufficient reasons for the delay to file the instant application.*

I have found it is important to address the point of law raised by the respondent since this court has a duty to take judicial notice of matters relevant to the case even when the matter is not raised in the memorandum of appeal. The Court of Appeal of Tanzania in the case of **Adelina Koku Anifa & another v Byarugaba Alex**, Civil Appeal No. 46 of 2019 (unreported) that:-

"...the court cannot justifiably close its eyes on such glaring illegality because it is his duty to ensure proper application of the laws by the subordinate courts and/or tribunals."

The facts of the instant application correspond well with the authority above and in case the point of law could not have been raised by the learned counsel for the respondent then this court could have raised or the same could have been raised in a later stage. The applicant was required to file his application in accordance with the law of limitation of time.

Mr. Desidery in his submission has raised a point of law that the matter is prematurely before this court. He claimed that the applicant was required to apply for an extension of time to set aside the *ex parte* judgment at the District Land and Housing Tribunal. As rightly stated by Mr. Thomas, the applicant filed an application for setting aside the *ex parte* Judgment at the District Land and Housing Tribunal but the same was dismissed, hence, he filed a Land Appeal No. 17 of 2019 before this Court and Hon, Manyanda, J allowed the applicant to file an application to set aside the *ex parte* judgment of the District Land and Housing Tribunal. Therefore, the said remedy was exhausted. For that reason I overrule the objection raised by Mr. Desidery.

Coming to the crux of the matter, the issue which is the bone of contention in this Application is *whether or not the applicant has adduced sufficient reasons to move this Court to grant his application.*

It is trite law that in an application for an extension of time the applicant is required to account for each day of delay. In the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019.

Encapsulated in the applicant submission and as per the applicants' affidavit, the applicant's ground for delay is mainly based on accounting for the days of delay. The applicant's counsel submitted that after the passing of the original owner of the suit land, Mboka S. Mboka, the applicant was in the process of appointing an administrator of the estate of the late Mboka S. Mboka. He added that the family appointed the applicant to administer the estate of the late Mboka S. Mboka and the letter of administration was granted on 27th June, 2022. He went on to submit that on 15th July, 2022 the applicant obtained a copy of Form No. 4 and immediately after obtaining the said copy, the applicant with her advocate prepared the instant application. Therefore, in my view, I find that the applicant's counsel has accounted the

days of delay and the same are sufficient reasons for extension of time to file an application to set aside the *ex parte* judgment of the District Land and Housing Tribunal for Kinondoni at Mwananyamala.

In consequence, this application succeeds. The applicant's application is granted to file an application to set aside the *ex parte* judgment of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 469 of 2016 within 30 days from today. The application is hereby granted without costs.

Order accordingly.

Dated at Dar es Salaam this date 30th September, 2022.



A.Z.MGEYEKWA

JUDGE

30.09.2022

Ruling delivered on 30th September, 2022 via audio teleconference whereas Mr. Thomas Massawe, counsel for the applicant was remotely present.



A.Z.MGEYEKWA

JUDGE

30.09.2022