

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND APPEAL NO. 54 OF 2022**

(Arising from Kibaha District Land and Housing Tribunal in Misc. Land Appeal No.99 of 2021;
Originating from Pera Ward Tribunal in Land Case No. 91 of 2018)

JUMA RAMADHANI.....APPELLANT

VERSUS

RASHID RAJABU.....RESPONDENT

Date of Last Order: 28.11.2022
Date of Judgment: 14.12.2022

JUDGMENT

V.L. MAKANI, J.

The appellant JUMA RAMADHANI has filed this appeal against the decision of Kibaha District Land and Housing Tribunal (the **District Tribunal**) in Misc. Land Application No. 99 of 2018. The application at the District Tribunal was for extension of time within which the appellant could file an appeal against the decision of Pera Ward Tribunal (the **Ward Tribunal**). The application for extension of time was dismissed by the District Tribunal hence this appeal.

The grounds of appeal by the appellant are as follows:

- 1. That the first appellate court misdirected itself for holding that the appellant herein had not adduced sufficient reasons for extension of time while there was strong and sufficient reasons supplied by the appellant herein that the trial tribunal proceedings and judgment were tainted with serious illegalities and irregularities such as denial of right*

to be heard, the presence of actual bias (unfair trial), the matter was decided in contravention with mandatory requirements of the provision of section 13(2) of the Ward Tribunal Act, there were change of assessors during trial, the secretary assumed jurisdiction he didn't have no casting of votes, the trial never visited the locus in quor (sic!), the proceedings were defective, and the tribunal was improperly constituted etcetera.

- 2. That the first appellate court erred in law and in fact for failure to exercise its discretionary powers properly and failure to invoke use its revisionary powers suo motto so as to correct the gave illegalities committed by the trial Ward Tribunal.*
- 3. That the first appellate court misdirected itself for holding that it was the appellant herein who instituted the matter in trial Ward Tribunal while there is no evidence to certify that allegations.*
- 4. That the first appellate court misdirected itself for holding that the appellant herein was aware with the presence of Land Application No. 91 of 2018 and his affidavit professed that he is the one who instituted the matter in the trial Ward Tribunal while in fact there is no such a profession in the affidavit and the trial records does not clearly disclose if it was the appellant who instituted the case.*
- 5. That the learned Chairperson of the first appellate court grossly erred in law and in fact for denying the appellant with his constitutional right to be heard (Audi Alteram Partem) through appeal; hence contravening the principle of natural justice and the mandatory requirements of Article 13(6)(a) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time.*

The appellant is praying for the following orders:

- (a) That the appeal be allowed, thereby quashing and setting aside the ruling and orders of the first appellate court.*

(b) That this honourable court be pleased to invoke its supervisory and revisionary powers vested upon it by virtue of section 43(1)(2) of the Land Disputes Courts Act CAP 216 RE 2019 and proceed to revise and nullifying the proceedings and judgment of the first appellate court and the trial Ward Tribunal (Pera Ward Tribunal) with costs thereby order "trial denovo" before the competent tribunal/court and by another Chairperson.

(c) That costs of this appeal be borne by the respondent.

(d) Any other relief(s) this honourable court may deem fit and just to grant for the good end of justice.

With leave of the court the appeal was argued by way of written submissions. Mr. Loishiye Kisota, Advocate drew and filed submissions on behalf of the appellant. While the submissions by the respondent were drawn and filed by Mr. Iman Madega, Advocate.

