

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**LAND CASE APPEAL NO. 17 OF 2022**

*(Originating from the District Land and Housing Tribunal for Mbeya in in land  
Application No. 167 of 2021.)*

**ABRAHAM MWANGOJE .....APPELLANT**

**VERSUS**

**ERICK MWALWANDA .....RESPONDENT**

**JUDGMENT**

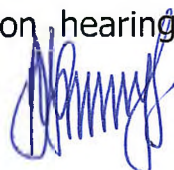
*Date of last order: 13<sup>th</sup> September, 2022*

*Date of judgment: 29<sup>th</sup> September, 2022*

**NGUNYALE, J.**

This appeal arises from the ruling of the District Land and Housing Tribunal for Mbeya in Land Application No. 167 of 2021 following its refusal to grant the appellant an extension of time within which to file the appeal against the decision of the ward tribunal of Itigi.

Briefly, the factual background in this appeal as discerned in the record is that Erick Mwalwanda, the respondent sued the appellant in the ward tribunal of Itigi on 1/12/2020. Upon hearing the parties, the ward



tribunal decided in favour of the respondent. Then the respondent filed execution proceedings in the District Land and Housing Tribunal for Mbeya via application for execution No. 457 of 2021, the appellant unsuccessfully objected the execution. The appellant then filed application for extension of time via Miscellaneous Application No. 167 of 2021 which was also unsuccessful. This time, the decision aggrieved the appellant who then filed the instant appeal consisting five grounds of appeal which no recital is needed here.

When the appeal was placed for hearing, Mr. Osia Adam learned advocate appeared for the appellant whereas the respondent was unrepresented. The disposal of the appeal took the form of written submission.

In his submission Mr. Osia submitted that the ward tribunal decision had illegalities as it was only the respondent who was heard in the ward tribunal. He added that the tribunal had no pecuniary jurisdiction as the estimated value of the suit house was far beyond its jurisdiction. He referred to section 15 of the Ward Tribunal Act which set the pecuniary jurisdiction of the ward tribunal to be Tsh. 3,000,000/=.

He continued to submit that although the respondent claimed to be the administrator of the estates of his late brother there was no proof that



he was so appointed. He cited the case of **The Principal Secretary, Ministry of Defence and National Service vs Duram P. Valambhia** [1992] TLR 387 in which the court stated where the point of law at issue is the illegality or otherwise of the decision being challenged the point of law is of sufficient importance to constitute a sufficient reason.

The other reason for extension of time was sickness of the appellant, it was submitted that in the affidavit the appellant had demonstrated that he was sick and proved through medical report which was annexed. He cited the case of **Emmanuel R. Maira vs The District Executive of Bunda**, Civil Application No. 66 of 2010 in which it was held that health matters in most cases are not choice of human being cannot be shelved and or can anyone be held blame when they strike. He added that the appellant had eye problem and attended at the Ilembula Hospital. He concluded by submitting that the dispute should be heard in merits because the appellant was not heard.

In reply the respondent opposed the appellants stance, on issue of lack of pecuniary jurisdiction the respondent submitted that it is not clear how the appellant valued the suit land and came up with the argument.



On *locus standi* he submitted that on 29/10/2007 he was legally appointed the administrator of the estates of his brother and produced letter of administration to that effect, of which, the tribunal acted upon to satisfy itself.

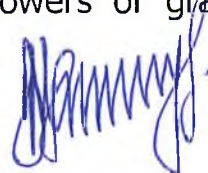
Regarding the sickness of the appellant, the respondent submitted that the appellant did not provide sufficient evidence that he felt sick. He cited the case of **Twiga Chemical Industries vs Bamusedde** [2005] 2 EA 325 and **Remco Ltd vs Mintry Jadva Parbat and Co. Ltd & others** [2002] 1 EA 233 in support of the argument. He added that the appellant was served but neglected to appear before the ward tribunal.

During rejoinder Mr. Osia had restated what had been submitted in submission in chief filed on 12/8/2022. To that extent I see no need to summarise it here again.

Having heard the rival arguments from both parties, the issues for determination by this court are;

- i. *Whether illegality was fully established to enable the tribunal to exercise its discretion to extend time as prayed by the appellant;*
- ii. *Whether the appellant proved that he was prevented by sickness to lodge the appeal within time.*

I will start with the exposition of powers of the court in extending time, courts have a wide discretionary powers of granting or denying an



extension of time when sought. However, for the said decision to stand, the discretionary powers must be exercised judiciously, reasonably, and based on sound legal principles and not arbitrarily. It is also a settled principle that an appellate court would not interfere with the discretionary powers of the lower court in that aspect unless the discretion exercised is in contravention of the above stated principles and that the contravention resulted into miscarriage of justice. See the case of **Metro Petroleum Tanzania Limited & 3 Others vs United Bank of Africa**, Civil Appeal No. 147 of 2019, CAT at Dar es Salaam(Unreported).

The court will be guided with the above principles in this appeal. Starting with the first issue of illegality. I am mindful of the settled law that where the point of law at issue is illegality or otherwise of the decision being challenged, that by itself constitutes sufficient cause. See the case of **Principal Secretary Ministry of Defence and National Service v. Devram P. Valambhia** [1992] TLR 387. However, in the case of **Tanzania Harbours Authority v. Mohamed R. Mohamed** [2003] TLR 76, the court emphasized that time will not be extended in every situation whenever illegality is alleged as an issue by the



applicant. It all depends on the circumstances of each case and the material placed before the court.

