

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND CASE APPLICATION NO.41 OF 2023

REUBEN LUBANGA.....APPLICANT

VERSUS

- 1. BERNADETHA MALKUS.....1ST RESPONDENT**
- 2. EVARISTO MALKUS.....2ND RESPONDENT**
- 3. ODILO MALKUS.....3RD RESPONDENT**
- 4. CONRAD MALKUS.....4TH RESPONDENT**
- 5. ALBERTO MALKUS.....5TH RESPONDENT**
- 6. PATRICK MALKUS.....6TH RESPONDENT**
- 7. LAURENCE MALKUS.....7TH RESPONDENT**
- 8. HELENA MALKUS.....8TH RESPONDENT**
- 9. RIGNAS MALKUS.....9TH RESPONDENT**
- 10. MARTHA MANYEPA.....10TH RESPONDENT**
- 11. MOYO AFRICA EXPLORATION LIMITED....11TH RESPONDENT**

RULING

30/3/2023

L.HEMED, J

On 30th January 2023, the applicant herein filed this Application under section 41(2) of the Land Disputes Courts Act [Cap 216 RE 2019] seeking for the following orders;

“(i) That this honourable Court be Pleased to extend time within which the Applicant may be allowed to lodge an appeal in this Court out of time against the decision

*of the District Land and Housing Tribunal for Temeke
at Temeke in Land Application No.209 of 2017 dated
12/12/2022 between the same parties herein.*

(ii) Costs of this Application be provided for

*(iii) Any other reliefs as this honourable Court shall deem
fit and just to grant.”*

The 11th respondent objected the application by filing counter Affidavit on 8th March 2023. The said counter Affidavit was deponed by one Eugene Beda Mwidadi, the Director of the 11th respondents. The 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th respondents did not file counter affidavit.

When the matter was called for hearing on the 30th March 2023, Mr. Robert Makwaia, learned advocate who appeared to represent the 1st up to 10th respondents, stated that they have not filed counter affidavits as they do not object the application. In other words, he submitted to concede to the application.

Again, Mr. Deusdediti Luteja, the learned advocate who appeared for the 11th respondent submitted that, although the 11th respondent had filed

counter affidavit, they were of the view that the application for extension of time be granted so that, the intended appeal is determined on merits. However, he prayed the court not to grant the prayer for costs.

Mr. Adolf Mahali, the learned advocate for the Applicant only prayed for the Court to grant the application without costs. He requested the Court to give the applicant time equivalent to statutory period.

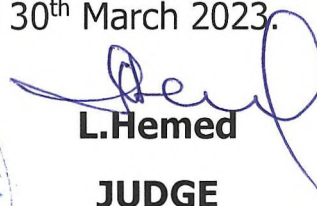
Having heard from the learned advocates on behalf of the parties let me now turn to the application. The application is for extension of time within which the applicant may file an appeal in this court against the decision of the District Land and Housing Tribunal for Temeke. I have quickly gone through the affidavit deponed to support the application and found that the main reason for the delay is the late supply of the certified copies of judgment and Decree of the trial Tribunal.

The 1st up to 10th respondents have supported the application by waiving their rights to counter the same. The 11th respondents, supported the application through the submissions made by their advocate Mr. Luteja, who stated to support it so that the appeal is determined on merits.

The fact that the respondents have supported the application, this court deems just to grant the application so that substantive justice is determined. Application is thus granted with no order as to costs. The applicant is directed to file the intended appeal within 21 days from the date of the ruling. It is so ordered.

Dated at Dar es Salaam this 30th March 2023.




L.Hemed

JUDGE
30/3/2023

COURT: Ruling delivered in the presence of Mr. Adolf Mahali for the applicants, Mr. Robert Makwaia for the 1st up to 10th respondents and Mr. Deusdelit Luteja advocate for the 11th respondent this 30th March 2023.




L.Hemed

JUDGE
30/3/2023