

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND CASE APPLICATION NO. 118 OF 2017

(Arising from District Land and Housing Tribunal at Mara in Application No. 99 of 2012)

1. DEUS OGOLA

2. FREDRICK OGOLA APPLICANTS

VERSUS

ZEDEKIA OLOO SISO RESPONDENT

RULING

25/09/2018 & 21/01/2018

RUMANYIKA, J.:

Application is for extension of time to lodge appeal against order of 03/10/2016 by the District Land and Housing Tribunal for Mara at Musoma (the DLHT) dismissing Application No. 99 of 2012 for what of territorial jurisdiction. It is supported by affidavit of Deus Ogola.

When the application was called on for hearing on 25/09/2018, Mr. T. Mkongi learned Advocate for Zedekia Oloo Siso (the respondent) raised sort of omnibus preliminary point of objection (p.o). Namely the supporting affidavit was on account of verification clause incurably defective. As no set of facts was said to be within personal knowledge of the deponent and

which ones was informed by who. That it was as if there was not affidavit and no application at all (case of **Margovind Savan Vs. Juthall Velgi Ltd** (1969) HCD No. 278. That the incompetent application be struck out.

The applicant had his advocate this time around not in attendance. He opted on his own to proceed and only submitted that the affidavit in support of application was in line with requirement of the law. That is it.

The issue is whether the supporting affidavit was incurably defective for non-disclosure by the deponent applicant, of which set of facts was in accordance with his personal knowledge, and which one was not. I could not respectfully see basis of the p.o. I will, for case of reference quote the entire verification clause (with respect to the 1st applicant only);

VERIFICATION:

I DEUS OGOLA, the applicant herein does verify that **all that is stated from paragraph 1, 2, 3, 4, 5 and 6 is true to the best of my knowledge and belief.** Verified at Mwanza this 07th day of June, 2017.

**Sgd:.....
DEPONENT**

Meaning that in his affidavit, the applicant (deponent) had in his knowledge and belief all the facts deposed with respect to the whole of it (6 paragraphed). The issue in respect of which facts he was, if at all by any one informed about should therefore have been raised.

The p.o as said was omnibus in the sense that it wasn't clear it concerned with whose affidavit. The 1st or 2nd applicant? It is very unfortunate that the available affidavit was not a joint one. Nor was Mr. Mkongiri's point that the 2nd applicant (Fredrick Ogole) had no supporting affidavit therefore no application in court. That one happening it should have been a different scenario all together. The p.o is overruled.

However, I had ample time and between the lines sufficiently read the pleadings and the entire the records. Essentially, whereas the DLHT held that it lacked territorial jurisdiction but Tarime. Mr. Makowe learned counsel held a different view. That case law stated the contrary. Not only Mr. Makowe offered no explanation, but also the learned counsel cited no authorities. It is like counsel was of the firm view that case now be heard in the DLHT or never. What a noble situation! Suffices the point to dispose of the appeal.

Without prejudice to the foregoing, and with regard to cause of the delay, the applicant may have had within 18 days (i.e. 21/10/2016) applied for the copies and at the same time lodge a notice of appeal. Fine! But with no copy of the impugned order appended to the application with a view to seeing when exactly it was certified, leave alone how/when repeatedly he followed up the matter (para 4 of the affidavit), the applicant wouldn't be right saying that he would not have been late but for the copies. The copies may have had been long ready for collection. But the applicant did not at once collect the same. In other words as long as possibilities of the copies long ago being ready for collection were, by way of affidavit not ruled out, the applicant did not give account for each day of


the delay. The devoid of merits and frivolous application is dismissed with costs. Ordered accordingly.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE
17/01/2019

Delivered under my hand and seal of the court in chambers this 21st January, 2019 in the absence of the applicants and respondent.




M.A. Moyo
DEPUTY REGISTRAR
21/01/2019