

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MISC. LAND APPLICATION NO. 40 OF 2020

(Arising from the decision of the District Land and Housing Tribunal for Mara at Musoma (Hon. Kitungulu, E.- Chairman), dated 28/11/2019 in Misc. Application No. 756 of 2019)

ROKETI MAHEGA APPELLANT

VERSUS

1. MSAFIRI MUSIGITANI 1ST

RESPONDENT

2. EMANUEL MAGESA 2ND RESPONDENT

3. MWAJUMA MAGANYA.....3RD RESPONDENT

4. NYABANANE MWIKWABI4TH RESPONDENT

JUDGEMENT

26th May and 14th August, 2020

KISANYA, J.:

The appellant, Roketi Mahega, applied to the District Land and Housing Tribunal for Mara at Musoma (hence force referred to as “the Tribunal”) requesting for extension of time file an appeal against the decision of the Ward Tribunal of Ngusi in Land Case No. 29 of 2019. The said application was dismissed by the Tribunal for want of merit. Aggrieved, the appellant has lodged the present appeal on the following grounds, in verbatim:

- 1. That, the appellant never appear since office tenure of the Nagusi Ward Tribunal was over; hence he could not appeal before a vacuum. The information of expiry of the Trubunal’s office was as*

per Serengeti District Council's announcement which contains (sic) in the file.

- 2. That, after the appointment of the new Tribunal, the Appellant was not summoned.*
- 3. That 4th appearance was during the time when the office of tenure of the Tribunal was still valid.*

Briefly, the appellant was sued by the respondents in the Nagusi Ward Tribunal (hereinafter referred to as the Ward Tribunal) on the claim of trespassing on their respective lands. The appellant raised a preliminary objection on the ground that, the Ward Tribunal had no jurisdiction to determine the matter. His objection was based on the reasons that, the said Tribunal had been dissolved by the District Council. Upon submitting in support of the objection, the appellant left the Ward Tribunal. His objection was overruled by the Ward Tribunal and the case proceeded ex parte. After the trial, the respondents were declared as the lawful owners of the disputed lands. Thereafter, they applied for execution of the decision of the Ward Tribunal. When served with the application for execution, the applicant decided to apply for extension of time to lodge his appeal; and stay of execution. The reason advanced in his application was to the effect that, he was not aware of the suit instituted in the Ward Tribunal. The Tribunal was satisfied that the appellant was served with the summons to appear before the Tribunal but refused. For that reason, the application for extension was dismissed thereby leading to the present.

At the hearing of this appeal the appellant was represented by Mr. Thomas Makongo, learned advocate while the respondents were represented by Mr. John Manyama, learned advocate.

When Mr. Makongo, learned advocate was called on to submit in support of the application, he requested to drop the first ground of appeal. He went on to submit that, the appellant failed to appear before the Ward Tribunal because its tenure had expired since 30/06/2018 and that, he was not notified or summoned to appear thereafter. Mr. Makongo contended that, the sufficient reason for the Tribunal to extend the time to appeal was the doubt on whether the appellant was summoned to appear before Ward Tribunal. He supported his argument by citing the case of **T.M. Sanga vs vs Sabrudin G. Ablibahi and Others** (1977) LRT No. 51 where this Court held that, uncertainty on the service of summons is a sufficient cause for extension of time. Therefore, the learned counsel argued the Court to allow the appeal.

Responding, Mr. Manyama, learned advocate argued that, the reason advanced by the applicant in the application before the Tribunal was to the effect that, he was not aware of the case filed against him. He submitted that, the Tribunal was satisfied that, the appellant was aware of the case filed before the Ward Tribunal. Mr. Manyama went on to submit that, the appellant's objection on jurisdiction and mandate of the Ward Tribunal to determine the application was overruled. Therefore, he contended that, the case of **T.M Sanga** (*supra*) was distinguishable from the circumstances of this case where the appellant had appeared before the Ward Tribunal. That said, Mr. Manyama requested the Court to dismiss the appeal for want of merit.

When Mr. Makongo rose to rejoin, he reiterated his submission that, the appellant was not served. He then requested the Court to allow the appeal.

I have carefully and dispassionately examined the petition and evidence on record in the light of the rival arguments of the learned advocates for both parties. I am of the considered opinion that, the issue for consideration is whether this appeal has merit. In order to address this issue, I will consider whether the Tribunal was justified to dismiss the application for extension of time.

