

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO.107 OF 2020

*(From the Decision of the District Land and Housing Tribunal of Kinondoni District at
Mwananyamala in Misc. Land Application No.444 of 2020)*

TUMSIFU NDESHAOAPPELLANT

VERSUS

LUCY MSANGI.....1ST RESPONDENT

ALLY KWENDO.....2ND RESPONDENT

JUDGMENT

OPIYO, J:

In this appeal, the appellant, Tumsifu Ndeshao is seeking to overturn the decision of the District Land and Housing Tribunal for Kinondoni, here in referred as the trial tribunal based on the following grounds; -

1. That, the learned trial Chairman wrongly dismissed the application for extension of time without considering the issue of illegality on the face of record.
2. That, the application for extension of time was wrongly dismissed on account of failure to show sound and sufficient cause.
3. The learned trial Chairman wrongly concluded that the applicant was negligent in pursuing his right of appeal.

The background of the case briefly is that, the appellant sued the respondents over a land located at Upendo street at Saranga area. The dispute was before Saranga Ward Tribunal whose decision was in favour of the respondents by creating new boundaries on the suit land. The

appellant did not prefer her appeal on time, therefore applied for extension of time at the District Land and Housing Tribunal for Kiriwondoni. His application was denied, hence the instant appeal.

This appeal was heard by written submissions, Advocate Thomas Mathias appeared for the appellant, while the respondents were represented by Advocate Symphorian Reveliani Kitare.

Mr. Mathias submitting for the appellant on the 1st and 2nd grounds together, maintained that, the allegation of illegality on the face of record in itself is a reason sufficient to allow an application for extension of time. He insisted that since the suit land is a surveyed land, it was wrong for the trial Ward tribunal to introduce new boundaries in its decision. He argued that, this is a clear error on the face of that decision and need to be worked upon since the Ward Tribunal is neither a land surveyor nor entrusted with or licensed to perform functions of land surveyors as per section 3, 4(1 and 8 of Land Survey Cap 324 R.E 2002 and section 8 of Ward Tribunal Act, Cap 206 of 2020. This is a clear illegality of the impugned decision of the Ward Tribunal sufficient to extend time for curing the same, he contends. He cited the case of **Principal Secretary Ministry of Defence and National Services versus Devram Valambia (1992) TLR No. 185**, also the case of **Juto Ally versus Lukas Komba & Another, Civil Application No. 487/17 of 2019 (unreported)**, where it was stated that:-

"I am of the settled opinion that although the applicant has not sufficiently accounted for the period of delay, the issue of alleged illegality of the decision to be impugned suffices to move me to grant her extension of time"

He also cited the cases of **Zito Zuberi Kabwe & Two other versus Hon Attorney General, Civil Applicant No. 365 of 2001 (unreported)** and **Mary Rwabisi t/a Amuga Enterprises versus National Microfinance Pic, Civil Application No. 378/01 of 2019** to support his contention.

On the 3rd ground, it was argued that, the appellant by being a lay person was not aware of the procedures for filling application for extension of time. He was advised to seek an assistance from the Advocate and heeded to the said advise. This shows how the appellant was serious with the matter and not negligent. He referred the court to the case of **Tropical Air (Tz) Ltd versus Godson Eliona Moshi, Civil Application No. 9 of 2017** and **Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil application No. 2 of 2010 (unreported)**.

In reply, Mr. Kitare argued on the 1st and 2nd grounds of appeal that, the submissions by the appellant's counsel are baseless. The decision of the Ward tribunal is not impaired by any illegality and the same was done correctly.

On the 3rd ground it was submitted that, the appellant failed to provide sufficient reasons for his application hence the trial tribunal dismissed the same for lack of merits. Hence, the cases of cases of **Tropical Air (Tz) Ltd and Lyamuya Construction Company Ltd (supra)** are not in favour of the appellant as he failed to abide by the rules stated therein. He therefore advocated for dismissal of the appeal with cost.

In a brief rejoinder, Mr. Mathias insisted that, the issue before the District Tribunal for Kinondoni was an application for extension of time for reasons

that the Ward tribunal had acted *Ultra Vires* in deciding the case between the appellant and the respondents. This is a pure point of law that requires determination of the District Land and housing tribunal for Kinondoni, hence the necessity for extending time for appeal, he contends.

I had a vigilant reflection on the submissions by both parties. I have also painstakingly gone through the records at hand relating to this appeal. In disposal of the same, I consolidate all the three grounds of appeal and discuss them together. This is due to the fact that, all of them have focused on showing this court that the District land and Housing was wrong to deny the appellant's application for extension of time while the said appellant had provided sufficient causes for the same to be allowed. According to the appellant's counsel, in his submissions in the instant appeal, he insisted that, the appellant brought to the attention of the District Land and Housing Tribunal that, the decision of the Ward tribunal was tainted by illegality as it acted *Ultra Vires*. This was the main reason advanced by the appellant when seeking to extend time for her appeal to be lodged out of time. The appellant pointed out that, the said illegality he put forward is the act of the trial court placing new boundaries between the parties' pieces of land while the same is in the surveyed area.

Other reasons included his ignorance of the procedures as to where to go after the decision was delivered, until when she was advised by the tribunal clerk to seek for assistance from an advocate, of which she did, resulting to the application for extension that was rejected.

From the perusal of the records, I noted the appellants concern that the decision of the trial tribunal indeed did set new boundaries in the disputed land. Also, that the disputed property is a surveyed land. He contends that

is illegality on the face of records requiring consideration by the higher court. The desired consideration could not be achieved because the action to rectify the same was already time barred, needing extension of time to file out of time. In line to what was decided in the case of **Tropical Air (Tz) Ltd case (supra)**, the contention that there is a point of law involved in the decision sought to be impugned on appeal, need not be established in the application for extension of time. It only suffices for the applicant to indicate such a contention in the intended grounds of appeal, the duty to determine the alleged illegality lies with the court in the course of considering the appeal.

Based on the above view of the Court of Appeal, the District land and Housing Tribunal for Kinondoni was not supposed to dismiss the appellant's application as the contention of illegality apparent on the face of the impugned decision was put before it without a word on it. Since it has been held that illegality contention is in itself sufficient to extend the time, it is prudent to give it a thorough consideration. The appellant had insisted before the District Land and Housing tribunal very clearly through pointing out the said illegality and arguing on the same. It clear by so doing the appellant complied by the rules stated in **Tropical Air (Tz) Ltd case (supra)**. It was therefore, a wrong to turn a blind eye on the same by the District Land and Housing tribunal for Kinondoni in determining the application before it. Having so said, I find all three grounds of appeal to have merit and they are hereby allowed.

In the event, I quash the decision and orders of the District Land and Housing Tribunal for Kinondoni in respect of the Misc. Application no. 444

of 2019. Appellant is given 30 days to file the intended appeal. No order as to costs



M.P. OPIYO,

JUDGE

21/4/2020