

**IN THE HIGH COURT OF TANZANIA
(DODOMA REGISTRY)**

AT DODOMA

MISC LAND APPEAL NO. 64 OF 2019

*(Arising from the decision of the District Land and Housing Tribunal of Dodoma in
Misc. Application No.229 of 2017 dated 17th June, 2019)*

EDWARD MPULULA APPELLANT

VERSUS

DAVID MHOKOLE RESPONDENT

RULING

27th May, 2021 & 25th August, 2021

M.M. SIYANI, J.

For easy of understanding, I find it prudent that I narrate albeit briefly, facts behind the instant appeal. On 24th February, 2017, Edward Mpulula who is the appellant herein, instituted a land matter at Mpinga Ward Tribunal against one David Mhokole. The appellant lost the suit as through its decision dated 24th March 2017, the trial ward tribunal declared the respondent herein, the owner of the disputed piece of land. On 19th July 2017, the appellant decided to challenge the said decision but he found himself out of time. As such, he lodged an application for extension of time within which to file an appeal at the District Land and Housing

Tribunal of Dodoma. On 7th August 2017, the said application was dismissed for want of good cause.

Aggrieved, the appellant approached the doors of this court. Upon hearing the parties, my brother, Kitusi, J (as he then was) quashed the District Land and Housing Tribunal's order above on the ground that no reason for such decision was attached. It was directed that the applicant's application for extension of time, be considered by another Chairman competent to do so. As noted, the record shows while the quashed decision was issued by H.E. Mwiha (Chairman) on 7th August 2017, one R.S.S Mandari, presided over the proceedings in compliance with the order of this court. The later went on to dismiss again the application on the reason that the appellant had no good cause to warrant enlargement of time.

Still aggrieved, the instant appeal has been preferred and the petition of appeal presented contains two grounds as follows:

- 1. That, the District Land and Housing Tribunal of Dodoma erred in law and in fact when it decided to disregard the order of the judgment of the High*

Court of Tanzania at Dodoma which allowed the order that applicant's Application be heard by another Chairman.

2. That, the District Land and Housing Tribunal of Dodoma at Dodoma erred in law and fact in not considering that before the applicant started to prepare a petition of the appeal to the District Land and Housing Tribunal of Dodoma, the appellant was unfortunately bereaved with his brother in law at Chenene Village in Chamwino District, that after receiving the said sad news he proceeded to Chenene village for burial purpose when he stayed for about one week soon after which he came back and started to make follow-up for the copy of judgment where he was served the same by the Mpinga ward tribunal after the appeal period had elapsed.

Subject to an order dated 14th April 2021, the appeal was heard by way of filling of written submissions. I am grateful for the parties compliance to the time scheduled. In support of the first ground of appeal, it was argued that the District Land and Housing Tribunal, erred by disregarding the High Court's order which directed the application for extension of time to be heard afresh by another Chairman. According to the appellant,

despite the said order directing rehearing of the application by another chairman, but the matter which is a subjected of appeal, was presided by R.S.S Mandari, the same chairman who dismissed the application at the first Instance.

With regard to the second ground of appeal, it was submitted that the District Land and Housing Tribunal, erred again when it failed to consider the fact that appellant was bereaved by his brother in law something which delayed him to initiate his appeal. The appellant contended further that the District Land and Housing Tribunal also ought to have considered the fact that the delay in filling his appeal was caused by the ward tribunal's failure to supply a copy of judgment in time.

In reply to the submission in respect of the first ground of appeal, the respondent argued that the order of this court regarding consideration of the application by a different chairman, was complied with. According to him the decision which is a subject of this appeal, was issued by a different chairman as ordered by the High Court. On the second ground of appeal, it was submitted that the appellant failed to account for his delay as no evidence was tendered to prove the fact that he was bereaved by his

brother in law. As such respondent argued that, the District Land and Housing Tribunal, was therefore correct in its decision.

Having revisited the record and what was submitted to me by the parties, I will hasten to state that, the complaint in the first ground of appeal has no support of the record. As prior indicated, the first decision which dismissed the appellant's application and which was quashed by this court, was issued by H.E Mwiwava. The record indicates further that the re-consideration of the said application and its decision thereof, was done by R.S.S Mandari. In my view, this court's order dated 27th August 2018, was therefore complied with. It follows therefore that since the complaint in respect of the first of appeal was that the same chairman presided over the matter, then such ground has no merit and I dismiss it accordingly.

Through the second ground of appeal, the appellant faulted the District Land and Housing Tribunal Dodoma for its failure to consider as sufficient cause for enlargement of time; the fact that the appellant was bereaved by his brother in law and the delay by ward tribunal to supply him a copy of judgment. This grounds fails as well because one; the fact that the appellant's delay was partly caused by time spent in attending his brother

in law burial ceremony, was not party of his affidavit filed to support the application.

Save for his rejoinder submission, both the affidavit and submissions in chief at the District Land and Housing Tribunal, did not contain "being bereaved" as a ground for extension of time. The practice has always been that, no new set of facts would be raised in rejoinder. The reason is simple, that is when a new fact is raised through rejoinder, and the opponent party will have no opportunity to respond the same. That means if courts of law are to base their decisions on such new facts, then the party which had no opportunity to reply, would be condemned unheard. The above notwithstanding, even if it is taken for granted that, the appellant was bereaved by his brother in law as alleged, yet when he returned two weeks after the ward tribunal's decision, he was well within the prescribed time, for the purpose of initiating an appeal.

The appellant also complained that there was delay in serving him with a copy of a judgment. According to him he was served with such copy on 10th July, 2017 and he moved the tribunal to enlarge time, on 19th July, 2017. While there was no proof of the alleged service of a copy of the impugned decision on that day, yet the appellant did not explain what

delayed him to file his application for extension of time promptly following such services. It is a settled principle of law that, whoever moves the court to extend time, must sufficiently account for each day of the delay. Courts of law should not be burdened with a duty of fishing such reasons. See **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT unreported).

In the fine, since the appellant could not account for his delay, the decision of the District Land and Housing Tribunal cannot be faulted. The instant appeal is therefore without merit and consequently the same is hereby dismissed with costs. Order accordingly.

DATED at DODOMA this 25th August, 2021



M.M. SIYANI

JUDGE