It is on record that the appellant wanted to appeal the decision of the Ward Tribunal. The time within which to appeal against the decision of the Ward Tribunal is 45 days from the date of impugned decision. This is provided under section 20 (1) of the Land Disputes Courts Act, Cap. 206, R.E. 2019. However, the said time can be extended by the District Land and Housing Tribunal if there is good and sufficient cause. This is provided for under section 20(2) of the Land Disputes Courts Act (*supra*) which reads:

"Notwithstanding the provisions of subsection (1), the District Land and Housing Tribunal may for good and sufficient cause extend time for filing an appeal either extend the time for filing an appeal either before or after expiration of forty five days;"

What amounts to good and sufficient cause is not defined in the Land Disputes Courts Act. It is decided basing on the circumstances of each case. As rightly argued by Mr. Manyama, the good and sufficient advanced by the appellant in his application before the Tribunal was to the effect that, he was not aware of the case filed before the Ward Tribunal. This ground is reflected in paragraphs 4 and 5 of the affidavit in support of the application where the appellant deposed as follows:

4. That the Applicant never lodge an appeal in due time since he was not aware of the said case before the Nagusi Ward Tribunal.

5. That the Appellant intends to lodge an appeal against the Ward Tribunal' decision.

There is no other reasons stated by the appellant. As stated earlier, the application was dismissed on the ground that, the appellant was aware of the suits filed against him. This Court can hold otherwise upon being satisfied that the appellant was not served. It is on record of the Ward Tribunal that, the appellant appeared before the Ward Tribunal. He addressed the Ward Tribunal on its jurisdiction to try and determine the matter. This is reflected in the ruling of the Ward Tribunal when it held as follows on the objection raised by the appellant:

"... baada ya kuelezwa dhumuni la wito barazani mbele ya wajumbe wa baraza la kata na mbele ya wadai wote wanne, ndg Mdaiwa Rocket Mahega alikataa kusikiliza shauri hili la madai ardhi kwa maneno alisema hataki kusikiliza kesi kwenye baraza hilo...Ndugu Rocket Mahega alisema sababu; (i) hana Imani na wajumbe wote wa baraza(hawataki) (2) Bara hili la Kata ya Nagusi lilishavunjwa tangu tarehe 30/06/2020... alirudi tena barazani siku hiyo hiyo ya tarehe 13/7/2018 na kuleta barua yake ya maandishi ya kupinga kusikiliza kesi hiyo kwa madai ya ardhi...Wajumbe wa baraza la kata ya Nagusi waliendelea kuwasilikiza hao wadai wote wanne kwa sababu maelezo ya huyo mdaiwa Roketi Mahega katika sababu alizozitaja siyo ya kweli kwa sababu baraza hilo la kata ya Nagusi bado linaendelea na majukumu yake kwa sababu baraza hilo la kata halijavunjwa."

In that regard, it is clear that, the appellant was aware of the suit filed by the respondents against him before the Ward Tribunal. In other words, he was duly served. That is why he appeared and addressed the Ward Tribunal. The hearing proceeded exparte because the appellant refused and objected the Ward Tribunal to determine the case. The record shows further that, the

hearing proceeded *ex parte* before the same Ward Tribunal. It was not determined by the new Tribunal and members. Therefore, the second and third ground of appeal that the appellant was not summoned "after appointment of the Tribunal" has no merit. It follows that, the Tribunal was right in dismissing the appellant's application for extension of time file an appeal. I agree with Mr. Manyama that, the decision in **M.T. Sanga** (*supra*) cited by the learned counsel for the appellant is distinguishable from the circumstances of this case where the appellant had appeared before the Ward Tribunal.

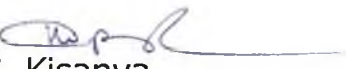
In view of the above, this appeal lacks merits. It is hereby dismissed with costs. Order accordingly.

Dated at MUSOMA this 14th day of August, 2020.


E. S. Kisanya
JUDGE
14/8/2020

Court: Judgement delivered this 14th day of August, 2020 in the absence of the appellant and the respondents but with leave of the Court. Parties to be notified accordingly.




E. S. Kisanya
JUDGE
14/8/2020