

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

LAND CASE APPEAL NO. 07 OF 2023

*(Arising from Misc. Land Application No. 80 of 2019 originated from Land Application
No. 36 of 2019 in the District Land and Housing Tribunal for Nzega)*

**MILAJI BAKARI HAMIS APPELLANT
VERSUS**

- 1. NMB PLC 1ST RESPONDENT**
2. DOLPHIN GENERAL BUSINESS ENT. CO. LTD 2ND RESPONDENT

RULING

*Date of Last Order: 21.11.2023
Date of Ruling: 28.02.2024*

KADILU, J.

This is a ruling in respect of a Preliminary Objection raised by the respondents' Advocate against the appeal filed by the appellant in this court. The appellant is challenging the decision of the District Land and Housing (DLHT) for Nzega allegedly because:

- 1. The Hon. Chairman erred in law and fact for dismissing Misc. Land Application No. 36 of 2019 without considering the notice presented by the appellant on his absence when the case was called on for hearing which led to the tribunal's wrong interpretation of Regulation 13 (2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003.*
- 2. The Hon. Chairman erred in law and fact for ruling against the appellant with biases which amounted to disregard of the principle of fair hearing.*

A brief background of the matter is that in 2019, the appellant filed Land Application No. 36 of 2019 in the DLHT for Nzega against the respondents herein. The application was dismissed for non-appearance of the appellant. He was dissatisfied with the decision of the DLHT that dismissed his application. He filed Misc. Land Application No. 80 of 2019 in the same tribunal requesting it to set aside its ex parte order in Misc. Land Application No. 36 of 2019. The application was dismissed with costs for lack of merit. Though he was aggrieved, the appellant did not appeal immediately against that decision to the High Court. He filed Misc. Land Application No. 17 of 2020 requesting for extension of time to file leave to appeal to the High Court. The application was dismissed for want of prosecution.

Still desirous to pursue his right, the appellant filed to the High Court Misc. Land Application No. 13 of 2021 for re-admission of the dismissed application, Misc. Land Application No. 17 of 2020. After hearing both sides, the presiding Judge found the application misconceived in law hence, he dismissed it. The honourable Judge directed the appellant to file a proper application within 30 days from 03/03/2023. The appellant interpreted the court's direction as granting him an extension of time to appeal against the ex parte decision of the DLHT in Land Application No. 36 of 2019. He thus filed the instant appeal before this court on two grounds reproduced above.

Representing the respondents, Mr. Dalati Mwantembe, the learned Advocate raised a preliminary objection (P.O.) on the point of law that the appeal is hopelessly time-barred. Through the legal representation of

Advocate Mwigamba Sosthenes, the appellant resisted the objection and stated that the appeal was well within time. The P.O. was disposed of by way of written submissions. Advocate George Mwaisondola filed a written submission arguing the P.O. on behalf of the respondents. He submitted that the decision of the DLHT that is being challenged was delivered on 26/02/2020. For that reason, Mr. George explained that the appeal was supposed to be filed within 45 days from the date of the decision as per Section 41 (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019].

The learned Advocate added that the appellant had filed several applications in respect of this matter but he had never been granted an extension of time to file the instant appeal. He elaborated that the appellant's last application was dismissed by Hon. Amour, H.K. J, remarking that the appellant was at liberty to file a proper application within 30 days. According to Mr. George, the said remark cannot be construed to mean a grant of an extension of time to file an appeal because in that application the appellant did not apply for an extension of time to file an appeal but rather, an application for extension of time to file leave to appeal. According to Mr. George, the court could not give an order that it was not moved to grant. He urged this court to dismiss the appeal with costs.

In resisting the P.O., Mr. Mwigamba submitted that the order made by the Hon. Amour, H.K. J. permitted the appellant to file a memorandum of appeal within 30 days. He explained that the order was delivered on 03/03/2023 and the present appeal was filed on 28/03/2023 hence, it is

within time. The learned Counsel argued that if the respondents were aggrieved with the order of the High Court, they were supposed to appeal to the Court of Appeal not venturing through a preliminary objection which is misconceived in law. He implored this court to dismiss the P.O. with costs for being bad in law and calculated to delay the appellant's right of appeal.

I have keenly considered the parties' rival submissions. The issue for determination in this P.O. is whether the appeal is time-barred and whether the court's order of 03/03/2023 granted the appellant an extension of time to file an appeal. My learned brother Amour, H.K. J, (as he then was) after having assessed carefully the application before him, found that granting the application for an extension of time to file leave to appeal would be a futile exercise because the dismissed application itself was misconceived in law. He was of the settled mind that granting the application would mean the re-admission of the misconceived application.

He held that view because, in terms of Section 38 (1) and Section 41 (1) of the Land Disputes Courts Act, no leave is required for the aggrieved party to appeal from the DLHT to the High Court. None of the above provisions requires leave of the High Court to appeal against the decision of the DLHT regardless of whether the tribunal was exercising original or appellate jurisdiction. In his ruling, Hon. Amour, H.K. J observed as follows:

"From the outset, I should point out that Misc. Land Case Application No. 17 of 2020 was not an appeal but an application for an extension of time within which to make an application for

leave to appeal out of time to the High Court against the decision of the District Land and Housing Tribunal for Nzega in Misc. Land Application No. 80 of 2019."

He then proceeded to dismiss the application and make a direction as already shown. The relevant part of the court's order reads as follows:

*"In such circumstances, it will be a futile exercise to grant this application whose effect is to re-admit a misconceived application. The application is therefore dismissed with no order for costs. The applicant is at liberty **to file a proper application within thirty (30) days** from the date of delivery of this ruling."*

My construction of the above-quoted direction of the court is that the appellant was free to file an appropriate application which, based on the facts of this case, was an application for an extension of time to appeal to the High Court. Since the dismissed application was for an extension of time to file leave which was ultimately found to be unnecessary, the appellant was free to file his appeal subject to the limitation period. Because the decision sought to be challenged was pronounced by the DLHT on 26/02/2020 and the appeal was required to be brought within 45 days, on 03/03/2023 when Hon. Amour, H.K. J, made the quoted remarks, the appellant was already late for about 3 years to file an appeal to the High Court.

As such, he needed an extension of time to appeal to the High Court to challenge the tribunal's refusal to set aside its earlier dismissal order. To


the contrary, the appellant filed the present appeal directly to this court while there is nothing on record suggesting that he had ever sought and obtained the extension of time. For that reason, I am inclined to agree with the Advocate for the respondents that the present appeal is hopelessly time-barred. Thus, I uphold the P.O. raised by Counsel for the respondents. The appellant's appeal which was instituted out of time without leave of the court, deserves to be dismissed as I hereby do in terms of Section 3 (1) of the Law of Limitation Act, [Cap. 89 R.E. 2019]. Costs of this appeal shall be borne by the appellant.

Order accordingly.


KADILU, M.J.
JUDGE
28/02/2024.

Ruling delivered in chamber on the 28th Day of February, 2024 in the presence of Ms. Flavia Francis (Advocate), holding brief for Mr. George Mwaisondola, Advocate for the Respondents.




KADILU, M.J.,
JUDGE
28/02/2024.