

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TABORA

AT TABORA.

MISC. LAND CASE APPLICATION NO. 10 OF 2023

(Arising from Land Appeal No. 16 of 2021 in the High Court of Tanzania at Tabora, and Land Case No. 71 of 2018 in the District Land and Housing Tribunal)

MOHAMED S. GAMBO APPLICANT

VERSUS

CHANDE CHINGWILE RESPONDENT

RULING

Date of Last Order: 19/07/2023

Date of Delivery: 19/07/2023

MATUMA, J

This is an application for extension of time within which the applicant may appeal to this Court against the judgment of the District Land and Housing Tribunal in the exercise of its appellate jurisdiction.

At the hearing of this application, the applicant was represented by Mr. Lucas Ndanga learned Advocate while the respondent was represented by Mr. Musyani Emmanuel learned Advocate.

Mr. Lucas Ndanga in arguing for this application adopted the contents of the affidavit as part of his submissions. He averred that the major



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ground for the delay was rather technical as the applicant had no legal guide and ended up filing his appeal in this Court instead of filing the same in the District Land and Housing Tribunal. He emphasized that the applicant lodged his appeal timely but at the wrong registry.

The learned Advocate also submitted that his client was vigilant in prosecuting his rights but he was delayed to be supplied with copies of the impugned judgment of the trial tribunal. He argued this court to do away with technicalities and afford his client an opportunity to appeal.

In reply against this application, Mr. Musyani learned advocate also adopted the contents of his counter-affidavit and its annexure as part of his submissions. He then submitted that the law requires the Applicant in applications of this nature to account for each day of delay and cited the case of ***Lyamuya Construction Co. Limited vs Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010.***

The learned advocate also argued that the Applicant's appeal was struck out by this Court on 21/11/2022 and the Applicant received the copy of the order on 13/12/2022 but he did not file the instant application until March, 2023 and thus a delay of 78 days.

In his rejoinder, Mr. Lucas Ndanga learned advocate argued that this court should consider the applicant as a layman who could not abide strictly with the law.

Having listened to the parties for their rival submissions for and against this application and going through the records, I find that the interest of justice demands that this application be granted.

It is an undisputed fact that the Applicant had his appeal timely filed in this Court but it collapsed by technical reason because it was filed in the High Court Registry instead of the Registry of the Trial Tribunal in accordance to section 38 (2) of the Land Dispute Courts Act [Cap 216 R.E 2019]. The impugned judgment was entered by the District Land and Housing Tribunal in the exercise of its appellate jurisdiction and in accordance to the law supra, an aggrieved party is required to lodge his appeal in the District Land and Housing Tribunal which shall then forward the records to the High Court.

The applicant in this case lodged his appeal to the High Court where he faced an objection leading his appeal to be struck out. It is upon such a scenario he found that he was out of time to re-file his appeal to the proper registry. The Applicant being a layman, I agree with Mr. Lucas Ndanga learned advocate that we need to do away with technicalities and afford him time to re-open his appeal. I find that there was no substantial delay by the applicant to appeal but rather the delay was technical.

I accordingly allow the application and extend the applicant thirty (30) days from today within which he has to file his appeal to the relevant registry; that is in the District Land and Housing Tribunal for it to forward the same in this court. No orders as to costs.

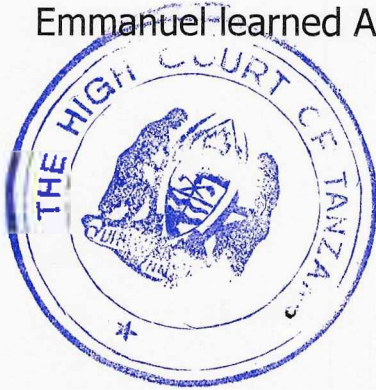
It is so ordered.



Matuma
JUDGE
19/07/2023

COURT

Ruling delivered in chambers in the presence of Mr. Lucas Ndanga learned Advocate for the applicant also holding brief of Mr. Musyani Emmanuel learned Advocate for the respondents.



MATUMA

JUDGE

19/07/2023