

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND APPEAL No. 12 OF 2021**

**KAEMILI SEDIAI..... APPELLANT**

**VERSUS**

**ROBISON SEDIAI..... RESPONDENT**

**JUDGMENT**

11<sup>th</sup> July & 19<sup>th</sup> August, 2022

**TIGANGA, J.**

This appeal originated from the application for extension of time to file an appeal out of time before the District and Housing Tribunal for Ngorongoro, herein to be referred to as DLHT.

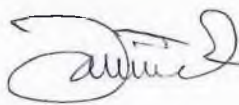
Grounds which were filed in that application were the following; **first**, that the honourable tribunal be pleased to grant an order for extension of time to file an appeal out of time. **Second**, that the tribunal be pleased to find the record and the judgment of Samunge Ward Tribunal and see illegality apparent on the face of record and grant an order for extension of time to file the appeal out of time. **Third**, that any other relief(s) and order(s) the tribunal deems fit and equitable to grant.



Upon hearing the application on merit, the DLHT found no good cause for extension of time to file the appeal out of time. The application was dismissed with no order as to costs. The appellant was aggrieved by the decision of the DLHT and thus, preferred this appeal. The appeal is hinged on four grounds to wit:

1. That, the land tribunal erred in law for denying the appellant a right to be heard by way of written submission regarding his application.
2. That, the land tribunal erred in law for not considering illegality on the point of law raised by the appellant.
3. That, the land tribunal erred in law for not considering appellant's application.
4. That, the land tribunal erred in law for denying appellants constitution right of representation.

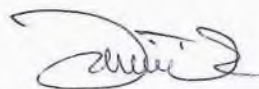
This appeal was argued by way of written submission upon the leave of this Court. Mr. Mohamed N. Mhinda, learned Advocate represented the appellant whereas the respondent appeared in person, unrepresented.

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However, before venturing into the analysis of the appeal and its merit, I am enjoined to albeit briefly, introduce in this judgment the antecedent of the rival.

The respondent filed an application claiming ownership of land before Samunge ward tribunal in the District of Ngorongoro against the appellant. He claimed to have been inherited the said land since 1982 from his father, now the deceased. The said land was alleged to have been trespassed by the appellant. Upon hearing the matter on merit, on 6<sup>th</sup> March, 2018, the Ward Tribunal delivered its decision in favour of the respondent Robinson Sedyai. On 10<sup>th</sup> August, 2020 the appellant lodged his application before the DLHT seeking for enlargement of time to appeal out of time. The application was dismissed.

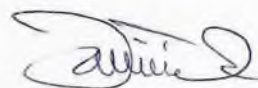
In his submission, Mhinda Mr. jointly argued all four grounds of appeal. He said, the appellant was denied the right of making written submission which is equal to denying him the right to be heard and the right to representation. To fortify his argument, he cited Article 13(6)(a) of the constitution of the United Republic of Tanzania, 1977 amended from time to time. Also, he cited Section 46 of the Land Disputes Courts Act, [Cap. 216 R.E 2019] which allows the party to have an Advocate. Strengthening the submission also the cases of **ARCOPAR (O.M)**



**versus Harbert Marwa and Family Investment Co. Ltd and Three Others**, Civil Application No. 94 of 2013, **Mbeya-Rukwa Auto parts and Transport Ltd versus Jestina George Mwakyoma** (2003)

TLR 251 were referred to. That right to be heard and representation are the principles of natural justice enshrined in our Constitution.

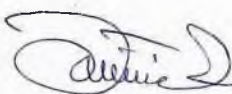
On the ground of illegality, Mr. Mhinda argued that, the ward tribunal heard the application with one woman as an accessor contrary to Section 11 of the Land Disputes Courts Act, [Cap. 216 R.E 2019]. That, this provision requires for the quorum to be complete, to have at least three women out of the men making the quorum. Also, he went on submitting that, the ward tribunal entertained the matter without having pecuniary jurisdiction as the land in dispute its value was above three million which is the jurisdiction of the ward tribunal. The learned advocate went on contending that, so long as the proceedings of the Ward Tribunal show that, the family of the deceased testified that the land was given to the three wives of the deceased Sedyai Kabaske Busen it is obvious that, the respondent had no *locus standi* to prosecute the matter because the land does not belong to him. Therefore, he considered all those three grounds to be illegality on points of law justifying extension of time for filing appeal.



In his reply submission, the respondent disputed all grounds of appeal raised by the appellant. He said, the appellant appeared in tribunal and he was given an opportunity of being heard and therefore, he cannot be heard claiming of being denied the right to be heard. That he appeared in person. The Advocate failing to appear in the tribunal for the reason of rainfall and off road is not strong one to justify the appeal being allowed because Advocates cannot conduct in the manner, they deem fit themselves, the respondent argued.

On the point of illegality, the respondent contended that, extension of time is exclusively within the discretion of the tribunal to grant or otherwise. That, the application is grantable upon adducing sufficient and good cause. To buttress his contention, he cited section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019]. Moreover, the case of **Zitto Zuberi Kabwe and 2 Others versus Attorney General**, Civil Application No. 365/01/2019.

