

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**AT MBEYA**

**MISC. LAND APPEAL NO. 7 OF 2020.**

***(From the District Land and Housing Tribunal for Mbeya, at Mbeya  
in Misc. Land Application No. 70 of 2018. Originating from Land  
Case No. 65 of 2018 of Ruanda Ward Tribunal).***

**BEN EDSON MENDRO.....APPLICANT**

**VERSUS**

**LAUDEN A. MWATONOKA.....RESPONDENT**

**JUDGMENT**

**30. 9 & 27. 11. 2020.**

**UTAMWA, J:**

In this appeal, the appellant BEN EDSON MENDRO challenged a decision of the District Land and Housing Tribunal for Mbeya, at Mbeya (the DLHT), delivered on 16/5/2019. The decision was on an application for extension of time to appeal out of time against a decision of a ward tribunal. The application had been made by the appellant before the DLHT through Misc. Land Application No. 70 of 2018.

The back ground of this matter can be briefly narrated as follows; that, the respondent Lauden A. Mwatonoka (as an administrator of estate

of the late Asangalwisye Mwatonoka), sued the appellant in the Ruanda Ward tribunal (the ward tribunal) for recovery of the debt of Tanzania shillings (Tshs.) 900,000/=. The claim was for rent of Tanzanian shillings (Tsh.) 50,000/= per month from January, 2017 to June, 2018 following the leased agreement for a room. The ward tribunal decided in favour of the respondent. The appellant was aggrieved by that decision, but did not appeal timely until when he received a forceful eviction order. That was when he applied before the DLHT for extension of time to appeal out of time. His application was dismissed, hence this appeal. He preferred two grounds of appeal as follow:

1. That, the chairman of the DLHT erred in law and fact by entering a decision in favour of the respondent while the appellant had never been served with the copy of the summons on the date of hearing of the matter before the ward tribunal.
2. That, the chairman of the DLHT erred in law and fact by entering a decision in favour of the respondent without considering the whole affidavit sworn by the appellant.

The respondent objected this appeal which was heard by way of written submissions. The appellant was unrepresented whereas the respondent was represented by Mr. Philip Mwakilima, learned counsel.

In his submissions in chief, the appellant argued as follows regarding the first ground of appeal; that, the DLHT did not peruse the record of the ward tribunal in order to detect the irregularity or illegality which had been committed by the ward tribunal. The irregularity was that, the appellant who was the respondent in the ward tribunal, was condemned unheard. This is because, he was not served with a summons notifying him on the hearing date. He further argued that, the illegality committed by the trial tribunal, was a good ground for the DLHT to extend time.

Concerning the second ground of appeal, the appellant submitted that, the DLHT did not consider his affidavit during determination of the application. Instead, it decided on the arguments advanced by the respondent only. He also claimed that, had the DLHT considered his affidavit, it would have granted the application. This is due to the fact that, the affidavit contained sufficient reasons for his delay. He thus, urged this court to allow the appeal and set aside the decision of the DLHT.

On his part, the respondent's counsel made his replying submissions regarding the first ground of appeal as follows: before the DLHT, the appellant never raised the issue of illegality as a ground of extension of time. Again, the complaint by the appellant that he was condemned unheard has no basis. This is because, the record shows that, he had appeared during the hearing before the ward tribunal, but he absconded before the matter was concluded. There was thus, no need for summoning him again.

Regarding the second ground of appeal, the respondent's counsel argued that, the DLHT considered both parties' arguments in its decision. He also contended that, the complaint by the appellant that, his affidavit was not considered is untenable. This follows the fact that, he did not pray before the DLHT for it to form part of his submissions. Furthermore, he argued that, it was the duty of the appellant to give reasons accounting for each and every day of delay, but he did not do so. He thus, prayed for this court to dismiss the appeal with costs.

In his rejoinder submissions, the appellant reiterated the contents of his submissions in chief and insisted for his appeal to be allowed.

I have considered the submissions by the parties, the record and the law. I will resolve this matter by considering one grounds of appeal after another. Starting with the first ground of appeal, I must appreciate that, indeed, it is the law that, an allegation of illegality in a decision to be appealed against constitutes a sufficient reason to extend time for appealing out of time; see the case of **VIP Engineering and Marketing Ltd and Two others v. CITI Bank Tanzania Ltd, Civil References No. 6, 7 and 8 of 2006 Court of Appeal of Tanzania** (unreported). Indeed, there are exceptions to this general rule.

Now, the issue here is whether the decision of the ward tribunal in this matter was founded any illegality. The complaint by the appellant is that, he was condemned unheard since he was not summoned to defend his case. I have gone through the record of the ward tribunal and noted the following; that, on 25/6/2018 the ward tribunal issued a summons to the appellant requiring him to appear before it on 28/6/2018. The summons shows that, it was received and signed by the appellant. On 28/6/2018, both parties appeared and the case was heard starting with the respondent who was the claimant in the ward tribunal. Then the appellant who was the respondent gave his defence in length (see at pages 2 and 3

of unnumbered handwritten proceedings of the ward tribunal). After that, the ward tribunal adjourned the case and ordered (in kiswahili) that, I quote the order for easy reference:

“Baada ya kusikiliza pande zote mbili Baraza limeamua kufika eneo la mgogoro sokoni Soweto. Kesi imeahirishwa hadi tarehe 02/07/2018. Kuleta mashahidi na vielelezo”

This can be literally translated as follows; that, having heard both parties, the Tribunal has decided to visit a *locus quo* at Soweto market. The case is adjourned till 02/07/2018, for the parties to call witnesses and bring exhibits.

The record further shows that, from that date i.e. (28/6/2018) the appellant never attended the tribunal. He did not also give any notice to the ward tribunal showing the reasons why the case had to be adjourned. The ward tribunal thus, continued with the hearing of the matter and finalized the case in the absence of the appellant. I do not thus, agree with the appellant that, he was condemned unheard. This is because, the case was previously adjourned in his presence. Nonetheless, he absented himself in the subsequent date for hearing. In that regard, it was illogical for the ward tribunal to issue a summons to notify him about the hearing date. A party to court proceedings who absents himself deliberately from the hearing of a case is precluded from complaining that, he was denied

I therefore, find that, the appellant did not adduce any sufficient ground for the DLHT to grant the application for extension of time. In that view, I determine the issue posed above affirmatively that, the chairman of the DLHT in fact, considered the appellant's affidavit, though he did not consider all his grounds for extension of time as shown above. The second ground of appeal thus, also lacks merits and is overruled.

Owing to the above reasons, I hereby by dismiss the appeal in its entirety for demerits. The appellant shall pay costs to the respondent since costs follow event in law. It is so ordered.



  
J.H.K. Utamwa  
JUDGE  
27/11/2020

27/11/2020.


CORAM; J. H. K. Utamwa, Judge.

Appellant: present in person.

Respondent: present in person.

BC; Mr. Patrick, RMA.

Court: Judgment delivered in the presence of both parties, in court this 27<sup>th</sup> November, 2020.

  
J. H. K. UTAMWA  
JUDGE  
27/11/2020.