In the tribunal and in this court the appellant raised the issue of jurisdiction of the tribunal, the issue of *locus standi* of the respondent who claimed to be administrator but no letters of administration were produced, failure to join the seller and failure to hear the respondent. Regarding pecuniary jurisdiction of the ward tribunal, I acknowledge the principle that the question of jurisdiction of a court of law is so fundamental and that it can be raised at any time including at an appellate level. Any trial of a proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged a nullity on appeal or revision. See the case of **Rev. Frank Mushi vs The Registered Trustees of Evangelistic Assemblies of God Tanzania**, Civil Appeal No. 134 of 2017 and **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017 (both unreported)

In this appeal the appellant complain that the suit land was above three million as such the ward tribunal lacked the requisite pecuniary jurisdiction. In rebuttal it was submitted that there is no evidence to prove the value of the suit land.

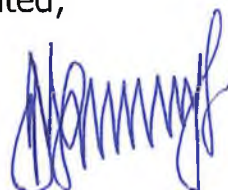


Having considered the argument, considering the circumstance of this case the jurisdictional issue raised could not be determined without evidence on the value of the subject matter. The contention by the appellant that the value of the property was Tsh. 3,000,000/= is unsubstantiated because the appellant who alleged so could not produce evidence to that effect. It has to be noted that in the ward tribunal there was no exchange of pleadings in which the value of the subject matter could have been stated. Therefore, inferring that the suit land was valued above Tsh. 3,000,000/= is speculative on which the court cannot act upon. In the case of **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017 (Unreported) the court stated;

*'We are of the view that the jurisdictional issue raised could not be determined without evidence on the value of the subject matter.'*

From the above, the complaint is unsubstantiated, and therefore the ward tribunal had pecuniary jurisdiction to try the dispute.

Regarding failure to produce letter of administration by the respondent and serve summons to the respondent. In the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 the court stated;





*'Since every party intending to appeal seeks to challenge a decision either on points of law or fact, it cannot, in my view be said in **Valambhia's case**, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should of right, be granted extension of time if he applies for one. The Court emphasized that such point of law, must be that of "sufficient importance" and **I would add it must also be apparent on the face of the record such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process.**' Emphasize added.*

Guided by the above position, the question whether the respondent was served with summons or not that the appellant was not heard and that the respondent claimed to be the administrator of estate of his late brother without letter of administration are matters which are not on the face of the impugned decision of the ward tribunal. It need evidence to establish it and long drawn argument for the same to be established. From that moment then, it ceases to be an illegality on face of record. Therefore, the first issue is answered in affirmative that the appellant failed to demonstrate illegality on the decision of the ward tribunal.

On the second issue of sickness, I subscribe to the principle stated in the case of **Emmanuel R. Maira(supra)** cited by the appellant that health matters, in most cases, are not the choice of a human being, cannot be shelved and nor can anyone be held to blame when they strike. See also the case of **Finca Tanzania Limited vs Hassan Lolila**, Civil





Application No. 165/18 of 2021 (Unreported). The question remains whether the appellant proved that he was sick for almost two years. In the affidavit under para 4 of the affidavit he alleged that *Kwamba kwa muda mrefu nimekuwa nikisumbuliwa na maradhi na kulazwa kutokana na presha na matatizo ya moyo yanayotokana na umri wangu mkubwa. Naambatanisha nakala za vyeti vya matibabu kama sehemu ya kiapo.* Simply translated that for long time I have been suffering from deceases and hospitalized because of pressure and heart problems due to my old age. I attach certificates of treatment as part of my affidavit.

Then the tribunal in its ruling held that;

*'Hakuna ubishi kuwa suala la ugonjwa in jambo lambalo liko nje ya uwezo binafsi wa binadamu. Hata hivyo kama mtu ni mgonjwa au alikuwa mgonjwa ni lazima athibitishe hilo kwa ushahidi Madhubuti kutoka kwa daktari aliyemhudhumia. Kama mhusika hana uhahidi huo na au hakwenda hosipitali baraza au mahakama haiwezi kukubali maneno matupu kama alivyosema mleta maombi.'*

Which is literally translated as

*'There is no dispute that sickness is a matter beyond the control of human being. However, if sick person or he was sick must prove that with concrete evidence from the doctor who attended him. If that person has no such evidence and/or did not go to hospital the tribunal or court cannot accept empty words as stated by the applicant.'*



In his submission Mr. Osia submitted that the appellant narrated in his affidavit that he was sick and proved through medical report but the chairman did not consider it. In reply the respondent submitted that there was no sufficient evidence to prove that the appellant was indeed sick.

On part of this court, it is clear that for sickness to be accepted as a reason for failure to do certain act within time, the applicant has to demonstrate in clear terms showing the time spent in treatment and provide documentary proof thereof if any. The affidavit must be so elaborate indicating whether the patient was the out-patient or otherwise. In this appeal the affidavit of the appellant fell short of what the appellant wanted the tribunal and this court to believe. It was not stated as to when the appellant felt sick and whether he was in or out-patient. The attached sick chit is too scant as it does not show when the appellant was attended by the stated hospital. It does not even state the disease the appellant was treated and the date. Taking that the appellant took almost two years to file application for extension of time in the tribunal, the chits relied by the appellant is silent on when he attended treatment and for how long. For instance, the appellant spent considerable time in opposing execution proceedings which to my vie



was in wrong way, such time without mincing words could have utilized in pursuing application for time extension. Although the court sympathize with the appellant for the decease he suffers but for purpose of extending time it was too general to the extent that no tribunal or court of law could have acted upon it and extended time to file the appeal.

In the upshot, from what I have discussed above, I find the appeal unmeritorious. Consequently, it is dismissed with costs.

DATED at MBEYA this 29<sup>th</sup> day of September, 2022



  
**D.P. NGUNYALE**  
**JUDGE**