

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

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISCL. LAND APPEAL NO. 117 OF 2020**

*(Arising from the Decision of the District Land and Housing Tribunal  
For Tarime at Tarime in Land Application No 467 of 2019)*

**RYOBA MWITA KEROBE ..... APPELLANT**

***VERSUS***

**NYOMAH NIABUTO ..... RESPONDENT**

**JUDGMENT**

23<sup>rd</sup> and 23<sup>rd</sup> October, 2020

**KISANYA, J.:**

Before the District Land and Housing Tribunal for Tarime at Tarime (the DLHT), the appellant, Ryoba Mwita Kerobe applied for extension of time within which to appeal against the decision of the Ketare Ward Tribunal in Application No. 15 of 2013. In its ruling dated 17<sup>th</sup> April, 2020, the DLHT dismissed the application for extension of time on the account that, it had been "*taken by event after application for execution been granted*"

Dissatisfied, the appellant has filed the present appeal on the following grounds:

- 1. That the District Land and Housing Tribunal Chairman erred on point of law when he declined to entertain the applicant's (now appellant) application for extension of time.*
- 2. That the District Land and Housing Tribunal, erred on point of law and facts to consider and apply extraneous matter than considering the application that was before him for adjudication.*

At the hearing of this appeal the appellant appeared in person, legally unrepresented. The Respondent failed to appear without notice. Upon considering that she was duly served and filed a reply to Petition of Appeal, I ordered the hearing to proceed in her absence.

When the appellant was called upon to submit in support of the appeal, he asked the Court to consider and adopt his Petition of Appeal. Thus, he urged the Court to allow the appeal and grant him leave to appeal out of time against the decision of the Ketare Ward Tribunal.

I have dispassionately examined the records and the grounds stated in the petition of appeal. I am of the view that, the issue for consideration is whether the application for extension of time was determined by the DLHT. The answer to this issue is not hard to find. It is found in the proceedings and ruling of the DLHT in Misc. Application No. 467 of 2019.

Pursuant to the Chamber Summons filed before the District Land and Housing Tribunal and registered as Misc. Application No. 467 of 2019, the appellant moved the DLHT to grant the following orders:

- 1. That this Honorable Court (sic) be pleased to extend time to file an appeal out of time.*
- 2. That the costs of the application be provided for.*
- 3. That any other relief (s) this Honorable Court (sic) may deem just to grant.*

Furthermore, paragraphs 2 and 3 of the affidavit in support of the application tell us that the extension sought was in respect of the decision of the Ketare Ward Tribunal rendered on 18/02/2014. However, the District Land and Housing Tribunal declined to grant the application on the reason that, it had been taken over by event. For easy of reference, I find it pertinent to reproduce what was stated in the ruling as hereunder:

***"Applicant lodged this application praying this tribunal to grant the order for stay of the ruling of this tribunal dated 17<sup>th</sup> October 2019. On 12/03/2020 when the matter was for mention I have noted that application for execution in Land Application No. 15 of 2013 of Ketare Ward Tribunal was granted by this Court on 17th October, 2019 through Misc Application No 256 of 2019....***

***Above observation been my position I hereby dismiss this application as the same been taken by event after application for execution been granted by this tribunal.***"[Emphasize is added].

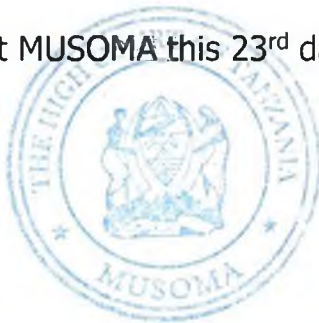
In my opinion, the DLHT did not determine the application for extension of time filed by the applicant. What was determined by the DLHT is an application for stay of execution which is different from the application for extension of time to appeal. Indeed there is Misc. Application No. 466 of 2019 where the applicant prayed for stay of execution.


It is settled law that an appeal is not a bar to execution. See the case of **Suleman ally Nyategi VS Mwanza Engineering Works**, MZA Civil Application No. 9 of 20002, CAT at Mwanza (unreported). In that regard, an appeal is not taken over by an event only because the decision to be challenged has been executed. It follows that, the DLHT was duly bound to determine the application for extension of time within which to appeal by considering whether or not the appellant herein had advanced good cause for the delay. However, the DLHT treated the application before it as an application for stay of execution.

In the circumstances, I invoke the powers of revision vested in the Court by section 43 (1) (b) and (2) of the Land Disputes Courts Act [Cap. 216,

R.E. 2019] to quash the proceedings and ruling of the DLHT in Misc. Application No 467 of 2019 and hereby set aside the order dismissing that application. Accordingly, since the power to extend an appeal against the decision of the Ward Tribunal is vested in the DLHT and where the application at hand was not determined, the matter is remitted to the DLHT for Tarime at Tarime to determine Misc. Application No. 467 of 2019. For the interest of justice, it is ordered that, the said application be heard by another Chairperson with competent jurisdiction. Each party to bear its own costs. It is so ordered.


DATED at MUSOMA this 23<sup>rd</sup> day of October, 2020.



  
E. S. Kisanya.  
JUDGE  
23/10/2020

**Court:** Judgement delivered in Chambers this 23<sup>rd</sup> October, 2020 in the presence of the appellant and in the absence of the Respondent. B/C Mariam Kimweri present.



  
E. S. Kisanya  
JUDGE  
23/10/2020