

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT BUKOBA

MISC. LAND APPEAL NO. 57 OF 2021

(Arising from Misc. Application No. 88 of 2020 of the District Land and Housing Tribunal for Muleba at Muleba , Original Land Case No. 12 of 2017 at Kamachumu Ward Tribunal)

NUMERIAN FRANCIS.....APPELLANT

VERSUS

BENEDICTO KAMUGISHA.....RESPONDENT

JUDGMENT

22/09/2021 & 07/10/2021

NGIGWANA, J.

This appeal arises from the ruling of the District Land and Housing Tribunal (DLHT) for Muleba at Muleba whereby the Appellant Numerian Francis lodged a chamber application under Regulations 4 of the Land Disputes Courts (The District land and Housing Tribunal Regulations, 2002; and Section 20 (1) and (2) of the Land Disputes Courts Act, 2002 Cap. 216 seeking the indulgence of the tribunal to extend time within which to file an appeal out of time against the decision of the Kamachumu Ward Tribunal in Land Case No. 12 of 2017 handed down on 12/12/2017.

The appellant who was the applicant in the DLHT enjoyed the services of Advocate Reinhod Mujuni while the respondent enjoyed the services of Mr. Gerase Reuben, learned advocate.

With leave of the Tribunal, the application was argued by way of written submissions. Finally, the DLHT found that there was failure of the applicant to demonstrate good cause, sufficient to convince the tribunal to grant the application.

Aggrieved, the appellant preferred an appeal to this court against the ruling of the DLHT on three (3) grounds: **One**, that the trial tribunal erred in law and facts by not taking into consideration the reason adduced by the appellant for his application to appeal out of time. **Two**, that the trial tribunal erred in law and fact by not taking into account that the proceedings of Kamachumu Ward Tribunal was an audible case on the side of the appellant in which the appellant was notified by the trial tribunal that the matter was for mediation and in case the mediation fails; the Respondent will be advised to open the case for litigation and he was never notified on the matter decided by the Ward Tribunal, **Three**, that the tribunal erred in law and fact by not taking into consideration that Kamachumu Ward Tribunal has errors and irregularities in which if not cured by allowing the appeal to be filed out of time, injustice will be done to the appellant because the matter was not heard on merit.

Wherefore, the appellant herein prays this Honorable Court to allow the appeal with costs. The appeal was opposed by the respondent.

At the hearing of this appeal both parties were represented whereby the appellant enjoyed the services of Mr. Derick Zephurine, learned advocate while the respondent enjoyed the services of Ms. Pilly Hussen, learned advocate.

Amplifying the first ground of Appeal, Mr. Zephurine submitted that the reason for delay was sickness as the appellant was sick, and after of the judgment being delivered, his wife became sick, and he was the one attending her until she met her death. He added that, after losing his wife, he was admitted to Hospital several times and for that matter, good cause for the delay was demonstrated.

In reaction, Ms. Pilly submitted that the founding affidavit in support of the chamber application revealed that the appellant's wife died in 2015, a year before the institution Land Case No. 12 of 2017 before Kamachumu Ward Tribunal, and application for extension of time was filed on 30/06/2020 after pronouncement of the judgment of the Ward Tribunal. Ms. Pilly added that the Appellant did not account for each day of delay as required by the law. She made reference to the case of **Ramadhani Kihwani versus TAZARA, Civil Application No. 401/18 of 2018.**

Submitting on the 2nd ground of Appeal Mr. Zephurine stated that it is a known procedure that mediation must be conducted, and the appellant was aware that the case at the Ward Tribunal was at the Mediation stage, hence was never made aware of the matter decided by the Ward Tribunal

In reaction Ms. Pilly submitted that this ground was not raised in the trial tribunal in Misc. Application No. 88 of 2020, as one of the grounds to be considered by the trial tribunal to grant or not to grant extension of time, and therefore cannot be raised at this stage.

