

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA.

LAND APPEAL NO. 01 OF 2019

(Arising from Misc. Land Application No. 28 of 2018 of District Land and Housing Tribunal for Tunduru at Tunduru and Originating from Land Case No. 14 of 2014 of Nalasi Mashariki Ward Tribunal)

CHIBIBI HATIBU APPELLANT

VERSUS

ALUSI HATIBU RESPONDENT

Date of last Order: 25/06/2020

Dated of Judgment: 04/08/2020

JUDGMENT

I. ARUFANI, J

The appeal at hand arises from the decision of the District Land and Housing Tribunal for Tunduru at Tunduru (hereinafter referred as the tribunal) delivered in Misc. Land Application No. 28 of 2018 dated 15th April, 2019. In the mentioned application the applicant was seeking for extension of time to appeal against the decision of Nalasi Mashariki Ward delivered in Land Dispute No. 14 of 2014 dated 10th November, 2014. After the appellant being dissatisfied by the decision of the tribunal which dismissed the

application she has filed the petition of appeal in this court which contains the following grounds:-

1. The tribunal erred in law when it held that the appellant failed to establish sufficient cause for failure to appeal timely while the appellant established and actually proved the reason as to why she failed to appeal timely.
2. That the tribunal erred in law when it failed to consider illegality of the judgment and proceedings of the trial (Ward) tribunal as a good and sufficient ground for extension of time to appeal.

When the appeal came for hearing the appellant was represented by Mr. Eliseus Ndunguru, learned advocate and the respondent appeared in the court in person, without legal representation. The counsel for the appellant argued the grounds of appeal seriatim. He told the court in relation to the first ground of appeal that, the tribunal erred to find the appellant had failed to show sufficient cause for the delay to appeal within the time prescribed by the law while the appellant showed the reason for the delay and that reason was accepted by the tribunal.

He argued that, the appellant stated before the tribunal that she had eyes problem and produced medical documents to show she was suffering from that problem but after the tribunal accepted the appellant was suffering from eyes problem it refused to grant the appellant extension of time to appeal out of time on the ground that she failed to appeal from 2015 when she became well. He submitted that, after the tribunal found the appellant was sick in the period of 45 days within which she was required to appeal it was

not required to refuse to grant the appellant extension of time on the ground that she failed to appeal from 2015 up to 2018 when she filed the application for extension of time to appeal in the tribunal. He argued that, although the appellant had no medical documents to show she was sick in the period from 2015 to 2018 but she was sick as she became blind and is still suffering from that problem.

He stated in relation to the second ground of appeal that, the appellant used a ground of illegality of the decision of the ward tribunal as a ground of seeking for extension of time but that ground was not considered by the tribunal. He argued that, if you read the decision of the ward tribunal you will find the issue of coram was not observed in the ward tribunal and the value of the house in dispute was not ascertained. He stated that, those were among the reasons caused the appellant to seek for extension of time to appeal out of time so that the stated illegalities can be looked at and corrected.

He referred the court to section 36 (1) and (2) of the Land Disputes Courts Act and stated that, it gives the tribunal supervisory power of seeing the decisions of ward tribunals are made in accordance with the law. He submitted that, as the law requires when the tribunal is dealing with appeals from ward tribunals to look into the propriety of the decision of ward tribunals and as one of the reason for the appellant to seek for extension of time was about illegality of the decision of the ward tribunal, the tribunal was required to grant the sought extension of time so that it can use its supervisory powers to look into the alleged illegality and correct it.

He stated the position of the law as stated in the case of the **Principal Secretary, Ministry of Defence and National Service V. Duram P. Valambia** [1992] TLR 387 is that, where the issue of illegality is raised in an application for extension of time that is sufficient ground for granting extension of time so that the alleged illegality can be looked at and corrected. He submitted that, as the alleged illegality was not considered by the tribunal is praying the appeal to be allowed so that the appellant can be granted extension of time to exercise her constitutional right to appeal against the decision of the ward tribunal.

In reply the respondent told the court that, she doesn't know if the counsel for the appellant knows their problem because their dispute is not about a house but a piece of land left by their late mother. She said their late mother acquired the land in dispute in 1974 through Operation Vijiji vya Ujamaa and the appellant who is her sister has built her house on the part of the land in dispute. She said their dispute started in 2014 when she purchased a land adjacent to the land in dispute and built her house there is when the appellant started complaining she had entered into her land.

She said this is not the first appeal to be filed in the court by the appellant and said the appellant filed another Appeal through Hon. Mhelela, learned advocate which was Land Appeal No. 102 of 2014 but after the appellant and her advocate failed to appear in the court the application was dismissed. She said in 2016 the appellant filed an application in the court seeking for the appeal which was dismissed to be restored on a ground that she was a civil servant and she was represented in the said application by her own child but the said application was dismissed.

She argued that, the appellant filed the application which resulted into the appeal at hand in the tribunal alleging she was suffering from blindness while she has never being blind. She contended that, the appellant has never being blind and said she was continuing with her work as she was a teacher. She said the appellant has been coming to court with different reasons from when the original case was determined without success. She said she has all the documents to show the cases filed in the tribunal and this court by the appellant before filing the appeal at hand in the court. She complained that, the appellant has continued to disturb her because she has money of paying advocates.

