

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
SUMBAWANGA DISTRICT REGISTRY  
AT SUMBAWANGA**

**MISC. LAND APPLICATION NO. 07 OF 2022**

*(Originating from Land Application No. 34 of 2014 of District Land and Housing Tribunal for Rukwa)*

**GABRIEL SHEMA.....APPLICANT**

**VERSUS**

**MELINA LYALA.....RESPONDENT**

**RULING**

*Date of Last Order: 19/08/2022*

*Date of Ruling: 14/12/2022*

**NDUNGURU, J**

This is a ruling in respect of preliminary objection raised by the respondent's learned advocate challenging competence of this court in entertaining this application which emanated from the appeal which was dismissed by this court.

The applicant, Gabriel Shema, is seeking leave of this court for extension of time, that he be allowed to appeal to this court outside statutory time required by law. The application is supported by the affidavit sworn, drawn and filed by the applicant himself.

When the application was called on for hearing, the applicant appeared was represented by Ms. Tunu Mahundi, learned advocate;

whereas, the respondent had a legal services of Ms. Mr. Deogratus Sanga – learned advocate. The hearing proceeded by way of written submissions.

Arguing for the application, Mr. Sanga learned advocate for the respondent submitted that it is his strict view that the instant application is untenable in law and this court lacks jurisdiction over the same simply on basis that, the applicant prior to filing this application in regard with the same proceedings filed with this very same court an appeal Land Appeal No. 22 of 2021 which by the reason of being time barred was dismissed by this before Hon. Nkwabi, J on 17<sup>th</sup> day of March 2022. Mr. Sanga further submitted that the applicant unreasonably instead of either preferring an appeal, review or revision which are the only available remedy for him in the ambit of the law, tempting to mislead and waste time of the court as the application is incompetent and this court lacks jurisdiction.

Mr. Sanga submitted that it is established principle of the law that where the matter is dismissed parties cannot go to the dismissing court seeking for extension of time for bringing back the dismissed action rather, they are only allowed to opt for either review, revision or an appeal as per the case of **Neema Nanyai vs Richard Samata Swika**, Civil Appeal No. 239 of 2019 HC, unreported.

Mr. Sanga is of the view that taking the position of the law, the instant application which in essence renders this entire application untenable in law and ousted jurisdiction of this court over the matter.

In reply, Ms. Mahundi submitted that the application before this court is proper application as the remedy for time barred is application for extension of time as the law provides in Land Disputes Courts Act, Cap 216 2019 and this court has jurisdiction power to determine the application. Further, she submitted that the appeal was dismissed for being time barred and Hon Judge acted according to section 3 (1) of the Law of Limitation, Cap 89 RE 2019 and the remaining remedy is to file the proper application for extension of time before the competent court which is this court upon given good reason.

Ms. Mahundi contended that the matter at hand was not determined on merit before this court hence this court has jurisdiction power to entertain the applicant because it was not final determined. She was of the view that the case cited by the respondent's advocate is not binding by the court as this court has jurisdiction and power to extend time and all cases has to be treated different. She strongly argued that every case must be decided according to its own circumstances as per the case of **Zanzibar Shipping Corporation vs Mkunazini General Traders**, Civil Appeal No. 3 of 2011, unreported.

She prayed for the court not to be bound by technicalities rather for the interest of justice to grant application because the case was not determined on merit.

Having considered the rival arguments from both sides for and against the objection raised, the only question I may ask is whether the point of objection is meritorious.

It is important note that in granting extension of time the court does not only consider if there are sufficient reasons for delay but reasons have to be sufficient enough. See **Republic vs Yona Kaponda & 9 Others** [1985] T.L.R. 84 and **Eliakim Swai and Another vs Thobias Karawa Shoo**, Civil Application No. 2 of 2016, unreported, CAT.

As per the paragraph 3 of the applicant's affidavit the applicant has admitted to the effect that a court of competent jurisdiction has already entertained and dismissed the appeal emanating from land application No. 34 of 2014.

It is my considered view that allowing the application at hand amounts to abuse of court process as the applicant's is barred from seeking extension of time to refile a dismissed appeal. The position of the law has been articulated in the decision of **Hashim Madongo and**

**two Others vs Minister for Industry and Trade and two Others,**

Civil Appeal No. 27 of 2003, where Court of Appeal stated thus: -

*"That after the application before Kalegeya, J was dismissed, as it should have been, it was not open to the appellants to go back to the high court and file the application subject of this appeal...the only remedy available to the appellants after the dismissal of the application was to appeal to the Court of Appeal and that the application for extension of time ought to have been filed prior to filing the application for prerogative orders."*

The above legal position was emphasized in the decision of this court in Tanzania in **Tanzania Breweries Ltd vs Edson Muganyizi Barongo & 7 Others**, Misc. Labour Application No. 79 of 2014 where the court had this to say: -

*"...I think by and large that the present application which seeks to resurrect the application that was dismissed by this court Rweyemamu, J by the applicants have adopted, cannot in my interpreting the case laws above be*

*left to stand, it is worthless because if I grant the present application, I will be granting them an opportunity to bring back the application which Rweyemamu, J dismissed. This cannot be done in premio legis (from the bosom of the law) if aggrieved by the dismissal of their application... they should have taken the correct avenue of appealing against the dismissal of their application to the Court of Appeal rather than coming from the backyard door by way of application for extension of time to file an application for being time barred by law."*

I fully subscribe to the above authorities. Without doubt, the present application is barred by law as the only remedy would have been for the applicant to appeal against the dismissal order.

In the premise, I accordingly dismiss the application for lack of merit. I make no order as to costs.

It is so ordered.



*J. Ndunguru*  
**D.B. NDUNGURU**

**JUDGE**

**14.12.2020**