As regards the 3rd ground, Mr. Zephurine submitted that the Ward Tribunal decision is tainted with illegalities/irregularities one being the issue of

pecuniary jurisdiction. He added that it was not stated by the Ward Tribunal that it had jurisdiction over the matter. He made reference to the case of **Juto Ally versus Lucas Komba and Another, Civil application No. 48 of 2019** where it was emphasized that jurisdiction is fundamental. The learned counsel referred the court to the case of **Mary Rwabizi t/a Amuga Enterprises versus National Microfinance Bank PIC, Civil Application No. 378/01 of 2019** in which it was emphasized that illegality is one of the grounds for the grant of extension of time.

In reaction, Ms. Pilly conceded that illegality is one of the grounds for the grant of extension of time, but the same must be on the face of the record. She added that in the case at hand, the issue of illegality was not raised in the DLHT, hence cannot also be raised at this stage, and since the DLHT was not in exercise of its appellate jurisdiction, it cannot be faulted in that area.

Having seen the rival submission in support of the appeal and against the appeal, the sole issue which need to be resolved is whether the appellant has displayed before the District Land and Housing Tribunal sufficient reasons warranting grant of the application.

It is settled that an application for extension of time can only be granted upon the applicant adducing good cause or sufficient reason(s) for delay. This principle was clearly stated in **Mumello v. Bank of Tanzania** [2006] E.A. 227 that,

"... an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause"

The term sufficient cause is has not been defined as stipulated in the case of Tanga **Cement Company Ltd vesus Jumanne D.Masangwa and Another**, Civil Application No.6 of 2001 where the Court of Appeal held that

"What amounts to sufficient cause has not been defined. From the decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant"

The Court of Appeal further stated in the case of **Finca (T) Limited and Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported) that;

"It is settled that where extension of time is sought, the applicant will be granted upon demonstrating sufficient cause for the delay. Conversely, it is also well settled that the sufficient cause sought depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur."

In the case at hand, the record vividly shows that the ground given for the delay was **sickness/ illness** as articulated in the following Paragraphs of the applicant's affidavit as quoted herein below;

2. *That I was the respondent in Land Case No.12 of 2017 before Kamachumu Ward Tribunal upon which the judgment was entered against me to the effect that the Suitland belonged to the Respondent.*
3. *That since then even before the case started, I have been going through a lot of problems as I had to attend my wife and my mother who were sick. My wife died in 2015 and some years later in January 2019 my mother also died*
4. *Because of my age and difficulties of losing my beloved ones, I fall sick upon which I was admitted before Bukoba Regional Referral Hospital on 12th day of January 2018 and I was advised to rest as my health condition was totally in difficult situation. There from I had to attend Clinic at the same Hospital to check on my improvements (Copies of **discharge letter as well as Clinic Card are jointly attached and marked "JJR", the leave of the honorable Tribunal is sought for them to form part of this affidavit.***
5. *That due to unfitness of my body I had to go for counselling so as to resume to my wellbeing and go on with my activities, it is when I came to realize that I had a case before Kamachumu Ward Tribunal and the time for appealing against such decision has elapsed as I did not file an appeal within time prescribed by the judgment of Kamachumu Ward*

Tribunal and that I was ambitious of procuring the same since it has the overwhelming chances of success.

There is no doubt that there are circumstances in which sickness/illness becomes a ground for extension of time. The Court of Appeal in **Kapapa Kumpindi versus the Plant Manager Tanzania Breweries**, Civil Application No.2 of 2010 (Unreported) held that, sickness is a ground for extension of time. However, it must be noted that not every time that the reason of illness is cited, then the court must extend time. Sickness or Illness becomes a ground for extension of time only when it is proved that indeed it is the sickness that caused the delay. Just mentioning does not do. See **Mgabo Yusuph versus Chamriho Yusuph** Civil appeal No.22 of 2019 HC (Unreported)

It is trite that in application proceedings the affidavits constitute not only the pleadings but also the evidence. Equally straight that the applicant must make out his case in his founding affidavit and that he must stand or fall by the allegations contained therein. It follows therefore that the applicant must set out sufficient facts in his founding affidavit which will entitle him to the relief sought. It is again trite law that he who alleges on a certain fact has to prove the same.