On the issue of illegality, the respondent submitted that, looking at the record of the ward tribunal it is apparent that, the quorum was properly constituted when it was making its decision. Therefore, he asked this court to disregard the raised illegality as the reason for

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extension of time for appealing. He also distinguished all the cases cited by Mr. Mhinda.

In rejoinder, Mhinda reiterated his position in submission in chief without more colours.

I have considered the rival submissions of both parties. The issues to be determined is whether this appeal is meritorious.

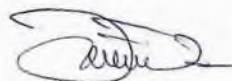
In fact, the raised ground of a right to be heard and a right of representation suffers no convincing argument. I so hold because, passing through the record of the DLHT is very sounding that, the appellant was heard orally. At page 3 of unnumbered typed proceedings of the DLHT there appears the submission of the appellant. How then comes that; he complains of being denied the right to be heard? It is a fallacy real not being able cherished. Also, I have scanned the record of the DLHT, I neither see any colour of right under which the appellant prayed the matter to be heard by way of written submission nor requested for being represented by an Advocate and denied that right.

The appellant was duty bound to substantiate such allegations in accordance with Section 110 and 112 of the Evidence Act, [Cap 6 R.E 2022]. Failure to prove the same also makes this ground vexatious and

frivolous. Therefore, basing on such analysis the two grounds (1 and 4) suffer dismissal, as I hereby do.

On the issue of illegality (ground 2), reading the ruling of the DLHT there is nowhere it was determined by the chairperson. Of course, reading the proceeding and submission of the appellant in the DLHT, the appellant did not say anything in regard of it at the time when he was submitting. However, the ground was raised in the affidavit filed in the DLHT and its chamber summons. In my view, the chairman was required to determine the raised ground even though the appellant did not argue about it. failure to argue it does not mean that it was abandoned. I am at that conviction because affidavits are pleading in applications and therefore, need be acted upon in determining the issues. See the case of **MPS Oil Tanzania Limited and Two Others versus City Bank Tanzania Limited**, Miscellaneous Application 248 of 2014.

In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) are:



*"(a) The applicant must account for all the period for delay;*

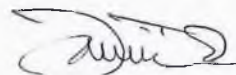
*(b) The delay should not be Inordinate;*

*(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*

*(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged". (Emphasis supplied)*

This case among other things considers the illegality of the decision sought to be challenged as a good cause for extension of time. Not only that, but also in the case of **Sabena Technics Dar Limited versus Michael J. Luwunzu**, Civil application No. 451/18 of 2020 the Court of Appeal of Tanzania on the issue of illegality had the following to say:

*"Admittedly, the law is settled in this jurisdiction that, illegality of the impugned decision is good cause and*



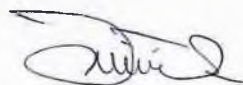


*may be used to extend time under rule 10 of the Rules. However, we wish to underline that the impugned illegality is that of the decision sought to be challenged”.*

The appellant is alleging that, the decision of the ward tribunal intended to be challenged in the DLHT has some illegalities among them improper constitution of the ward tribunal which delivered the decision. Without going to the merit of the appeal of the decision sought to be challenged, I think this ground has merit. I believe so because, the law is very apparent that, in order for the ward tribunal to be properly constituted women sitting at the same time as accessors must not be less than three. However, the issue as to whether the quorum was properly met or otherwise is the one to be determined by the DLHT but at this time it is enough to hold that there is a point of illegality to be determined as it is apparently seen on record of the ward tribunal.

In the case of **TanESCO vs Mufungo Leonard Majura and 15 Others**, Civil Application No 94 of 2016, (Unreported), where it was stated:

*“Notwithstanding the fact that, the applicant in the instant application has failed to sufficiently account for*

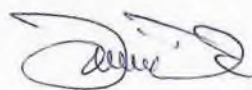


*the delay in lodging the application, the fact that, there is a complaint of illegality in the decision intended to be impugned suffices to move the Court to grant extension of times so that, the alleged illegality can be addressed by the Court”.*

Thus, despite the fact that, the appellant has failed to account for almost two years’ days of delay for filing his appeal, the moment that the complaint of illegality which is also apparent on the face of record is envisaged, it is a sufficient cause to extend time so that the appeal be filed in order to the appellate body address the lamented illegality thereat.

On the remaining alleged illegalities which are *locus standi* and pecuniary jurisdiction in my view, are not apparent on the face of record. They need a long-drawn inference in order to sufficiently proof that they are points of law and therefore, illegalities. The points which need further evidence to substantiate their existence, do not qualify to be good cause for extension of time.

For the foregoing, this appeal is allowed to the extent explained. The proceedings, decision and orders of the DLHT for Ngorongoro are hereby quashed and set aside. The time for filing appeal is hereby




enlarged. The appeal must be filed within thirty days (30) from the date of this judgment.

It is accordingly ordered.

**DATED** at **ARUSHA**, this 19<sup>th</sup> day of August, 2022.



  
**J. C. TIGANGA**  
**JUDGE**