

**IN THE HIGH COURT OF TANZANIA**

**AT ARUSHA**

**MISCELLANEOUS CIVIL APPLICATION NO 29 OF 2011**

(C/F District Land and Housing Tribunal of Manyara, Appeal No. 24 of 2010)

**IDDI SHABANI ..... APPLICANT**

**VERSUS**

**HAMISI SHABANI ..... RESPONDENT**

Date of last order: 19/05/2014

Date of Ruling: 27/05/2014

**RULING.**

**MWAIMU, J.**

This is an application for extension of time to file an appeal to the Court brought under section 38 (1) of the Land Disputes Courts Act Cap 216. It is supported by the affidavit of the applicant Iddi Shabani attached with some documents including an intended petition containing four proposed grounds. The respondent Hamisi Shabani filed a counter affidavit opposing the application.

The application has been argued by way of written submissions. Mr. Umbulla learned counsel for the applicant contended that the applicant failed to appeal on time because the judgment and decree by the District Land and Housing Tribunal dated 13<sup>th</sup> day of July, 2010 contained an error on the number of the appeal dealt with by the District Land and Housing Tribunal as typed in the judgment. He said that the certified copy of the judgment in appeal was assigned to No. 80 of 2009 instead of 24 of 2010 which was the one registered in respect of Magugu Ward Tribunal Application No. 31 of 2009. Following that error, Mr. Umbulla contended that the applicant could not manage to appeal to the High Court before the error was rectified and that the error was corrected on 2<sup>nd</sup> day of December, 2010. It is his contention that by the time the error was rectified the applicant was already time barred.

Not only that but also Mr. Umbulla argued that the intended appeal stand a chance of success. He invited the Court to invoke the provisions of the proviso to section 38 (1) of the District Land and Housing Tribunal Act to enlarge time to enable the applicant lodge his appeal in Court.

The respondent who appeared himself opposed the application submitting that has no merit and prayed the Court to dismiss it with usual consequences. According to him the applicant had all the time within which to lodge his appeal in time and that the error of the

number on the appeal in the District Land and Housing Tribunal is a lame excuse. He further contended that the applicant was not diligent enough as after the number of the case was rectified and certified on the 06<sup>th</sup> day of December, 2010, he could not lodge his appeal until on the 15<sup>th</sup> day of April, 2011 a period of four months and nine days. He concluded that the applicant did not furnish sufficient reasons to enable the Court to grant the application. As regards to the contention that the intended appeal has chances of success, he said that there is no such possibility.

I have considered the submissions by both parties and the issue on the circumstances is whether the applicant has furnished sufficient reasons to establish the reasons for the delay to file the appeal in time.

From what is on record there is no dispute that there was an error in the recording of the number of the case in the judgment. In the first place the District Land and Housing Tribunal recorded the appeal number as 80 of 2010 instead of 24 of 2010. It is also crystal clear from the record of the Tribunal that the error was rectified on the 2<sup>nd</sup> day of December, 2010 and that when the error was corrected, the applicant was already time barred to institute an appeal. The only option was for him to lodge an application for enlargement of time. I am satisfied that the reasons pointed out by the applicant as the cause of delay to lodge an appeal are sufficient

for this Court to grant the application. The delay was caused for a reason beyond his control. I have also read the intended grounds of appeal and appeased that the intended appeal has chances of success.

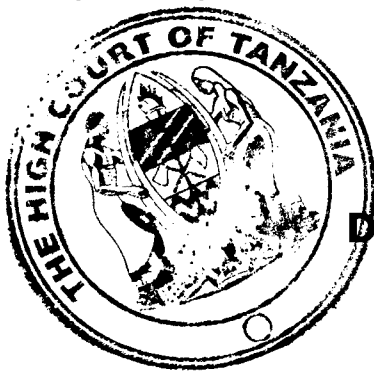
In the circumstances the application is allowed. The applicant should file his appeal within fourteen days from the date of this ruling. Costs should follow event.

**SGD: M.P.M. Mwaimu**

**JUDGE**

**27/05/2014**

I hereby certify this to be a true copy of the original.



*[Signature]*  
**DISTRICT REGISTRAR**

**ARUSHA**

9/7/14