As applicant's affidavit is to the effect that his wife died in 2015 and the case was instituted at Kamachumu Ward tribunal in 2017. Nothing shows that the applicant established before the trial Tribunal how the death of his wife which occurred in 2015 or the death of his mother prevented him from filing the application timely. He alleged that he was sick, whereas he was

referred to Bukoba Regional Referral Hospital but the trial tribunal found no medical proof/documents attached to the founding affidavit.

I went through paragraph 4 of the founding affidavit and found these words

"Copies of discharge letter as well as Clinic Card are jointly attached and marked "JJR", the leave of the honorable Tribunal is sought for them to form part of this affidavit". However, this court made perusal of the same and found that the mentioned documents were not attached to the founding affidavit.

This court went a step further to see whether the chamber summons and affidavit served to the respondent had the alleged attachments but found that the respondent after being served with the same, he filed the counter affidavit, where paragraph 4 states **"... The respondent further avers that the applicant claimed to have attached a discharge letter and a Clinic Card to his affidavit but the same were not found pleadings served upon the respondent"**

The court further went through the written submission in support of the application drawn and filled by Reinhold T. Mujuni to see whether he discussed the alleged documents, but the answer was in the negative as he made no reference, mention or discuss the said documents. Since the appellant's major reasons for extension of time were sickness, and death of his wife and mother the medical proof was imperative. However, as stated earlier, he has failed to establish before the DLHT that he was sick and how the alleged sickness, and/or death of his wife or his mother prevented

him from filling the application timely. It is to be noted that the court is a temple of justice, thus manipulated and sympathetic stories can never amount to sufficient cause warranting the grant of extension of time. Likewise, ignorance of the applicant or his advocate does not constitute good cause warranting extension of time. See Selemani **Kasembe Tambala versus the Commissioner General of Prisons and 2 others**, Civil Application No. 383/01 of 2020 CAT (Unreported).

The Court of Appeal of Tanzania in the case of **Lyamuya Construction versus Board of Registered Trustees**, Civil Application No.2 of 2010 (Unreported) has provided the following guidelines for the grant of extension of time;

- (a) The applicant must account for all the period of delay.
- (b) The delay should not be inordinate
- (c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intended to take.
- (d) If the court feels that there are sufficient reasons/such as the existence of a point law of sufficient importance such as the illegality of the decisions ought to be challenged.

In the case at hand, the application for the extension of time was filed in the DLHT on 30/06/2020. The judgment sought to be challenged if the extension is granted was delivered on 12/ 12/2017. The applicant stayed silent for good two and a half years (30months). In **Charles Pantaleo**

Kingoka versus Abas Musa Kitoi, Civil Application No.71/76 of 2019, the Court of Appeal held that;

"There must an account of each day of delay. Delay even of a single day, has to be accounted for"

I have gone through the records of the trial tribunal and found that the delay of thirty (30) months was not accounted for. No doubt that the delay of thirty months amount to an inordinate delay and no valid explanation offered by the applicant for the delay. Furthermore, the tribunal record revealed that the appellant gave no valid and clear explanation to show that he was not negligent. In that respect I shake hands with Ms. Pilly Hussein, learned counsel for the respondent that the trial tribunal was very right in holding that the applicant failed to demonstrate sufficient cause warranting the grant of the application. The 1st ground is therefore devoid of merit hence dismissed.

As regards the 2nd ground, I have gone through the record of the Ward tribunal, and found that the matter was not at mediation stage. The same was heard on merit. The 2nd ground therefore fails.

