IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL No. 08 OF 2022

(Originating from the Ruling of the DLHT for Rukwa at Sumbawanga in Misc. Land Application No. 196/2021 which originated from Land Case No. 06 of 2020 of Kanda Ward Tribunal)

YOTHAM SUNGURA.....APPELLANT

VERSUS

SAIMON LAIMUNDI MATALUMA
(The Administrator of the Estate of .....RESPONDENT
the late Laimundi Matamula)

JUDGMENT

21/06/2023 & 08/09/2023

MWENEMPAZI, J.:

The appellant herein had his application dismissed by the trial tribunal. It was an application for enlargement of time to file an appeal, it was not an appeal itself. The reason for the dismissal was that the appellant has failed to account for the number of days he had delayed to file his appeal within the prescribed time by the law.

Being aggrieved by that decision, the appellant herein filed this appeal which consists of three (3) grounds of appeal which are as reproduced hereunder;

1. That, the Honourable Chairlady erred in law and fact in dismissing the appellant's application on the ground that he had slept on his own right. Whereas, she herself knew that the appellant had earlier opted for revision, but it was dismissed on the ground that an appeal was the correct approach for the appellant.
2. That, the Honourable Chairlady erred in law and fact by not considering that the appellant intended to appeal against the decision in which he was not heard, as the trial at the Ward Tribunal was conducted ex-parte.,
3. That, the Honourable Chairlady erred in law and fact by declaring that the appellant had not accounted for the number of days he had delayed to file his appeal while, she was the chairlady presiding the Revision Application and dismissed it at the end, whereas for itself to be determined it took her about eight (8) months.

In regard of his grounds of appeal as reproduced above, the appellant prays for this court to allow this appeal and in doing so, the decision of the trial tribunal be dismissed with costs, and any other relief this court deems fit.

In reply to the grounds of appeal, the respondent disputed all the grounds filed by the appellant and strictly put the appellant to the proof of every ground that he had filed.

When the matter came for hearing as scheduled, the appellant appeared for himself as he had no legal representation meanwhile the respondent was represented by Ms. Neema Charles learned Advocate. Both sides prayed for leave of this court that the hearing be done by way of written submissions, and this court gladly granted the prayer in which both sides complied with the scheduling as it was ordered by this court.

The appellant submitted first that, submitting for the first ground as reconstructed above. It was his submission that he had not slept on his own right of appealing against the decision of the ward tribunal which was delivered on the 17th of November, 2020, but the truth was, as he was aggrieved by the said decision, and at the particular time he was much within time for filing an appeal, the appellant approached the learned trial chairlady herself and she advised the appellant to file for revision instead of an appeal. Most unfortunately, in her decision, she dismissed the revision on the ground that appealing was the correct avenue for the appellant whereas the revision was against an ex-parte decision of the ward tribunal.

He proceeded that, as he is just a layman who adhered to a legal advice from a learned expert who turned out to be the learned chairlady who presided the Revision Application, whereas he was only attempting to acquire his right of being heard after the ward tribunal proceeded to hear the matter against him ex-parte and proceeded to award the respondent herein as the rightful owner without hearing the appellant. The appellant is fortified that if he is granted the opportunity to be heard, the decision of granting ownership of the disputed land to the respondent will be overturned.

Submitting for the second ground and the third ground together, the appellant stated that, the intensions of the appellant was to appeal against the decision of the ward tribunal because he had not been afforded the right to be heard, and it was unfortunate that the advice he obtained from the chairlady was not helpful at all and keeping in mind that, the appellant was within the statutory time of appealing when he obtained the advice, and that the particular **Revision** numbered **149/2020** took too long for it to reach a helpless end to the appellant in which, the statutory time for appealing had already elapsed.

The appellant added that as he knows very well that ignorance of law is not an excuse, but for he is a layman, after being aggrieved by the decision of the ward tribunal, he never knew of any other option

than appealing, but the idea of applying of a revision was installed in his mind by the learned chairlady. Therefore, the appellant believes that as he was not heard at the ward tribunal, that reason alone is sufficient enough to warrant him an extension of time of appealing out of time.

In conclusion, the appellant prays for this appeal to be allowed with costs and that he be allowed to appeal against the decision of the Ward Tribunal so that he gets the chance of delivering the proof of ownership of the suitland that would turn the tables of the ex-parte decision, for it is openly clear that the right to be heard is a constitutional right to every citizen.