In his submissions in chief, Mr. Kisota gave a brief background of the matter and argued the 1st and 5th grounds of appeal together. He said the first appellate court (the District Tribunal) misdirected itself for holding that the appellant herein has not adduced sufficient reasons for his delay while in reality the appellant adduced sufficient reasons including the fact that he was not a party to the suit and for not being aware of the existence of the suit at the Ward Tribunal. He said the signature of the appellant does not appear at the proceedings in the Ward Tribunal, so he never appeared in the said Tribunal. He said in the

absence of his signature the proceedings and decision of the Ward Tribunal are tainted with serious irregularities and illegalities and so the proceedings are null and void. He said the testimony was taken without taking oath or affirming. He relied on section 4 of the Oaths and Statutory Declarations Act CAP 34 RE 2019 and the case of **SNV Development Organisation Tanzania vs. Anne Fidelis, Civil Appeal No. 198 of 2019 (CAT)** (unreported). Mr. Kisota proceeded to point out another illegality that the matter proceeded ex-parte instead of dismissal for want of prosecution as per section 13(2) of the Ward Tribunals Act. He said illegalities constitute sufficient reasons for extension of time to allow the court to correct such irregularity. He cited several cases including **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia [1992] TLR 185, VIP Engineering & Marketing Limited & 2 Others vs. Citibank Tanzania Limited, Consolidated Civil Reference Nos. 67 and 8 of 2006 (CAT)** (unreported) and **Barclays Bank Tanzania Limited vs. Tanzania Pharmaceutical Industries & Others, Civil Application No. 62/16 of 2018 (CAT)**. He prayed for the grounds of appeal to be allowed.

Mr. Kisota also argued the 3rd and 4th grounds together. He said the District Tribunal misdirected itself in that he was aware of the matter at the Ward Tribunal while there was no such evidence to certify the allegation. He said there is no signature of the appellant at the Ward Tribunal and so the allegation that he was the one who instituted the matter at the said Tribunal is mere speculation and conjecture. He prayed for these grounds too to be allowed.

As for the 2nd ground Mr. Kisota said the District Tribunal failed to use its revisionary powers *suo motto* to correct the grave illegalities committed at the Ward Tribunal by the powers given to it under section 36(1)(2) of the Land Disputes Court Act. He said the District Tribunal instead of calling for and examining the records of the Ward Tribunal by invoking its revisionary powers it overlooked the errors, blessed and left them uncorrected, hence creating bad precedence. He said the District Tribunal abstained from exercising its powers properly. In conclusion Mr. Kisota prayed for the appeal to be allowed and the orders prayed for in the petition of appeal be granted.

Mr. Madega in reply submitted that the application at the District Tribunal was heard ex-parte to the advantage of the appellant because

the respondent herein failed to file written submissions as was ordered by the District Tribunal. The District Tribunal only looked at the counter affidavit. He said the appellant at the District Tribunal asked for extension of time to file an application for revision and the reason for the delay was that he was not in the knowledge of the existence of the application at the Ward Tribunal. He said the District Tribunal, however, discovered with evidence that the appellant was aware of the application in the Ward Tribunal hence the allegation was not true. He said instead of the appellant appealing against the contents of the appeal he has raised the issue of illegality to justify the appeal. He said this ground cannot be relied upon because that was not the ground for his application for extension of time. He emphasized that the appeal lacks merit, and the decision of the District Tribunal was proper and ought to stand. He prayed for the appeal to be dismissed with costs.

Mr. Kisoka in his rejoinder reiterated the submissions in chief and strongly emphasized that the issue of illegality was pleaded before the District Tribunal. He went further and reproduced the contents of the affidavit and submissions filed at the District Tribunal regarding illegality. He reiterated his prayers too for the appeal to be allowed.

Before addressing the grounds of appeal as submitted, I would wish to keep the records straight that this is not a second appeal and therefore the District Tribunal was not an appellate court. The appellant applied to the District Court for extension of time to file appeal, and this was refused therefore that was an application and not an appeal. In essence this is the first appeal by the applicant.

The grounds of appeal by the appellant can be grouped into two, that is, the refusal of extension of time on the basis of illegality, and secondly that the District Court misdirected itself in holding that the appellant was aware of the case at the Ward Tribunal hence no sufficient reasons to warrant the grant of extension of time.

