

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT ARUSHA

MISC. LAND APPEAL NO. 13 OF 2019

(C/F Application No. 8/2017 of Mwandeti Ward Tribunal and Misc. Application No. 30/2018 of the District Land and Housing Tribunal of Arusha at Arusha.)

NJUMALI SINGOIAPPLICANT

VERSUS

MELIYO LOVOKIEKI.....RESPONDENT

JUDGMENT

19/06/2020 & 28/07/2020

GWAE, J

In the District Land and Housing Tribunal for Arusha at Arusha (DLHT hereinafter), the appellant unsuccessfully applied for an extension of time within which to file an appeal to the DLHT challenging the decision of the Mwandeti Ward Tribunal delivered on the 13th October 2017.

The grounds advanced by the appellant for the sought enlargement were; that, the appellant was availed judgment and proceeding on the 24th November 2017, that the copies supplied to the appellant were not signed and thirdly, that, there are points of law worth for determination by the DLHT in its appellate jurisdiction. The DLHT's chairperson, after his analysis of the parties' affidavits and consideration of their respective written



submissions, held that the appellant had not given good and sufficient cause to warrant the DLHT exercise its statutory discretion, particularly, that the affidavit of one Happiness from TAWLA was a copy which, according to him, has no evidential value and that, the points of law alleged by the appellant/applicant had not been shown. Eventually, the DLHT's chairperson dismissed the appellant's application with no order as to costs.

The appellant's appeal was argued by way of written submission, in her submission, the appellant endeavored to show that, there was requirement to have certified and duly signed copies of judgment, decree and proceedings availed to her so that she could prepare her appeal. Stressing the requirement of the certified copies in filing her intended appeal she cited a chain of authorities to be referred by the court such as in the case **Sewing Machines Co. Ltd v. Njake Enterprises Ltd**, Civil Application No. 56 of 2007 (unreported-CAT) where a failure to issue a properly signed decree was found to be a causal factor of delay to institute the intended appeal.

As to the alleged illegality, the appellant argued that there was apparent jurisdictional issue since the suit land was evidently purchased by the respondent at the tune of Tshs. **6,000,000/=**, issue of lack of locus stand since the respondent sued in his personal capacity instead of in the capacity of administrator.

The respondent in his written submission argued that, there were neither sufficient cause given by the appellant for an enlargement of time



nor was there any apparent error in the judgment of the ward tribunal as established in the case of Principal **Secretary Ministry of Defence and National Service v. Devran Valambia** (1992) TLR 185.

Regarding the alleged lateness of supply of decree and judgment of the trial ward tribunal. According to the trial tribunal record, it is no doubt that, copies of judgment and proceedings were available for collection since 24th November 2017 while this appellant's application was filed on the 2nd February 2018, thus the appellant was required to account for each day of delay from 24th November 2017 to 2nd February 2018 **if** the copies of judgment, decree and proceedings were necessary documents if filing her appeal to the DLHT as judicially emphasized (see judicial authority in **Mic Tanzania Limited vs. Arusha District Council**, Civil Application No. 66 of 2015 (unreported-H.C)).

In our instant case, I am not persuaded if the certified copies of the judgment and decree to be appealed were necessary in filing a petition of appeal in a matter originating from ward tribunal. Going through the provisions of the Land Disputes Courts Act, Cap 216 Revised Edition, 2002, I have found none of provision which require a petition of appeal to be accompanied by a copy of judgment or order of the ward tribunal. Hence assertions that the appellant was supplied with necessary documents late, to my view have no legal basis (see **Abdallah Mkumba v. Mohammed Lilame** (2001) TLR 326).

The appellant was therefore required to account each day of delay without exclusion however since she sought assistance from TAWLA and

since a copy of an affidavit of one Happiness Mfinanga was attached in the appellant's supplementary affidavit duly filed on the 12th June 2018, to my view, the learned chairperson ought not ignore simply because it is a copy since in applications, litigants used to attach annexures which are usually copies. If the DLHT's chairperson was in need of the original affidavit of advocate Happiness, in the event of apprehension of doubts as to its authenticity, he could order production of the original affidavit so as to ascertain its authenticity.

Regarding the issue of alleged illegality, I have carefully looked at the appellant's affidavit and its annexures filed in the DLHT and observed that the value of the suit farm as per sale agreement was **Tshs. 6,000,000/=**. The sale price of the suit land indicated in the sale agreement dated 2nd February 2017 between the respondent as a purchaser on one hand and one William Rarian as seller on the other hand. The price indicated in the sale agreement raises serious and apparent error on jurisdiction of the Ward tribunal which the DLHT's chairperson ought not to have ignored the alleged illegality. It should be judicially noted that, an issue of jurisdiction may be raised at any stage of any proceeding as was correctly held by the Court of appeal in **peter Ng'homango v. Attorney General**, Civil Appeal, No. 114 of 2011 (unreported) where it was authoritatively demonstrated that, an issue of jurisdiction can be raised at any time.

The proceedings in the ward tribunal, in my view, left a lot to be desired particularly when the suit land was said to have been bought by either appellant or respondent and the purchase price of the suit land is not indicated in the proceedings of the ward tribunal and or in the



respondent's application. It also be noted that indication of the value of subject matter is mandatory requirement in a proceeding so that a court or quasi-judicial body can be in a better position to know if it has jurisdiction or not. In the case of **Kerama Enterprises Co. LTD and 2 others vs. Exim Bank**, Commercial case no. 12 of 2013 (unreported) where his Lordship, Makaramba J, stated that:

"I should point out here also that apart from the statement in the plaint of the value of the subject matter of the claim being important for the filing fees"

The purchase price of the suit land which is vividly indicated in the sale agreement attached by the appellant in her application for extension of time to appeal out of the prescribed period raises a questionable issue of jurisdiction.

In the final event and for the reasons stated herein, this application is not without merits, the same is granted, the applicant is given **fourteen (14)** days from the date of this order within which to file an appeal before the DLHT. Costs of this application shall abide an outcome of the intended appeal.

Order accordingly.




M.R.GWAE
JUDGE
28/07/2020