Coming to the third ground, as correctly submitted by Ms. Pilly Hussein, illegality of the decision sought to be challenged constitutes sufficient reason for extension of time since it is settled that illegality which is apparent on the face of the record is in itself sufficient ground for extension of time. That way, the court will be in a position to take the proper recourse and correct the record if illegality is proved. The Court of Appeal in the case of The **Principal Secretary, Ministry of Defence**

and National Service versus Devram Valambia [1992]TLR 182
addressing the question of illegality had this to say;

"In our view, when the point at issue is one of 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 be established, to take appropriate measures to put the matter and the record right"

In the case at hand, the issue of illegality did not feature neither in the founding affidavit in support of the application filed before the DLHT nor in the written submissions. In other words, it was not among grounds for extension of time raised by the applicant for consideration by the DLHT.

The issue is whether the same can be entertained at this stage?. Since the alleged illegality is based on jurisdiction, and that this is the first appellate court as far as this matter is concerned, the court has the right to entertain it. However, it must be noted that, a claim of illegality can only be entertained if it meets certain conditions; **one**, if the illegality is apparent on the face of record, **two**, if is of sufficient importance, **three**, if its determination shall not involve a long-drawn process of argument. See the case of **Lyamuya Construction** (Supra).

During the hearing of this appeal, the illegality stated by the appellant's counsel centers on pecuniary jurisdiction; that the Kamachumu did not state that it had pecuniary jurisdiction to entertain the matter. There is no doubt that as per section 15 of the Land Disputes Courts Act, Cap 216 R: E 2019, pecuniary jurisdiction of the Ward Tribunal in all proceedings of civil

nature relating to land is TZS three Million (3,000,000/=). Where the value exceeds three Million, the matter falls outside the purview of the Ward Tribunal.

It is also trite law that the question of jurisdiction is fundamental as it goes to the very root of the authority of the court to adjudicate upon cases of different natures. The court therefore as a matter of practice must ascertain and be assured of its jurisdictional position at the commencement of the trial. In other words, the jurisdiction of the tribunal or court must be apparent on the face of record. **See the case of Fanuel Mantiri Ng'uda versus Herman Mantiri Ng'uda and 2 Others** [1995] TLR 155 (CAT)

What happens if the issue of pecuniary jurisdiction was not raised in the Ward tribunal and/or was not made one of the grounds for the extension of time but raised at the appeal stage. I sought guidance from the case of **Maigu. E. M Magenda versus Arobogast Maugo Magenda**, Civil Appeal No. 2018 of 2017 where the court of Appeal held that;

"We all the same agree with the learned second appellate Judge's statement of law and findings on the application of section 15 of the Land Disputes Courts Act, Cap 126 to this dispute, to the effect that pecuniary jurisdiction was not an issue at the Ward Tribunal and should not be raised as point of law"

In the case at hand the issue of pecuniary jurisdiction was not raised in the Ward Tribunal or in the DLHT, but raised at appeal stage. Apart from the question of pecuniary jurisdiction, there is no any other illegality apparent on the face of record, and of sufficient importance, whose determination

shall not involve a long-drawn process of argument, illegality as a ground for extension of time. Now being guided by the herein above Court of Appeal decision, the 3rd ground of appeal is also found devoid of merit hence dismissed.

In the upshot of the above, this court is certain that this appeal was filed without any scintilla of merit, and I proceed to dismiss it. Each party to bear its own costs.

Order accordingly.

Dated at Bukoba this 7th day of October, 2021.




E. L. NGIGWANA

JUDGE

07/10 2021

Judgment delivered this 7th day of October, 2021 in the presence of Mr. Derick Zephurine, learned Counsel for the Appellant, also holding brief for Ms. Pilly Ally, learned counsel for the respondent, E. M. Kamaleki, Judges' Law Assistant and Gosbert Rugaika-B/C. Right of second Appeal fully explained.




E. L. NGIGWANA

JUDGE

07/10/2021