On the issue of illegality, it is now settled, that an alleged illegality has to be apparent on the face of the record. Once it is established that the illegality in the impugned decision is clearly visible, then it can be termed as a sufficient cause to warrant extension of time (see the case of **Moto Matiko Mabanga vs. Ophir Energy PLC & Others, Civil Application No.463/01 of 2017 (CAT-DSM)** (unreported)). It should be further noted that not every error is considered an illegality. Mr. Kisoka has submitted that once there is

an illegality pleaded then extension of time has to be granted as in **Valambia's case** (supra). But in the case of **Abdu Issa Bano vs. Mauro Daolio, Civil Application No. 563/02/2017 (CAT-Arusha)** (unreported) the Court of Appeal quoted the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT-Arusha)** (unreported) which distinguished the **Valambia's case** as follows:

"But in that case [Valambia's case], the errors of law, were clear on the face of the record. The High Court there had issued a garnishee order against the Government, without hearing the applicant, which was contrary to both Government Proceedings Rules, and rules of natural justice. 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 as 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."

In the present application the illegality pointed out was on the appearance of the applicant at the Ward Tribunal, the failure for him to sign proceedings, failure for him to affirm or take oath and also the

allegation that the Ward Tribunal proceeded ex-parte instead of the case being dismissed for want of prosecution. These allegations are not apparent on the face of the decision. In fact, they entail the court to dig for details which in my view would involve a long-drawn process and the illegality would not be apparent on the face of the record as per the principles set. In view thereof, though the District Tribunal did not touch on this ground but still it, as noted above, it could not have been taken to be a reason for extension of time as prayed for by the appellant (then applicant). This ground therefore has no merit.

As for the complaint that the applicant was not aware that there was a matter before the Ward Tribunal, I join hands with the Chairperson of the District Tribunal that this cannot be true because according to the records, the applicant is the one who instituted the claim at the Ward Tribunal. The judgment of the Ward Tribunal in part states as follows:

"Mdai katika shauri hili Juma Ramadhani aliliambia baraza kwamba yeye hana shahidi wa kuja kutoa ushahidi dhidi ya nyaraka ambazo zitamtosha kwa ushahidi. Baraza limempa fursa ya kuziwasilisha nyaraka hizo kwenye Baraza hili la Kata ya Pera kama ushahidi lakini mdai Juma Ramadhani hakuziwasilisha nyaraka hizo kwenye Baraza la Kata. Baada ya mdai Juma Ramadhani kukosa kuwasilisha nyaraka zake hizo ambazo zingemsaidia aidha zingetusaidia Baraza katika

kufanya maamuzi, pia mdai huyo alitoweka gafura na kukosa kuhudhuria kwenye Baraza kwa siku tatu mfululizo bila ya kutoa taalifa. Baraza baada ya kuona kwamba mdai huyo katoweka katika hali isiyo ya kawaida na Baraza likizingatia kwamba kama mdai baada ya kufungua madai yake bila kuyatolea maelezo kisha mdai huyo akatoweka baraza lingefutulia mbali madai yake haya lakini kwa kuwa mdai alileta maelezo ya madai yake na kushindwa mwenyewe kumleta shahidi wa kukazia madai yake haya, Baraza limeamua kusikiliza maelezo ya upande wa utetezi.”

In brief the Ward Tribunal observed that the applicant presented his case before the Tribunal and promised to bring documents and witnesses to support his case which thing he did not do. The Ward Tribunal then decided to proceed to hear the respondent's case and it then made a decision. So, in essence, the applicant entered appearance and presented his case at the Ward Tribunal, but he failed to prove the case because he never turned up again. The allegation by the applicant that he was not aware of the case at the Ward Tribunal is therefore not the truth. But basically the applicant failed to prove the allegations that were presented before the Ward Tribunal. In that respect this ground has no merit and I agree with the Chairperson that this could not have been a sufficient reason to warrant extension of time. This ground fails.

For the reasons above, I find no merit in this appeal and it is hereby dismissed with costs.

It is so ordered.



A handwritten signature in blue ink, reading "V.L. Makani". The signature is written in a cursive style with a horizontal line underneath the name.

V.L. MAKANI
JUDGE
14/12/2022