

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 526 OF 2022

*(Arising from the District Land and Housing Tribunal for Temeke in Land
Application No. 129 of 2017)*

MADENGE ABDALLAH 1ST APPLICANT

IDDI ALLY 2ND APPLICANT

MUHARAMI RAMADHANI 3RD APPLICANT

VERSUS

RAJABU MWEMKALA RESPONDENT

RULING

Date of last Order: 13.10.2022

Date of Ruling: 18.10.2022

A.Z.MGEYEKWA

The application is brought under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] and section 14 of the Law of Limitations Act Cap 89 [R.E. 2019]. The applicant filed a joint affidavit deponed by Madenge Abdallah, Iddi Ally, and Meharam Ramadhani, the applicants.

Opposing the application, the respondent filed a counter affidavit deponed by Rajab Mwemkala, the respondent.

The applicant has lodged the instant application against the decision of the District Land and Housing Tribunal for Temeke concerning Land Application No. 129 of 2017 which was delivered on 7th February, 2022 in favor of the respondent. Aggrieved by that decision, the applicant has knocked on the door of this court seeking an extension of time to file an appeal out of time.

When the matter was called for hearing on 27TH September, 2022 the applicant appeared in person and the respondent did not show an appearance.

In support of the application, the applicants urged this court to extend the time to file an appeal out of time against the Judgment and Decree in Land Application No. 129 of 2017. They claimed that the tribunal's decision is unfair and contradictory. They valiantly argued that the trial tribunal Judgment is tainted with illegality, it violated the principle of fair hearing and the rule of natural justice. They claimed that the Chairman declared the respondent a lawful owner before hearing the Application while the applicants disputed the respondent's ownership. The applicant contended that the Chairman in comprising his decision has disregarded the evidence adduced by the applicants. To buttress their argumentation they

cited the cases of **Kalunda and Company Advocate v National Bank of Commerce Ltd**, Civil Application No. 124 of 2005, Court of Appeal of Tanzania at Dar es Salaam (unreported), and **Ally Salim Said v Iddi Athuman Ndaki**, Misc. Land Application No. 718 of 2020 HC (unreported).

In conclusion, the applicants beckoned upon this court to allow the applicants application.

Before I proceed to determine the matter on merit, there is one nagging issue that was brought up in the course of composing the Ruling. The said issue is whether the instant application is properly filed before this court. The 1st applicant submitted that they filed an appeal before Hon. Opiyo, J, and this Court dismissed the appeal for being filed out of time. Then they filed an application for an extension of time to file an appeal out of time. The respondent had nothing to say.

I have read the applicants' affidavit and specifically paragraph 10 of the affidavit reveals that the applicants lodged an appeal before this Court in Misc. Land Appeal No. 58 of 2020 against the District Land and Housing Tribunal in Land Application No. 129 of 2017. The appeal was before Hon. Opiyo, J, and this court noted that the appeal was filed out of time. Having not sought and obtained leave of the court to file the appeal out time, Hon. Opiyo, J proceeded to dismiss the application for being barred by time.

Subsequent to that process, the instant application was filed by the applicants, they are intending to file an appeal challenging the decision of the District Land and Housing Tribunal in Land Application No. 129 of 2017 while this Court has already dismissed the appeal related to the same decision of the District Land and Housing Tribunal.

In the premises, the applicants are precluded from filing an application for an extension of time to file an appeal against the same decision that was before this Court that was dismissed for being time-barred. Consequently, this Court is *functus officio* to determine the application at hand.

In the upshot, I proceed to dismiss this application for being incompetent before this Court without costs.

Order accordingly.

Dated at Dar es Salaam this date 18th October, 2022.




A.Z.MGEYEKWA

JUDGE

18.10.2022

Ruling delivered on 18th October, 2022 via video conferencing whereas the applicants and respondent were remotely present.




A.Z.MGEYEKWA

JUDGE

18.10.2022