

**IN THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
GEITA SUB REGISTRY
AT GEITA**

LAND APPLICATION No. 3788 OF 2024

*(From Land Appeal No. 85/2023 of the District Land and Housing Tribunal for Geita
Originating from Land Case No. 05/2018 of the Mbogwe Ward Tribunal)*

MANYANDA SHIKA..... APPLICANT

VERSUS

SHIJA SHIHEKA.....RESPONDENT

RULING

Date of last order: 20/03/2024

Date of Ruling: 26/03/2024

MWAKAPEJE, J.:

Aggrieved by the decision of the District Land and Housing Tribunal for Geita in land Appeal No.85 of 2023, the Applicant, by way of a chamber summons, the Applicant presents himself before this esteemed Court, seeking an extension of the time within which to lodge an appeal out of time, as provided for under Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019. The reliefs sought by the Applicant include but are not limited to, the following orders:-

1. *That the Court be pleased to extend the time for the Applicant to appeal out of time against the judgment of the District Land and Housing Tribunal for Geita delivered on 28/08/2020;*
2. *Costs be provided and*
3. *Any other relief this Court deems fit to grant.*

The affidavit duly sworn by Manyanda Shika, the Applicant, served as the supporting document for the chamber summons. The proceedings were conducted *ex-parte*, as the respondent failed to appear before this honourable Court at the appointed time for the hearing. The Applicant, appearing in person, offered no further submissions beyond those outlined in the filed documents.

In the sworn affidavit, the Applicant provided compelling reasons for the delay in pursuing this matter, citing the significant responsibility of caring for his ailing father from July 2020 until his demise in June 2023. Following his father's passing, the Applicant faced challenges in securing the necessary funds to engage legal counsel.

The affidavit further elucidates that the Applicant previously secured a ruling in his favour at the Ward Tribunal and subsequently at the High Court, with a judgment rendered on 31/05/2012 affirming his rightful ownership of the disputed land, thereby upholding the decision initially

made by the trial Ward Tribunal of Bukombe. However, the District Land and Housing Tribunal of Geita erroneously perceived the Applicant as the losing party in the land dispute, thereby resulting in a manifest illegality.

The Tribunal, in its ruling, stated that:

*"I have considered the opinion by assessor I have also read High Court Civil Appeal No. 17A/2008 between Manyanda Shika versus Shija Shileka na Masanja Sita, in which the suit land was 24 acres of land. In that appeal was dismissed, and the decision by Mbogwe Ward Tribunal in land case No. 25/2007 was left undisturbed that, means the **appellant lost** a case, and since the land was 24 acres, it is obvious that this ½ acre in this appeal is part of 24 acres...."[Emphasis supplied]*

It is firmly established that an extension of time should be granted based on a demonstrable showing of good reasons for the delay by the Applicant. See the cases of **Felix Mtumbo Kisima vs. TCC Limited and another**, Misc. Civil Appeal No. 1 of 5 1997 and **Lyamuya Construction Co. Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania**, Civ. Appeal no. 2 of 2010. Particularly, in the case of **Lyamuya Construction Co. Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania (Supra)**, guidelines to extend time were stipulated that:

"i. the applicant must account for the period delayed;

ii. the delay should not be inordinate;

- iii. the applicant must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take;*
- iv. if the Court feels that there are other sufficient points of law, i.e., illegality of the decision, ought to be challenged.”*

The purported reasons for the delay, as outlined in the Applicant's affidavit, do not meet the threshold for consideration under legal scrutiny. I assert this stance due to the absence of substantiated evidence indicating that the Applicant was the primary caregiver for his ailing father throughout the stated period.

Even if such an assertion is to be accepted by this Court, the Applicant's failure to promptly file the necessary appeal following his father's demise raises skepticism. Instead, he attributes the delay to a purported lack of funds to engage legal representation, a rationale deemed weak as indigence alone does not suffice as a legitimate ground for the delay, especially considering the availability of *pro bono* legal services tailored for the financially disadvantaged.

However, in instances where illegality is evident within the records, the Court is duty-bound to extend the time, even in situations where the reasons provided may seem inadequate. This principle finds resonance in the case of **Principal Secretary, Ministry of Defence and National**

Service v. Devraj Valambhia (1992) TLR 182, wherein it was articulated that:

*"In our view when the point at issue is **one alleging illegality of the decision being challenged**, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality to be established, to take appropriate measures to put the matter and the record straight." [Emphasis supplied]*

Therefore, as evidenced by the records, Manyanda Shika, the Applicant, was conclusively determined to be the rightful owner of the suit land by the Bukombe Ward Tribunal in Land Case No. 25/2007. This determination was subsequently affirmed by Honourable Lukelwa, J., at the High Court in Tabora. In the appellate proceedings before the High Court in Tabora, Manyanda Shika was the appellant, albeit unsuccessful in overturning the original decision. Nonetheless, the decision rendered by the Bukombe Ward Tribunal, declaring him as the lawful proprietor of the disputed land, remained unaltered and was upheld.

In light of the preceding analysis, I hereby confirm the presence of a potential illegality necessitating adjudication by a court of competent jurisdiction. Consequently, I invoke my discretionary power to grant the application by extending the time for the Applicant to file his appeal

beyond the designated period. The Applicant should, therefore, lodge his appeal within 21 days from the date of this ruling.

In the circumstances of the application, I make no order as to costs.

It is so ordered.

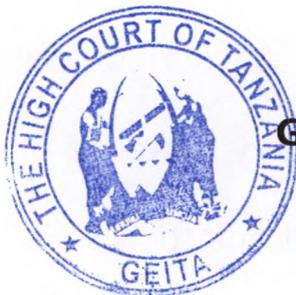
DATED and DELIVERED at Geita this 26th day of March 2024.



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**G.V. MWAKAPEJE
JUDGE**

The ruling is delivered on 26th March 2024, in the presence of the Applicant in person.



A handwritten signature in black ink, identical to the one above, consisting of a stylized, cursive script.

**G.V. MWAKAPEJE
JUDGE
26/03/2024**