The counsel for the appellant rejoined the submission of the respondent by stating that, all what was stated to the court by the respondent are new matters which were not deposed in her counter affidavit. He said although the respondent said there were other matters which have been filed in the court by the appellant but the appellant states there had been no any other matter which has ever being filed in the tribunal concerning the same parties and relating to the same land in dispute. He said the stated allegation was neither raised in the counter affidavit filed in the tribunal by the respondent nor stated in the ruling of the tribunal.

He prayed the court to be guided by the affidavit and counter affidavit filed in the tribunal by the parties and not matters which were not raised in the tribunal. He said to receive the copy of documents the respondent is praying to tender to the court is to open the matter and receive new evidence which is not allowed under the law. He said the parties are siblings and what is transpiring between them is a family conflict which is emanating from

illegal decision delivered by the tribunal. He submitted that, the only solution to their conflict is to grant extension of time to the appellant to appeal against the decision of the tribunal so that their conflict can be solved by the court.

After carefully considered the rival submissions from both sides the court has found that, the issues for determination in this appeal as can be deduced from the grounds of appeal filed in this court by the appellant are two. One is whether the tribunal erred in finding the appellant was not prevented by good or sufficient cause to appeal within the time, and two is whether the tribunal failed to consider the issue of illegality of the judgment of the tribunal as a good and sufficient ground for granting the appellant extension of time to appeal out of time. I will start with the first issue which is in respect of the first ground of appeal.

As the issue is whether the tribunal erred in finding the appellant was not prevented by good or sufficient cause the court has found as appearing in the ruling of the tribunal, it is true that the tribunal stated the appellant failed to show good cause for granting her extension of time to appeal out of time. That being the position the court has found proper to have a look on what constitutes good and sufficient cause which the appellant was required to show to the tribunal so that she can be granted extension of time she was seeking for. The terms good and sufficient cause are not defined in the Land Disputes Courts Act but the courts have tried to define it in several cases. One of them is the case of **Bertha V. Alex Maganga**, Civil Reference No. 7 of 2016 (unreported) whereby the Court of Appeal of Tanzania stated as follows:-

*"Whilst it may not be possible to lay down an invariable definition of **good cause** so as to guide the exercise of the court discretion, the court is enjoined to consider, inter alia the reasons for the delay, the length of the delay, whether the applicant was diligent and the degree of prejudice to the respondent if time is extended."*[Emphasis added].

Likewise the term **sufficient cause** used in the provision upon which the application was made has been defined in different cases and it has the same meaning with the term good cause defined hereinabove. One of the cases where the term sufficient cause is defined is the case of **Tanga Cement Company Limited V. Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 (unreported) where Nsekela, JA (as he then was) stated that:-

*"What amount to **sufficient cause** has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."*[Emphasis added].

While being guided by the definition of the terms good and sufficient cause given in the above cited cases the task of the court at this juncture is to determine whether the cause for the delay shown by the appellant to the tribunal was good and sufficient to move the tribunal to grant her extension of time she was seeking from the tribunal. The court has found as stated by the counsel for the appellant before this court and deposed in the affidavit

of the appellant filed in the tribunal to support her application, the reason which caused the appellant to delay to appeal within the time prescribed by the law is being sick suffering from eyes problem.

The court has gone through the ruling of the tribunal and found it is true that the tribunal refused to grant the appellant extension of time after seeing the appellant had failed to account for the period from 2015 to 2018 when she filed the application which resulted in the appeal at hand in the tribunal. The court has found that, despite the fact that the counsel for the appellant told the court they have no evidence to show the appellant was sick from 2015 to 2018 but there are some NHIF forms annexed in the affidavit of the appellant filed in the tribunal which shows the appellant was going to the hospital up to 2017. The latest document annexed in the affidavit of the appellant to show she was proceeding with treatment of her eyes problem is the copy of the letter from St. James Referral Hospital (Peramiho Hospital) dated 26th September, 2017 which states the appellant will continue with medicine for her eyes problem for the rest of her life.

The court has considered the above facts and found that, although there are some documents showing the appellant has a permanent eyes problem but that was not a good and sufficient cause to move the tribunal to exercise its discretionary power to grant the application of the appellant. The court has arrived to the above finding after seeing that, although illness can be accepted as a ground for granting extension of time but as stated in the case of **Shembilu Shefaya V. Omary Ally**, [1992] TLR 245 there must be an elaboration and evidence to show the applicant was sick and incapable

of taking the step she was required to take throughout the period of the delay.

The court has found that, the argument by the counsel for the appellant that the appellant failed to appeal within the time as she became blind is not supported by any medical evidence. What is stated in the copy of the letter annexed in the affidavit of the appellant is that she will be required to continue with medicine for the rest of her life and not that she became blind. The submission of the appellant to become blind was strongly disputed by the respondent who argued that, the appellant's eyes problem did not prevent her to fail to continue with her other activities as she was going to her work of teaching for the whole period of the delay to lodge the appeal in the tribunal.

