

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TANGA

(LAND DIVISION)

AT TANGA

MISCELLANEOUS LAND CASE APPLICATION NO. 24 OF 2019

(Originating from Land Appeal No 34 of 2018 at Korogwe District Land and housing tribunal before M.R Makombe)

FATUMA ZUBERI APPLICANT

VERSUS

JOHN SIMON GREEN RESPONDENT

RULING

MRUMA,J;

This application is made under Section 38(1) of Courts (Land Dispute Settlement) Act (Cap 216 R.E 2018). The applicant Fatuma Zuberi through her advocate Mr. Laurent Ntanga is seeking indulgence of this court to extend time so that she can file an appeal out of time. The application is buttressed by an affidavit of Laurent Ntanga, learned counsel. The Respondent resisted the application through a counter affidavit.

The matter originates from Magoma Ward Tribunal in Land Cause No 04/2018 wherein the Respondent John Green filed a dispute against the Appellant Fatuma Zuberi claiming that he was the rightful owner of a piece of land situated at Magoma Ward. After a full hearing, the tribunal decided in favour of the Appellant. The Respondent was dissatisfied hence

appealed to the District Land and housing tribunal at Korogwe via Land Appeal No 34 of 2018. At the end, the appellate tribunal overturned the ward tribunal's decision and found in favour of the Respondent. Judgment of the Appellate Tribunal was handed down on 21st November 2018.

When the matter was called for hearing on 13th Dec 2019, the Applicant was represented by Mr. Laurent Ntanga while the Respondent appeared in person. While adopting the affidavit, the learned advocate addressed the court on the reasons for this application.

He stated that his client routinely attended the proceedings both at Magoma Ward Tribunal and in the District Appellate Tribunal at Korogwe but he fell sick two weeks before the date scheduled for delivering of judgment and was being treated in a hospital at Dar Es Salaam as a result of which he could not lodge his appeal within the prescribed time.

The learned counsel stated that after collecting her copy of judgment the Appellant gave it to her sister who gave it to him (advocate) and having perused it he realized that there was gross illegality in that both in the Ward Tribunal and the District Land and Housing Tribunal proceedings in that the Applicant expressed to those courts that the disputed land belonged to her father and that no administration cause had been filed concerning that estate.

He submitted therefore that because of that the Applicant had no locus standi. He stated that the Law is clear that only an administrator of estate can stand in place of the deceased. The District Land and Housing Tribunal ignored that position of the law and proceeded to determine the matter

without hearing other heirs' interests. He referred this court to the decision of the Court of Appeal in the case **of Principal Secretary Ministry of Defence Vs Devlam Valambia (1992) TLR 185 and R vs Yohana Kaponda & 9 Others (1985) TLR 84.**

In summary therefore this court is moved to extend time within which the Applicant can appeal on two major grounds; one that there is illegality because the Applicant was not the right person to be sued before the Ward Tribunal as she is not an administrator of the estate which is in dispute and two; that she was sick and couldn't lodge the appeal in time.

In reply the Respondent being a lay person simply stated that he adopts fully what he had deposed in his counter affidavit and added that the fact that she was not an administratrix was known to the Appellant all along because her relatives used to attend to court.

In rejoinder, Mr Laurent Ntanga availed that the land is not surveyed. It is mandatory that for a person to acquire locus standi she/he must be appointed as an administrator of estate. According to his understanding, a person who intermeddles with the suit land is the applicant's mother, Hadija Mussa.

The court has carefully considered the Applicant's application in line with Section 38 (1) of the Land Disputes Courts Act, Cap 216 R.E 2002 and not Courts (Land Dispute Settlement) Act (Cap 216 R.E 2018) as cited by the learned counsel. The said provision provides that;

*"Any party, who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may **within sixty days after the date of the decision or order**, appeal to the High Court".*

*Provided that the **High court may for good and sufficient cause extend the time for filing an appeal** either before or after such period of sixty days has expired. (Emphasis is mine)*

It is of no gain reiterating that from the above provision of law, the utmost prerequisite for a grant of extension of time is manifestation of good and sufficient cause. What amounts to good and sufficient is upon the Applicant to provide material that will persuade the court to apply its discretion to extend time.

Numerous decisions have discussed eligibility of a party to be considered for extension of time. **Ratnam Vs Cumarasamy & Another (1964) 3 All ER 933 and Mumello Vs Bank of Tanzania (2006) 1 EA 227** being some of them.

In the Ratnam's case (supra), the Privy Council stated that;

"There must be some material put before the court to enable its discretion to be exercised".

The decision which the applicant seeks extension of time to appeal against was delivered by the District and Land and Housing Tribunal on 21/11/2018. As elucidated above appeals from the District and Land and Housing Tribunal to the High Court are to be filed in the District and Land

and Housing Tribunal within 60 days from the date of judgment. Sixty days from 21/11/2018 elapsed on 22nd February 2019. This application was presented for filing on 25th June 2019 that is 7 months, 5 days (217 days) after the decision was pronounced.

