

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 365 OF 2022

COMMISSIONER FOR LANDS 1ST APPLICANT

PERMANENT SECRETARY, MINISTRY OF LANDS, HOUSING AND

HUMAN SETTLEMENT DEVELOPMENT 2ND APPLICANT

THE ATTORNEY GENERAL..... 3RD APPLICANT

VERSUS

JOHNSON LEONARD MUHURURU..... 1ST RESPONDENT

R U L I N G

20/12/2022 & 22/2/2023

L. HEMED, J.

In this application, the applicants are seeking for extension of time to file Notice of Appeal against the whole *ex-parte* Judgment and Decree of this Court in Land Case No.28 of 2018 (Hon. V.L.Makani, J) delivered on 30th August, 2021. In the said *exparte* judgment which the applicants intend to challenge, it was found that the revocation of right of occupancy over plot

No.2242, Block "L", Kilonga Wima, Mbezi Beach, Dar es Salaam, was unlawful.

The respondent herein was declared the lawful owner of the suit land. The applicants were ordered not to remove the name of the respondent from the register of title and were required to hand over the Title deed in respect of the suit plot to the respondent. The applicants did not challenge the said decision in time hence the present application.

When parties appeared on 29/11/2022, it was directed disposal of the application by way of written submissions. According to the fixed schedule, submissions in chief was to be filed by 6/12/2022, Reply submissions by 13/12/2022, and the rejoinder submissions if any by 20/12/2022. The matter was to come for mention on the 20th December 2022 at 10.00am for purposes of fixing ruling date.

When the matter was called on 20th December 2022, the respondent and his advocate did not avail themselves. On the said date, Mr. Thomas Mahushi learned State Attorney who appeared for the applicants reported that they had already filed their submissions in chief but they were not served with the reply submissions to enable them file the rejoinder submissions. Upon perusal of the court file, I could not find reply

submissions. The fact that the respondents were not there to address the court as to what caused them failed to file Reply submissions, this court had no option other than ordering the ruling to be composed based on the available submissions.

Back to the application at hand. In determining this application, the court has to examine whether good cause has been shown by the applicants to warrant this Court exercise its discretion on whether or not to grant the application for extension of time.

I have gone through the affidavit deponed by one Gallus Lupogo to support the application and found that in paragraphs 8 and 9, he states that the applicants were not informed of the date of the *ex parte* judgment. It was stated further that even after the delivery of the impugned judgment they were not notified for them to collect copies of judgment.

It was further asserted that they became aware of the judgment on 3rd day of June, 2022 when the time to lodge notice of appeal had already lapsed. The question that arises is whether the applicants were entitled to be notified on the date of delivering the *ex parte* judgment. In **Cosmas Construction Co.Ltd vs Arrow Garments Ltd.**[1992] TLR 127, the court had this to say;

".....A party who fails to enter an appearance disables himself from participating when the proceedings are consequently ex-parte, but that is the farthest extent he suffers. Although the matter is therefore considered without any input by him he is entitled to know the final out come. He has to be told when the judgment is delivered so that he may, if he wishes, attend to take it as certain consequences may follow".

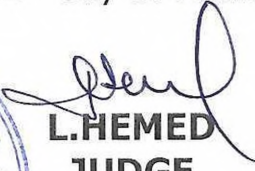
I also subscribe to the view of my sister Hon. Oriyo,J.(as she then was) in the case of **Chausiku Athuman vs Atuganile Mwaitege**, Civil Appeal No.122 of 2007, High Court of Tanzania at Dar es Salaam, where she stated thus:-

"... in exparte proceedings failure to notify the defendant when the exparte judgement will be delivered;...denies the defendant the right to take the necessary steps to protect her/his rights where the judgment is prejudicial to here/his interests."

From the foregoing, the fact that the applicants were not informed on the date of *ex parte* judgment, it could not be possible for them to know if the impugned *ex parte* judgment had been delivered and probably take the necessary steps in time. In view of the aforesaid reasons; I am satisfied that, the applicants have shown good cause warranting the grant of the application. The applicants had also raised the ground of illegalities in the impugned decision. I am of the view that since they have managed to prove that they were not notified on the date of judgement, it is not worth to labor much in determining such ground. I am holding so because the first ground on failure to be notified of the date for delivery of *ex parte* judgment in land case No. 28 of 2028 constitute a good cause for extension of time. I hereby grant extension of time for the applicant to file Notice of Appeal against the *ex parte* Judgment in Land Case No. 20 of 2018, to be filed within 14 days. Each party to bear its own costs. It is so ordered.

Dated at Dar es Salaam this 22nd day of February, 2023.




L. HEMED
JUDGE
22/2/2023

COURT: Ruling is delivered in the presence of Mr.Gallius Lupogo learned State Attorney for the applicants and Mr. Paul Elias holding brief of Mr.Mombeki Kabyemela for the respondents this 22/2/2023.

Right of appeal explained.

