

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

**MISCELLANEOUS LAND APPLICATION NO 503 OF 2023**

*(Arising out of the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Misc. Land Application No. 238 of 2023 between the same parties herein, decided by Hon. J. Sillas Chairman on the 19th June 2023)*

**Between**

**HELENA BERNARD IKUYUMBA (As Administratrix of the  
estate of the late BERNARD DAUDI IKUYUMBA.....APPLICANT**

**VERSUS**

**MRS LEAH TUMBO .....RESPONDENT**

**RULING**

*Date of Last order;01/11/2023*

*Date of Ruling;01/11/2023*

**MWAIPOPO J**

This is an application for extension of time filed by Helena Bernad Ikuyumba, hereinafter to be referred to as the Applicant, versus Mrs. Leah Tumbo, hereinafter referred to as the Respondent.

The Application is made under the provisions of Section 41(2) of the Land Disputes Courts Act Cap. R.E 2019, seeking leave of this Court to;

- i. Extend time within which the Applicant may be allowed to lodge an appeal in this Court out of time against the decision of the DLHT for Kinondoni at Mwananyamala in Misc. Application No. 238/2023 dated 19<sup>th</sup> of June 2023 between the same parties.

- ii. Costs of this Application.
- iii. Any other reliefs this Honourable Court may deem fit and just to grant.

The application is supported by an Affidavit of the Applicant, sworn in on the 11<sup>th</sup> of August 2023. The Respondent, on her part, filed a Counter Affidavit, sworn in on the 27<sup>th</sup> of September 2023. For the reasons that I will explain shortly, the Counter Affidavit, in principle, supported the Application and only countered the issue of costs of the Application.

During the hearing of the application, both parties were unrepresented and hence each one fended for themselves.

In her oral submissions, the Applicant was very brief, she informed the Court that the Respondent had no objection to her application for extension of time, except for the issue of costs. She thus prayed to the Court to adopt the contents of her application, in its consideration for the grant of extension of time.

As for the issue of costs, she prayed for the court to let each party bear her own costs of the case. Finally, she submitted that, in the event, the Court grants her prayer for extension of time, she requested to be given 45 days within which to file her appeal.

The Respondent on her part was equally very brief and to the point. She confidently informed the Court that she was not objecting to the Application for extension of time because it contained sufficient reasons for the court to grant extension of time.

However, as I stated above, the Respondent had reservations on the issue of costs since she prayed for the court to grant her costs of the Application or rather the Applicant to pay her costs of litigation. The reason she advanced was that the matter has taken long time to complete, more than 20 years.

At the outset, I wish to commend both parties for the manner in which they were willing to speed up the matter and save time. Indeed, this is a kind of spirit that should be cherished and emulated in situations where parties do not really need to put up rival submissions against each other.

Despite the fact that parties were in consensus ad idem in most of the matters except costs, I had to still to satisfy myself on whether the application is proper before the Court and whether the Applicant had adduced sufficient reasons to warrant extension of time.

Following my perusal, I noted that the Application was brought under section 41(2) of the Land Act Dispute Court Act Cap. 216 R. E. 2019 which mandates this court to grant extension of time for filing an appeal. Further the Applicant demonstrated diligence in the manner in which she made follow up of the copies of records following the delivery of the impugned decision of the DLHT. As per the record, she made follow up of the records on the 20<sup>th</sup> of June 2023, immediately after the decision was delivered on the 19<sup>th</sup> of June 2023. The said copies were obtained on the 7<sup>th</sup> of August 2023 and she prepared filed this application on the 15<sup>th</sup> of August 2023, upon payment of fees of TZS 30,000. The

Respondent on her part filed her counter Affidavit on the 27<sup>th</sup> of September 2023, upon payment of TZS 20,000.

Based on the trend of events narrated above, it is my firm position that she fulfilled the first three (3) requirements for applying for extension of time as set out in the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association Ltd, Civil Appeal No. 2 of 2010.**

With regard to the issue of costs, the Applicant in her Affidavit prayed to be awarded costs however, in course of hearing she abandoned it and prayed for the Court to let each party bear her own costs. The Respondent on her part prayed for the costs to be granted or awarded to her, given the fact that the matter at the DLHT had taken long time to complete, i.e. more than 20 years. (See Para 4 of Counter affidavit).

Based on the foregoing the issue is whether, the Applicant should be awarded costs as prayed for.

I am of the position that each party should bear her own costs. In reaching this decision, I am guided by the provisions of section 30(2) of the civil procedure Code Cap. 33 which states that;

**where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.** (See also the case of **Yusuph Mpini and Others Vs. Juma Y. Mkinga and others, Civil Appeal No. 1/2017, HCT DSM** where the High Court (Hon. Masabo, J stated that;

**the discretion to award costs being a judicial discretion must as a rule be judiciously exercised. An order for withholding costs should be accompanied by concrete reasons.**

In reaching my decision I have considered the following factors;

- a) The provisions of section 30(1) of the Civil Procedure Code, which apply in all the proceedings of the High Court. Sub section 1 provides for a general rule that; costs shall be in the discretion of the court to award. See also the case of **Juma Mganga Lukobora Versus TMDA Miscellaneous Civil Application No. 642/2021, HCT, DSM.**
- b) The general principle that costs shall follow the event and the fact that the Applicant who deserved to awarded such costs, declined to be awarded costs contrary to her prayer in the Chamber summons;
- c) The ongoing cases between the parties. Costs will still be in the cause.
- d) The fact that both litigants were lay persons and unrepresented.
- e) The consensus to have the Application granted as shown by the parties during hearing and their readiness to have this matter heard and resolved and consequently speed up justice in the other pending matters.
- f) The demeanor of the parties during hearing.
- g) The fact that both have incurred costs for this application.
- h) The readiness of the Applicant to forego costs which she prayed for in her application;

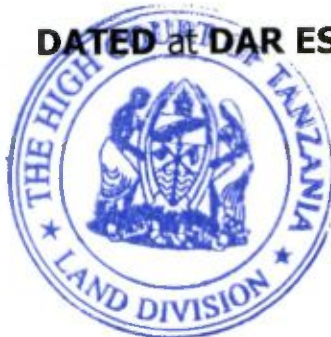
- i) Encourage spirit of settlement and or consensus among litigants in matters which are not necessarily contentious where parties are willing to speed up justice and save time and costs.

In the upshot, I proceed to grant an extension of time for the Applicant to file an appeal against the decision of DLHT for Kinondoni, at Mwananyamala in Misc. Land Application no. 238/2023, dated 19<sup>th</sup> June 2023.

The Applicant is hereby given 45 days from the date of this decision, to lodge her appeal in this Court. Each party shall bear costs of this Application.

It is so ordered

**DATED at DAR ES SALAAM** this 3<sup>rd</sup> day of November, 2023



*Mwaiipo*  
**S.D. MWAIPOPO**

**JUDGE**

**03/11/2023**

The ruling delivered this 3<sup>rd</sup> day of November, 2023 in the presence of both parties in person, is hereby certified as a true copy of the original.



*Mwaiipo*  
**S.D. MWAIPOPO**

**JUDGE**

**03/11/2023**