

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 632 OF 2022

*(Arising from District Land and Housing Tribunal for Temeke in Misc.
Land Application No. 105 of 2020)*

CHARLES MASHAURI MATONDO APPLICANT

VERSUS

JACKSON BABU MATONDO RESPONDENT

RULING

Date of the last Order 08.12.2022

Date of Ruling 08.12.2022

A.Z.MGEYEKWA

This Court is called upon to grant an extension of time for the applicant to file an appeal before this Court. The impugned Judgment was in respect of Misc. Land Application No. 105 of 2020 which was dismissed with costs. The application is preferred under the provisions of section 41 (2) of Land Disputes Courts Act Cap. 216 [R.E 2019]. The application is

supported by an affidavit affirmed by Mr. Charles Mashauri Matondo, the applicant. The application was opposed by the respondent who filed a counter-affidavit affirmed by Mr. Jackson Babu Matondo, the respondent.

When the matter was called for hearing on 8th December, 2022, the applicant enlisted the legal service of Ms. Lilian Mutalemwa, learned counsel, and the respondent appeared in person, unrepresented.

The learned counsel for the applicant started to kick the ball rolling. She urged this Court to adopt the applicant's affidavit and form part of his submission. Ms. Lilian submitted that the District Land and Housing Tribunal decision was delivered on 30th April, 2020 in favour of the respondent. The learned counsel for the applicant argued that the applicant did not receive the copies of the Judgment within time hence he was not in a position to file an appeal within time. She added that the applicant wrote a reminder letter but unfortunately he fall sick.

Ms. Lilian went on to submit that due to sickness the applicant could not move from one place to another. She added that after obtaining the copy he filed an appeal before Hon. Kisongo, Extended Jurisdiction, Land Appeal No. 6 of 2022, and the respondent filed a preliminary objection that the appeal was lodged out of time. Hence the applicant has filed the instant application for an extension of time to file an appeal out of time.

Ms. Lilian submitted that the hospital receipt proves that the applicant was sick, and other hospital chic were filed electronically. She stated that the Court has allowed an application for an extension of time to allow parties to be heard on merit. To buttress her submission she cited the cases of **Daniel Msele Manyoni & Another v Prisca Mnyaga Nyasura**, Civil Application No. 336 of 2020, and **Mrs. Jamila Surendra v Surendra Dharamshi @ Mahomed Dharamshi**, Misc. Application No. 2 of 2021. She also cited section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] that the Court extend time if the applicant has adduced sufficient reasons. Ms. Lilian added that the court extended time-based on the circumstances of the case. Fortifying her submission she cited the case of **Tanzania Fertilizer Company Ltd v National Insurance Cooperation Ltd & Another**, Commercial Case No. 71 of 2004.

In conclusion, the learned counsel for the applicant urged this Court to grant the applicant's application based on the fact that he has a great chance of success in the intended appeal.

Submitting in rebuttal, the respondent was brief. He submitted that the applicant who is his father is not sick. He stated that he already objected to the previous appeal for being time-barred. Ending, the respondent prayed for this court to dismiss the applicant's application.

In his short rejoinder, the applicant's counsel reiterated his submission in chief. Ending, he beckoned this Court to grant the applicant's application.

I have heard the submission made by both counsels and I noted that the applicant is applying for an extension of time to challenge the decision of the District Land and Housing Tribunal for Ilala in Land Appeal No.54 of 2021.

Hence, I called upon the counsel for the applicant to address me whether the application is proper before this Court. Ms. Lilian conceded that the applicant lodged an appeal before this Court and the same was dismissed, however, she urged this Court to find that it was an error committed by the counsel not the applicant.

There is no dispute that the records show that the applicant had filed an appeal before this Court challenging the same decision in regard to Application No. 105 of 2020 which was dismissed by Hon. Kisongo, DR with extended jurisdiction on 12th August, 2022 for being time-barred. Subsequent to that process, the applicant has filed the instant application for an extension of time intending to file an appeal challenging the decision of the District Land and Housing Tribunal in Application No. 105 of 2020 while this Court has already dismissed the appeal related to the same decision of the District Land and Housing Tribunal.

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

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 8th December, 2022.


A. ZMGEYEKWA
JUDGE
08/12.2022

Ruling delivered on 8th December, 2022 in the presence of Ms. Lilian Mutalemwa, counsel for the applicant and the respondent.


A. ZMGEYEKWA
JUDGE
08/12.2022