

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISIO)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.394 OF 2021**

(Originating from District Land and Housing Tribunal for Ilala at Mwalimu  
House 6<sup>th</sup> floor in Land Application No. 41 of 2014)

**HASRAM RAJABU MBWETE ..... 1<sup>ST</sup> APPLICANT**

**PATRIC MARCO MTANGA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**SAID SADIKI SELEMAN ..... 1<sup>ST</sup> RESPONDENT**

**MWALIMU YUSUPH MKUTA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 06.12.2022*

*Date of Ruling: 08.12.2022*

**A.Z.MGEYEKWA, J**

In this application, the Court is called upon to grant an extension of time to enable the applicant to institute an appeal to this Court, against the decision of the District Land Housing Tribunal for Ilala in Land Application

No. 41 of 2014. The application, preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] The affidavit is supported by an affidavit deponed by Mr. David Andindilile, the applicant's counsel. The applicant has set out the grounds on which an extension of time is sought. The respondents' counsel has stoutly opposed the application by filing a counter-affidavit deponed by Mr. Isaac Nassor Tasinga, the respondents counsel.

When the matter was called for hearing on 6<sup>th</sup> December, 2022, the applicant enlisted the legal service of Mr. David Andindilile, learned counsel and the respondents enjoyed the legal service of Isaac Tasinga, learned counsel.

On his oral submission, counsel for the applicant adopted the affidavit deponed by himself to form part of his submission. He stated that the applicant wants to file an appeal against the decision of the District Land and Housing Tribunal in Application No. 41 of 2014 delivered on 11<sup>th</sup> September, 2022. The counsel for the applicant raised tow limbs of grounds of delay. The days delay from the date of delivering the Judgment on 11<sup>th</sup> September, 2020 to the filing date of Misc. Application No. 674 of 2020. He went on to submit that the decision was issued on 18<sup>th</sup> November, 2020 and signed on 6<sup>th</sup> November, 2020. Mr. David submitted that there are two school of thoughts in regard to when exactly the time

started to run; the date when the decision was delivered and second school of thought is the date when the judgment is ready for collection.

The learned counsel for the applicant continued to submit that they have opted the first school of thought the date of delivering the Judgment which was on 18<sup>th</sup> November, 2020 whereas the 45 days lapsed, but on the second school of thought, the applicant was within time. The counsel for the applicant went on to submit that the Application was struck out because the names of the 2<sup>nd</sup> respondent appearing in the Judgment and in the Application before the District Land and Housing Tribunal the initials were not the same. He added that the respondents' counsel raised an objection thus, the tribunal struck out the Application and the applicant was directed to rectify the said names and the counsel had already wrote a letter dated 7<sup>th</sup> May, 2021 praying for rectification of the said clerical errors.

On the second limb objection, the learned counsel for the applicant submitted that the applicant made a follow up and he wrote a reminder letter which is annexed to his affidavit and they collected the Ruling of this Court on 30<sup>th</sup> July, 2021. Mr. David stated that it is a technical delay. Fortifying his submission he cited the case of **Emmanuel Rurihafi & another v Jonas Mrema**, Civil Appeal No. 314 of 2019 at Dar es Salaam (unreported). He added that the delay was not inordinate since he made

follow up to receive the application which was struck out. He stated that they were idle but took immediate action.

On the strength of the above submission, Mr. David beckoned upon this court to grant the applicant's application.

Objecting to the application, Mr. Isaac, learned counsel for the respondents argued that the matter at the District Land and Housing Tribunal there were three parties but the applicant on his own will has dropped Agata Auction Mart, thus in his view, the application cannot stand. To buttress his contention he cited the cases of **Isaack Wilfred Kasanga v Standard Chartered Bank Tanzania Ltd**, Civil Application No. 453/01 of 2019 and **Joseph Magombi v Tanzania National Parks (TANAPA)**, Civil Appeal No. 114 of 2016. He stressed that omission of a party who was present during trial vitiated the whole application.

Submitting on the application, Mr. Isaac said that in application for extension of time the Court has discretion to grant or not, but there must be good cause such as to account for each day of delay, extent of delay

The learned counsel for the respondents argued that the applicant's counsel submitted that the time started to run when the Application was struck out and the applicant did not say what they were doing on each and every day of delay. He valiantly argued that it is not correct to say that the made a follow up in making sure that they receive the court order of

striking out the said Application since there is no such requirement because striking means nullity. Mr. Isaac went on to submit that the applicant's counsel grounds does not serve the purpose all reasons are misplaced.

In conclusion, the learned counsel for the respondents beckoned upon this Court to dismiss the application with costs.

In his short rejoinder, Mr. David reiterated his submission in chief. He added that they have omitted Agata Auction Mart because they have no any grievances with him. He distinguished the cited cases he stated that the ground of striking out their Application is a basic ground to show that they were in court and the same is a good excuse. He referred this Court to the case of **Emmanuel Rurihafi** (supra). Ending, he urged this Court to grant the applicant's application.

Before addressing the application on merit, I opted to start with the concern raised by Mr. Isaac that Agata Auction Mart is not made a part to the instant application while he was among the parties at the trial tribunal.

I have heard the prayer made by Mr. Isaac and from the outset, I fully subscribe to his submission that the applicant was required to file the instant application against all parties who stood as parties during the trial. In other words parties must be maintained throughout the hearing of the cases and even during appeal. I understand that the party is the who

choose whom to sue but in the situation where the matter originated from the lower court or tribunal, the applicant or appellant has no choice than to join all parties even if he is not interest ,right to be heard must be observed. It will be improper to determine the propriety and merits or otherwise of the impugned judgment and decree without his knowledge as quashing someone's judgment and decree without according him an opportunity to be heard is illegal as it amounts to violation of the fundamental principle of the right to be heard. The Court in its plethora of decisions held that nobody should be condemned unheard. See the cases of **Patrobert D Ishengoma v Kahama Mining Corporation Ltd and 2 others** Civil Application No. 172 of 2016 **Mbeya - Rukwad Auto Parts and Transport Limited v Jestina George Mwakyoma** [2003] TLR 251 **Tan Gas Distributor Ltd v Mohamed Salim Said**, Civil Application for Revision No. 68 of 2011. In the case of **Patrobert D Ishengoma (supra)**, the Court of Appeal of Tanzania held that:-

*“ It is settled law that no person shall be condemned without being heard is now legendary. Moreover, it is trite law that any decision affecting the rights or interest of any person arrived at without hearing the affected party is a nullity even if the same decision would have arrived at had the affected party been heard.”*

In the instant application the right of the parties herein cannot be determined in the absence of Agata Auction Mart since the decision of this

Court might affect either party, hence it will be difficult for Agata Auction Mart to comply with the court order as a result the execution of the Decree might not be fulfilled.

For the aforesaid, I find that the application is improper before me therefore I proceed to strike out the application with leave to refile. I have considered the Court vacation period, thus, the applicants to file a properly application before or on 15<sup>th</sup> February, 2023.

Order accordingly.

Dated at Dar es Salaam this date 8<sup>th</sup> December, 2022.



  
A.Z.MGEYEKWA  
**JUDGE**  
08.12.2022

Ruling delivered on 8<sup>th</sup> December, 2022 via video conferencing whereas the 2<sup>nd</sup> applicant and 1<sup>st</sup> respondent were remotely present.



  
A.Z.MGEYEKWA  
**JUDGE**  
08.12.2022