

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 751 OF 2022**

*(Arising from Application No. 19 of 2019)*

**NSULWA NDINDILO NGUNDA ..... APPLICANT**

**VERSUS**

**LETSHEGO BANK (T) LTD ..... 1<sup>ST</sup> RESPONDENT**

**RUTH BONIFACE KOLLA ..... 2<sup>ND</sup> RESPONDENT**

**SUMA JKT AUCTION MART ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of last Order: 03.03.2023*

*Date of Ruling: 06.03.2023*

**A.Z.MGEYEKWA, J**

The application before this Court is improperly institutes the applicant is prays for enlargement of time to institute an appeal under section.41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The impugned decision is a Consent Judgment delivered by the District Land and Housing Tribunal

for Temeke on 31<sup>st</sup> December, 2019 and its Decree is signed on 24<sup>th</sup> December, 2021. The Application is premised on the grounds appearing on the Chamber Summons together with the supporting affidavit of Mr. Nsulwa Ndindilo Ngunda, the applicant sworn on 23<sup>rd</sup> November, 2022.

The Application is contested. The respondent filed a counter affidavit of Thadeus Massawe, 1<sup>st</sup> respondent sworn on 30<sup>th</sup> December, 2022. The Application stumbled upon a preliminary objection from the applicant's counsel, he has raised a point of preliminary objection as follows: -

1. *That the Application is improperly instituted and an abuse of the Court process.*

When the matter was called for hearing on 3<sup>rd</sup> March, 2023, the applicant enlisted the legal service of Mr. Idda Lawenja, learned Advocate and the respondent appeared in person.

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the Application.

In support of the preliminary objection, the learned counsel for the applicant argued that the applicant is applying for an extension of time to file an appeal against a Consent Judgment. She added that the said deed of settlement was voluntarily entered by both parties hence the same is not appealable.

Ms. Idda stressed that once a Consent Judgment is recorded by the Court then the same is not appellate, instead, the applicant can challenge the Consent Judgment only by way of review. To buttress her contention, she referred this Court to Order XLVII Rule 2 of Civil Procedure Code Cap.33 [R.E 2019].

Ms. Idda contended that the application for extension of filing an appeal before this Court is improper. To fortify her submission, she cited the case **Arusha Planters & Traders Ltd & others v European African Bank (T)**, Civil Appeal No. 78 of 2001.

In conclusion, the applicant urged this Court to dismiss the application with costs. Since the procedure is well settled on how to challenge a consent Judgment.

In his reply, the applicant was very brief. He admitted that the parties settled the matter and prepared a Consent Judgment. However, he was certain that the application before this Court is proper because the respondent did not honour the consent judgment. Ending, he urged this Court to proceed with the hearing of the application on merit.

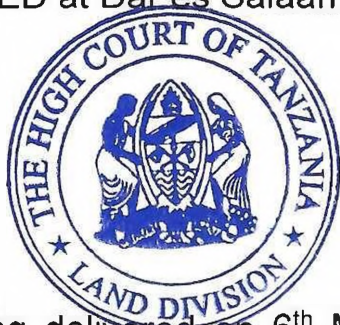
This court has considered the submissions of the applicant's counsel and the respondent in light of what transpired at the District land and Housing

Tribunal for Temeke. The learned counsel for the applicant stressed that the Consent Judgment is inappealable. To support his submission he referred this Court to the case of **Arusha Planters & Traders** (supra). I understand that a Consent Judgment is an agreement between parties, however, in the circumstance at hand, I am not in a better position to determine whether or not a Consent Judgment is appealable. Because what is before me is an application for extension of time. Therefore, in my considered view, I find it safe to restrain myself to peruse the records and find out whether or not the appeal is tenable. The same will be dealt by this Court at the appellate stage. For the aforesaid reasons, I overrule the preliminary objection and proceed to determine the application for an extension of time on merit.

No order as to costs.

Order accordingly.

DATED at Dar es Salaam this 6<sup>th</sup> March, 2023.



A.Z.MGEYEKWA

JUDGE

06.03.2023

Ruling delivered on 6<sup>th</sup> March, 2023 in the presence of Mr. Alex Enock, counsel for the applicant, and Ms. Idda Lawenja, counsel for the 2<sup>nd</sup> respondent.



  
A.Z.MGEYEKWA

**JUDGE**

06.03.2023