

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

**MISC LAND APPLICATION NO. 263 of 2023**

(Arising from the decision of the High Court of Tanzania (Land Division) on  
Land Appeal No. 33 of 2021)

**RASHID ATHUMAN ILOKO.....APPLICANT**

***VERSUS***

**AMINA RAMADHANI SOMBOKO.....RESPONDENT**

**RULING**

06<sup>th</sup> – 12<sup>th</sup> July, 2023

**E.B. LUVANDA, J**

The Applicant above mentioned is seeking for extension of time to file an application for review in respect of the decision of this Court in Land Appeal No. 33/2021.

In the affidavit, the Applicant stated to have filed two applications: Land Application No. 440 of 2021 for leave to appeal was withdrawn for improper citation; Misc. Application No. 428 of 2022 for leave to appeal where he was advised to seek for other remedies on the explanation that he was not heard in Land Appeal No. 33/2021. He stated that since November, 2021 to 30/04/2023 he was undergoing health difficulties he encountered shoulder

borne fracture in 2021, therefore could not be able to seek for an advocate to continue with proceedings.

In the counter affidavit, the Respondent stated that the Applicant has had always been able to litigate his case but failed to observe the law and procedure. That the Applicant failed to file this application negligently as he had prosecuted two more applications during the time he alleges being sick.

Mr. Peter Philemon Shapa learned Advocate for Applicant submitted that the Applicant could not appeal due to illness after an accident which caused the Applicant shoulder fracture and therefore unable to attend to court, as such he was denied his right to be heard in Land Appeal No. 33 of 2021. He submitted that the Applicant was under financial constraint, therefore was unable to pay an advocate to file a matter for review in Land Appeal No. 33/2022. He submitted that the Applicant encountered technical delay on prosecuting other applications, Misc. Land Application No. 440 of 2021 and Misc. Land Application No. 428 of 2022. He cited Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, a case of **Hamis Mponda vs. Niko Insurance Tanzania Limited & 2 Others**, Civil Application No. 240/01 of 2021 EAT.

In reply, the Respondent submitted that sickness and financial incapability is not a sufficient reason for granting an extension of time. He submitted that

sickness did not prevent the Applicant to file review because he filed Application No. 440 of 2021 which was withdrawn for improper citation, Misc. Application No. 428 of 2022. He therefore submitted that the alleged shoulder fracture from November, 2021 to 30/04/2022, and inability to seek advocate is not sufficient. He submitted that the Applicant ought to account for each day of delay. He cited **Omari Ibrahim vs. Ndege Commercial Service Ltd**, Civil Application No. 83/01 of 2020. He submitted that the Applicant was negligent, has not shown good cause warranting extension of time.

The available records indicate that after dismissal of Land Appeal No. 33 of 2021 for want of merit on 23/07/2021, the Applicant filed Misc. Land Application No. 440 of 2021 for leave to appeal to the Court of Appeal. However it was withdrawn with leave to refile on 15/07/2022 for improper citation. Thereafter the Applicant filed Misc. Land Application No. 428 of 2022 for leave to appeal to the Court of Appeal. However, it was struck out on 31/10/2022, for reasons that it was unmaintainable on the explanation that the appeal in Land Appeal No. 33/2021, was dismissed for want of prosecution and therefore the available remedy was for the Applicant to prefer an application for setting aside the dismissal order. On 05/05/2023 the Applicant filed this application for extension of time to file review in

respect of the decision of this Court in Land Appeal No. 33/2021. The reasons for delay is pegged on sickness (accident caused shoulder fracture) and financial in capacitation to hire an advocate.

Basically, the fate of the Applicant on his tirelessly journey for sake of justice in particular his dream to have his complaint reach the attention of the apex Court, is highly at stake. This was complicated following allowance of withdrawal of his application for extension of time to obtain leave to appeal, on technical ground that the court was improperly moved by way of improper citation, at the advent of overriding objectives and oxygen principal. His second bid, ended with more complications following holding of this court that the appeal (Land Appeal No. 33/2021) was dismissed for want prosecution, while the records suggest the appeal was dismissed for lack of merit. This instant application brings more complications and last nail in the coffin of the Applicant's fate because in Misc. Land Application No. 428 of 2022, he was advised to prefer an application to set aside a dismissal order, instead the Applicant preferred this application seeking extension of time, for intended review instead of restoration. That is why I have said above that the justice of the Applicant is at stake, because the Applicant is on dilemma and criss – crossed intersection and surely I doubt if the Applicant is aware as to where he is now heading to. Of course, I appreciate a fact

that the Applicant have been diligent to take essential steps including accounting for delays, unfortunate he is always caught on technicalities. If I take words in the counter affidavit of the Respondent also portray the same message, I quote, at paragraph five;

*"the Respondent contends that the Applicant has had always been able to litigate his case but failed to observe the law and procedure....."*

As to what is the way forward has really exercised my mind. This is because granting this application will be surely a futile exercise which will not yield any result.

I have taken note that Misc. Land Application No. 440 of 2021 was not heard on merit, likewise Misc. Land Application No. 428 of 2022. A proper way is for the Applicant to re-file papers in Misc. Land Application No. 428/2022. for determination on its merits docket.

Without prejudice to the above advice, the application stand to be struck out as I hereby do with no order to costs.

E.B. LUVANDA  
**JUDGE**  
12/07/2023