In rebuttal to the appellant's submission, the counsel for the respondent submitted that the instant Appeal is lacking merit and should be dismissed with cost for the following reason which she begs to submit below as follows:-

That, in reply to the 1st ground of appeal the respondent submitted that the ground of appeal lacks merits since the matter before the ward tribunal was decided ex-parte and the only remedy for the Appellant was to file as Application to set aside the ex-parte judgment on the sufficient ground but the Appellant here tries to mislead the court that the Chairlady was responsible for the Appellant to prefer Revision

instead of Appeal without a proof of Affidavit from the Honourable Chairlady per his submission.

She proceeded that further that, the appellant acted negligently to file revision instead of appeal and filing Revision it was intention of Appellant after knowing that Appeal was time barred instead of file Application of extension of time to file Appeal out of time Appellant decide to opt Revision which it was within time knowingly that it was un proper.

The counsel then referred me to the case of **Marcus Kihaga (As Administrator of The Late Letus Kihaga) vs Godfrey Kibasa** Land Revision No. 05 of 2019 in the High Court of Tanzania at Iringa, where it was held;

> *"It was held that basing on the above observation it is my considered opinion that the proper forum for the applicant was to file an appeal and the reasons for revision he advances would he ground of appeal instead of filling an application for revision."*

Submitting for the second ground, the counsel stated that, the appellant violated the provision of regulation 11(2) of the G.N by filing this appeal instead of apply before the DLHT for setting aside the expert

decree, that she assess that violation as fatal, and again she referred me to the case of **Zainabu Mgubila vs The Registered Trustees .Evangelical Lutheran Church Andin Tanzania -Iringa Diocese Land Appeal No 21 Of 2021,In The United Republic: Of Tanzania In The High Court Of Tanzania At Iringa** Page 15,16,17

In addition to that, she submitted that the appellant negligently denied to attend before the ward tribunal to adduce his evidence therefore the Appellant cannot blame anyone due to his own negligence, that also being a lay person does not constitute a defence, because ignorance of the law is not an excuse, the Appellant would have approached the lawyers who drafted him the Application of the revision instead of appeal, therefore, he cannot make blame on the Honourable Chairperson of the Tribunal.

Submitting against the last ground that, since the appellant had failed to make submission of his third ground of Appeal, her side assumes that the Appellant conceded with the decision of the District Land and Housing Tribunal on the ground that the Appellant failed to account every day of delay to file his Appeal since the Application was filed by the Appellant to extend his time to file Appeal out of time it Was time barred and Appellant reason to extend his time was not sufficient

due to fact that he failed to account every day of delay to file Appeal out of time.

The counsel referred me to the case of **Erica Herman & Yohane Matle vs Magdalena Herman Muna Gida (Legal Representative Of The Late Herman Muna G1dadi) Civil Application No 130/2 Of 2019 Court Of Appeal At Arusha** of Page 4, it was held that;

> *"For an extension of time to be granted the applicant must explain or account for the entire time period that he delayed to lodge particular proceeding, that he is seeking extension of time to file."*

Based on the submission above and the plethora of relevant authorities pined in, the counsel prays this appeal be quashed with cost.

After going through the submissions from both sides and the records of appeal before me, the only determinant issue which suffices to dispose of this appeal is ***whether this appeal is meritious before this court.***

I should say, the submissions by both parties should not go unnoticed, but when one goes through the grounds of appeal as filed by the appellant, it would be noticed that on the second ground of appeal, the appellant laments on being condemned unheard. To me, this ground

suffices to dispose of this appeal as long as it concerns a vital principle of natural justice, the right to be heard.

This tag of war between the parties herein, would have not reached this far had the trial tribunal consider the cardinal principle of natural justice, whereas in my considered opinion is that, no any technicality whether on the point of law or procedure, should overwhelm the right of being heard. It is well settled principle that, the right to be heard is one of the fundamental principles of natural justice, failure to observe the same vitiates proceedings. Rules of natural justice require no person to be condemned unheard. In the decision of **Ridge vs Baldwin [1963] 2 All ER 66**, is illustrative on the fact that, the consequences of failure to observe the rules of natural justice renders the decision void and not voidable.

In addition to that, **Article 13(6)(a)** of the Constitution of United Republic of Tanzania, 1977 states;

> *"When the rights and duties of any person are being determined by the court or any other agency,* ***that person shall be entitled to a fair hearing*** *and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned;"*
>
> **[Emphasis added]**

It has been stressed in various platforms that; courts are no longer court of technicalities. It is now a stand that issues of technicalities are no longer part of this court. The thinking of this court and superior court has changed and currently the focus is on substantive justice. It is not a new thing, anyway.

