

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AS SHINYANGA
MISC. LAND APPEAL NO.12 OF 2020**

HAWA KASHOKA.....APPELLANT

VERSUS

RAMADHANI HUSSEIN MAKUNGU.....RESPONDENT

(Appeal from the decision of the District Land and Housing Tribunal of Shinyanga)

Chrispian Hatson-Chairman

In

Misc. Application No.05 of 2020

.....
JUDGMENT

24th June & 13th August, 2021

MDEMU, J.:

Hawa Kushosha, the Appellant herein lodged a complaint to Ibinzamata Ward Tribunal for a declaration that she be pronounced the rightful owner of the suit land in Plot No.129 "Y". On 21st of October, 2019 the tribunal decided in favour of the Respondent. She did not appeal in time to the District Land and Housing Tribunal. She was not successful in an application for enlargement of time as the said application was dismissed on 3rd of August, 2020, hence the instant appeal on the following grounds:

1. That, the first Appellate Tribunal erred in law and fact in holding that the Appellant failed to explain a delay for appealing in time.

2. That, the first Appellate Tribunal erred in law and fact in holding that there was no illegality on the decision of the trial tribunal calling for extension of time to appeal out of time.

I heard Mr. Audax Costantine, Advocate for the Appellant and Mr. Geofray Tuli, Advocate for the Respondent on 24th of June, 2021 when this appeal was scheduled for hearing. In support of the appeal, Mr. Audax submitted jointly on the two grounds of appeal. He submitted in the first point that, the Appellant delayed to appeal because he had no copy of decision which he would have used to prepare grounds of appeal. He thought the DLHT would have considered that as a sufficient cause to extend time.

The second point he submitted is on illegality in the impugned decision. One he said, the decision of the Ward Tribunal is signed by the chairman alone which contravened the provisions of section 4(3) (4) of the Ward Tribunals Act, Cap.206 because the chairman alone neither constitutes a coram nor makes a decision. He thus thought this is illegality which have to be rectified on appeal. He cited the case of **Principal Secretary, Ministry of Defence**

and National Service vs Devram Valambhia (1992) TLR 185 that, the illegality constituted in the decision of the Ward Tribunal is a sufficient cause to have time to appeal extended. He thus urged me to allow the appeal.

In reply, Mr. Geofray Tuli, learned Advocate submitted that as to delay, it was the duty of the Appellant to account for the days of the delay, which he did not do that. He thought, this being a legal requirement, it was mandatory to do that. He added that, there is no explanation as to why the Appellant was supplied with the judgment on 17th of December, 2019 and lodged his application on 23rd of January, 2020 which is almost one month unaccounted for.

As to the ground of illegality, his view was that, failure by members of the tribunal to sign the decision has no connection with extension of time. To his view, it has nothing to do with administration of justice. He cited the case of **Aristides Pius Ishebabi vs Hassan Issa Likwedembe & 3 Others, Civil Appeal No.5 of 2019** (unreported) in support of his argument. In his view therefore, the non-signing of the decision has not occasioned failure of justice. He concluded that, not every irregularity amounts to illegality. He thus found no merit to the appeal and urged me to dismiss it with costs.

Mr. Audax rejoined briefly by reiterating his previous position and also added that, the case of **Aristides Pius Ishebabi vs Hassan Issa Likwedembe & 3 Others** (supra) is distinguishable because the defect is on the decree, in the instant appeal where members did not sign the decision, it all means want of commitment in ownership of the decision.

I think I have heard enough from the parties. It be sufficing to state that, for courts of law to exercise their discretionary power to extend time, there must be sufficient cause for so doing. It is trite law that, an application for extension of time is entirely in the discretion of the court whether or not to grant. In the exercise of the discretion, the court must be satisfied that there are good grounds to determine in favour of the application.

Factors to be considered by the court were stated in the case of **Lyamuya Construction Company Ltd vs the Board of Registered Trustee of Young Women Christian Association of Tanzania, Civil Application No.2 of 2010** (unreported) as follows:

- (i) The applicant must account for all the period of delay.*
- (ii) The delay should 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 reasons, such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged.

.....

In the application to the DLHT, one of the reason advanced was the illegality which Mr. Audax stated that, the decision of the tribunal was not signed. Going by what is in section 4 of the Ward Tribunals Act, Cap.206, the decision of the Ward Tribunal is of the majority members as reads herein below:

S.4 (3) The quorum at a sitting of a Tribunal shall be one half of the total number of members.


(4) At any sitting of the Tribunal, a decision of the majority of members' present shall be deemed to be the decision of the Tribunal, and in the event of an equality

of votes the Chairman shall have a casting vote in addition to his original vote.

I think the pertinent question is what evidence may one have that the decision was that of the majority members? In my view, is on the Coram and signing of the decision by the respective members. As the impugned decision is signed by the chairman alone, then we may not be certain of the Coram. I therefore agree with Mr. Audax that, had the chairman of the DLHT took into account this fact, he would have extended time to appeal.

I am aware as submitted by Mr. Tuli that, not every irregularity constitutes illegality, but for sure, non-signing of the decision by respective members is an irregularity constituting illegality as stated in **Principal Secretary, Ministry of Defence and National Service vs Devram Valambhia** (supra) the same was a sufficient cause to extend time. That said, this appeal is allowed. The decision of the DLHT is accordingly quashed and set aside. Each part to bear own costs.

It is so ordered.


Gerson J. Mdemu
JUDGE
13/08/2021