

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

**MISC LAND APPLICATION NO. 691 OF 2020**

*(Arising from the Judgment and Decree of the District Land and Housing  
Tribunal for Ilala at Mwalimu House (Hon. BIGAMBO, Chairperson) in  
Application No. 342 of 2016, dated 4<sup>th</sup> September, 2020*

**THOMAS NDUNGURU.....APPLICANT**

**VERSUS**

**PIUS TITUS KASIKANA.....RESPONDENT**

**RULING**

*Last order 23/6/2021*

*Date of ruling 1/7/2021*

**B.E.K. MGANGA, J**

On 2<sup>nd</sup> December, 2020 the Applicant filed this application applying for extension of time within which to appeal before this court against the judgment and decree of the District Land and Housing Tribunal for Ilala in Application No. 342 of 2016 dated 4<sup>th</sup> September, 2020. The chamber summons is supported by the affidavit of Thomas Ndunguru, the Applicant. The Respondent has filed the counter affidavit to oppose the application. When the application came for hearing on 23<sup>rd</sup> June 2021, the Respondent who was unrepresented prayed to argue by way of written

submission. The prayer was not resisted to by Mr. Lucas Kamanija advocate for the Applicant as a result parties were ordered to file their written submissions on 25<sup>th</sup> June 2021 of which they complied.

In his affidavit, the Applicant has averred that the judgment was delivered on 4<sup>th</sup> September 2020 and that on 18<sup>th</sup> September 2020 he applied for the copy of judgment and decree but the same was not supplied to him. He further averred that a reminder was written to the Tribunal as a result he was supplied with the same on 11<sup>th</sup> November 2020. It is his averment that thereafter he has to look for an advocate to assist him. On his side, the Respondent countered that the delay was due to the negligence of the Applicant.

In his written submission, counsel for the Applicant adopted the affidavit by the Applicant and argued that his client has accounted for each delay. He raised the issue of illegality arguing that it is a good ground for extension of time and cited the case of ***Principal Secretary, Ministry of Defence & national Service vs. Devram vallambia [1992] TLR 185*** and ***Mohamed Salum Nahdi vs. Elizabeth Jeremia, Civil Reference No. 14 of 2017.***

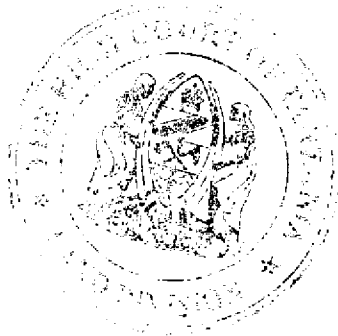
In his written submission, the Respondent adopted his counter affidavit and argued that in an application for extension of time, the Applicant has to give sufficient reason for the delay. He cited the case of ***William Shija vs. Fourtunatus Masha [1997] T.L.R. 213*** to buttress his point. He argued that the Applicant has failed to account for delay. He cited the case of ***Tanzania Posts and Telecommunications Corporation vs. M/S Henrita Supplies [1997] T.L.R 141*** to the effect that general principle as the chances of success of the intended appeal can be meaningful at a later stage after hearing arguments of both sides and not at this stage. The Respondent was kind enough to point out that the exception is circumstances of each case that has to be looked at by the court. He went on that, extension of time is a matter of discretion of the court and that it has to be exercised judiciously. He therefore prayed the application be dismissed with costs.

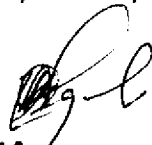
I have examined the affidavit and the counter affidavit together with the written submissions of the parties and consider them together the cases cited in order to reach an informed decision. Upon assessment of the affidavit and counter affidavit, I have found that the Applicant has managed to account for the delay. More so, the delay, in my settled opinion, is not inordinate. In short, the criteria set out by the Court of

Appeal in the case of ***Lyamuya Construction Company Ltd. Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, CAT – Civil Application No.2 of 2010 (unreported)*** has been met. Being alive in my mind that extension of time is a matter of discretion which I have to exercise it judiciously, and further, being alive of what was stated by the Court of Appeal in the case of ***Tanzania Posts and Telecommunications Corporation*** (supra), I hereby exercise that discretion and grant extension of time within which the Applicant to file his Appeal to this court. I therefore order that the Applicant shall file his appeal within fourteen (14) days from the date of this ruling. No cost awarded.

Order accordingly.

Dated at Dar es Salaam this 1<sup>st</sup> day of July 2021.



  
**B.E.K. Mganga**  
**JUDGE**  
**1/7/2021**