Again, our Constitution has provision under article 107A (1) (e) requiring this court to dispense justice without being tied up with technicalities which may obstruct dispensation of justice. This thinking of focusing on substantive justice and avoiding undue technicalities has long been considered by our superior court, the Court of Appeal, before enactment of **THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO.3) ACT, 2018, Section 3A.** The full court of the Court of Appeal in 1992 in the judgment of **Nimrod Elireheman Mkono vs State Travel Service Ltd. & Masoo Saktay [1992] TLR 24**, at page 29 stated that:

> *"We would like to mention, if only in passing, that justice should always be done without undue regard to technicalities."*

I do insist that, it is from substantive justice where the rights of individuals are fairly heard and determined. In this, the wordings of the

East African Court of Appeal in **Essaji vs Sollank [1998] EA 220** at page 224 are necessary to quote. Their Lordships think that:

> *"The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights."*

It goes without saying, the words of the East African Court of Appeal in the cited decision above and our Court of Appeal in the Nimrod's case are still important today.

I do acknowledge the importance for Applicants of extension of time to file an appeal before any judicial body to attach materials which will persuade that body to exercise its discretion mandate in their favour. There is an overabundance of precedents on the subject interpreting any reasonable or sufficient cause (see**: Alliance Insurance Corporation Ltd vs Arusha Art Ltd, Civil Application No. 33 Of 2015**; **Eliah Bariki vs Republic, Criminal Appeal No. 321 Of 2016**; **Royal Insurance Tanzania Limited vs Kiwengwa Strand Hotel Limited, Civil Application No. 116 Of 2008** (Unreported), **Lyamuya Construction Company Limited vs Board of Trustees of Young**

Women Christian Association of Tanzania, Civil Application No. 2 of 2010.

For instance, when interpreting 'reasonable cause' or 'good cause', Court of Appeal in **Oswald Masatu Mwizarubi vs Tanzania Processing Ltd, Civil Application No. 13 of 2010**, stated as follows:

> *"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."*

In the present appeal, the appellant at the trial tribunal had one material cause to justify the extension of time to file their appeal, namely; the application for Revision of the ex-parte decision of the ward tribunal, in which its decision ended up being a wrong avenue instead an appeal would have been a correct avenue.

I understand there is no such requirement in our laws. Even precedents are abundant on the subject (see: **Kisioki Emmanuel vs Zakaria Emmanuel, Civil Appeal No. 140 of 2016, Gregory**

Raphael vs Pastory Rwehabula [2005] TLR 99 and **Abdallah S. Mkumba vs Mohamedi I. Lilame [2001] TLR 326**).

However, from the practice of this court and our superior court, that when there is sufficient cause, an Applicant for an extension of time may be granted his prayers. But again, this court and our superior court have considered a situation where an Applicant is bringing an application in good faith and acted promptly in filing the same after becoming aware of the delay. That is the advice and position of our superior court in judicial hierarchy in this country.

In the decision of **Royal Insurance Tanzania Limited vs Kiwengwa Strand Hotel Limited, Civil Application No. 116 of 2008** (Unreported), the Court of Appeal stated that:

> *"It is trite Law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time,* ***act very expeditiously*** *and that* ***the application has been brought in good faith.***"
>
> **(Emphasis supplied).**

In the present appeal, the appellant is a lay person, the records of appeal reveal that he opted for a revision instead of an appeal in utmost good faith, as the ward tribunal passed a decision without affording him

a chance of being heard. The Revision was dismissed and again the appellant knowing he is out of time for lounging an appeal, he applied for an extension of time to lounge an appeal out of time. In my opinion the appellant filed the Application for Revision in good faith to contest his right to be heard according to the law. I see no good reason why he should be denied the right to be heard substantively.

For the foregoing reasons, I am of the considered opinion that the appellant had advanced sufficient cause that would have granted him the chance to be heard. As the matter of fact, I do find this appeal to be meritious and in that I proceed to allow it.

Consequently, the decision of the trial tribunal is hereby quashed and the decree thereto is set aside. It should be noted that, as the laws have been revised, the ward tribunals are no longer vested with powers to decide land matters as far as ownership is concerned. I therefore, quash the ex-parte decision of Kanda Ward Tribunal and thereto, I order a fresh trial at the District Land and Housing Tribunal for Rukwa at Sumbawanga. I make no orders as to costs.

It is so ordered.

Dated and delivered at Sumbawanga this 08th day of September, 2023.

T. M. MWENEMPAZI
JUDGE

Court: Judgment delivered in Court in the presence of the parties.

T. M. MWENEMPAZI

JUDGE

08/09/2023