To show the appellant was not prevented by eyes problem to file the appeal in the tribunal within the time prescribed by the law the respondent said the appellant filed other several matters in the tribunal and this court in the period stated she was sick and those matters were dismissed. The court has found that, although the counsel for the appellant said that is a new fact which was not raised in the counter affidavit filed in the tribunal by the respondent but the court has found paragraph 6 of the counter affidavit filed in the tribunal by the respondent shows it was deposed therein that, the appellant filed other applications in the tribunal but were struck out.

The court has also found that, despite the fact that there is a copy of a letter showing the appellant will continue with eyes medicine for the rest of her life written on 26th September, 2017 but there is no any other evidence

adduced to show the appellant would have not been able to file her matter in the tribunal from the mentioned date up to 22nd October, 2018 when she filed the application which resulted the appeal at hand in the tribunal. The court has found that is a period of one year which was not accounted for whilst as stated in the case of **Sebastian Ndaula V. Grace Rwamafa, (Legal personal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014 (unreported) a party seeking for extension of time is required to account for each day of the delay.

The argument by the counsel for the appellant that, as the appellant managed to establish before the tribunal that the period of 45 days within which she was required to file the appeal in the court she was sick the tribunal was not required to refuse to grant extension of time to her has been found by this court has no any merit. The court has arrived to the above finding after seeing that, the appellant was required to account for all period of the delay and not only the period of 45 days within which she was required to lodge the appeal in the court.

To the view of this court and as stated in the cases of **Bertha** and **Tanga Cement Company Limited** cited earlier in this judgment the period of one year is an inordinate delay which was not accounted for while the appellant was required to account for each day of the delay. That being the position the court has found the ground of the appellant to be sick was not sufficient to move the tribunal to grant the appellant extension of time she was seeking from the tribunal. In the premises the court has found the first ground of appeal raised by the appellant cannot be allowed.

Coming to the second ground of appeal the court has found that, it is true that the appellant deposed at paragraph 5 of the affidavit she filed in the tribunal to support the application that, the judgment and proceedings of the ward tribunal is tainted with a lot of irregularities and illegality and the tribunal did not make any decision on that point. The court is in agreement with the counsel for the appellant that, it is a settled position of the law as stated in numerous cases including the case of the **Principal Secretary, Ministry of Defence and National Service** (supra) that, allegation of existence of an illegality in an impugned decision is a ground which can be used by the court to grant extension of time so as to enable the alleged illegality to be looked at and corrected.

However, the court has found the irregularities and illegality alleged are in the decision of the ward tribunal which the appellant want to appeal against were not established to the extent of making the court to find the tribunal failed to use them to grant the appellant extension of time she was seeking from the tribunal. The court has arrived to the above finding after seeing that, the appellant did not say anything before the tribunal to show which irregularities and illegality are featuring in the judgment and proceedings of the ward tribunal. To the contrary the counsel for the appellant has come to mention the alleged irregularities and illegality in this court from the bar to be improper constitution of coram of the tribunal and the value of the land in the dispute was not ascertained.

The court has found that, despite the fact that the counsel for the appellant mentioned to this court the alleged irregularities and illegality but the impugned proceedings of the ward tribunal and its judgment were

neither attached in the affidavit of the appellant filed in the tribunal nor tendered in the tribunal and were also not produced before this court to enable the court to see the reality of what was being said by the counsel for the appellant. The court has also found that, as stated by the respondent the counsel for the appellant is not even sure the allegation of illegality of the value of the subject matter is in respect of which property.

The court has found that, while the counsel for the appellant states the allegation of illegality of the value of the subject matter is in relation to the value of a house in dispute but the respondent states their dispute is not in relation to a house but a piece of land left by their late mother. That make the court to find it cannot be said the alleged irregularities and illegality were established to the extent of moving the tribunal to use it to grant the appellant extension of time to file an appeal in the tribunal out of time.

To the view of this court and as stated in the case of **Mwanza Trading Co. Ltd V. Export Trading Co. Ltd** Civil Application No. 12 2015 CAT at Mwanza (unreported) the alleged irregularities and illegality were supposed to be established by producing to the tribunal and this court materials which would have shown existence of the alleged irregularities and illegalities in the record of the ward tribunal as the court cannot act on vacuum to grant the sought extension of time. It is in the light of the above stated observation the court has found as it was for the first ground of appeal the second ground of appeal is equally devoid of merit and is hereby disallowed.

All being stated, the court has found the appellant has not been able to satisfy the court the grounds of appeal filed in this court have any merit

which can move the court to allow the appeal. Consequently, the appeal is hereby dismissed in its entirety for devoid of merit. Since the parties are siblings the court has found proper for the interest of justice to order each of them to bear her own costs. It is so ordered.

Dated at Songea this 4th day of August, 2020.



I. ARUFANI

JUDGE

04/08/2020

Court:

Judgment read today 4th day of August, 2020 in the presence of both parties in person and Mr. Nestory Nyoni, Advocate for the appellant is also present. Right of appeal is fully explained.



I. ARUFANI

JUDGE

04/08/2020