Reasons brought to the fore by the Applicant are two, one that the applicant had been sick and could not follow up the appeal on time and two that the decision sought to be appealed against has gross illegality.

Starting with the issue of sickness, in the affidavit, the fact that the applicant was sick is explained in paragraphs 7, 8 & 9. For purposes of precision, I will quote;

- 7. That the judgment of Korogwe District Land and Housing tribunal was delivered on 21st November 2018 whereby **the applicant was present as she was sick** (sic), by the then she was attending medical treatment at Dar es Salaam;*
- 8. That from sometimes October 2018, the applicant has been attending medical treatment at Mkwajuni Mico Dispensary till todate. That currently her health is improved as the outcome she is able to hire lawyer for the purpose of initiating the process of appeal;*
- 9. That following the illness of the applicant was unable to appeal within the prescribed time as the time when she was supposed to appeal was attending medical treatment. End of quote.*

If parties to a had the habit and understood the duty of telling the truth, courts' load could have lessened. The aim of saying this is that I am with no flicker of doubt that, had the Applicant been surely attending treatment at whatever health facility, her advocate would attach the hospital records along with the application. The allegation that she has been sick without any documents to back it up is for all intents and purposes, frivolous.

Auspiciously, it is not the first time for such a reason to be advanced by parties so as to seek mercies for extension of time. The late Hon. Ramadhan J. A (as he then was) in one case of **SHEMBILU SHEFAYA vs OMARY ALLY TZCA 1992 TLR 245 (CAT at TANGA)** had this to say:

"ill health without elaboration cannot amount to a good reason for extending time... For court work we need something more than excuses"

This court in the case of **KWIPI SAIDI (Administratrix of Estate of the late ASHA JUMA) Versus SAIDI MBARUKU RASHIDI and HEMED AWADHI in MISCELLANEOUS CIVIL APPLICATION NO. 15 OF 2019** held that

"Sickness is a factual issue which needs medical proof that one was ill"

During the hearing, the Respondent stated and it was not challenged by the Applicant that at the tribunal the Applicant was represented by Mr. George Magoti, an advocate so if she was sick but certainly intended to appeal in time she could readily use the services of her advocate. This

makes sense so in the upshot, I find the first reason below par. In the same spirit with the Valambia's case (supra) as cited by the learned counsel, indeed a court must take a proactive role to make sure a decision, if illegal does not become final. In that case it is stated and I quote;

"We think that where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute "sufficient reason" within the meaning of rule 8 of the Rules for extending time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand".

It has been long established that for illegality to form sufficient cause for extension of time, it must be one that is obvious at a glance. (See also. **HANSPAUL AUTOMECHS LIMITED VERSUS RSA LIMITED, CAT at Arusha, Civil Application No. 126/02/ OF 2018**). A crucial inquiry therefore is whether the decision sought to be appealed against constituted any illegality apparent on face of record.

It has been the norm of courts that where there is any insinuation of illegality in the decision sought to be challenged, courts are bound to grant extension of time to the applicant even where other grounds flop. In that similar vein I think I am inclined to find out whether there really is an illegality in the decision of the District Land and Housing Tribunal.

With that in mind, parties have at times misconceived the sympathy of courts to pave way for them to pass to an appellate stage regardless of their droopiness in filing the appeal in time. It is my take that it is upon the

court hearing the application for extension of time, to filter and monitor multiplicity of such appeals by taking a considerate time to see whether the illegality complained of surely exists. This will save parties of more costs for litigations which could as well have ended at an earlier stage and two, it can as well save courts' precious time to dispense justice.

In this application, the illegality complained of is the issue of locus standi. In the Ward Tribunal it was the Respondent who filed a complaint. The Ward Tribunals Act, Cap 206 R. E. 2002 allows any person to file a complaint against any person who he reasonably believes has committed an offence or he has infringed his rights.

11.-(1) Proceedings may be instituted by making of a complaint to the secretary of a Tribunal, the Secretary of an appropriate authority, and the Chairman of a Village Council or a ten-cell leader.

(2) Any person who reasonably believes that any person has committed an offence may make a complaint about the matter to any of the persons specified in subsection (1).

At the end of the day it was the present Applicant who won.

In law there is no legal requirements that the owner of the land must personally appear in court to prosecute his case. Section 34(2) of the Land Disputes Courts Act Cap 216 R. E. 2002 provides that

*34. (2) "A party to any proceeding appealed against may appear –
(a) personally; or*

*(b) by an advocate **or any relative or any member of the household** or authorized officer of a body corporate".* (Emphasis is Mine).

Fatuma Zuberi being a daughter of Zuberi (deceased) fits as a member of the household of the late Mzee Zuberi.

Representation of parties in the High Court are governed by Section 46 of the Land Disputes Courts Act which provides that;

*In any proceeding in the High Court parties may appear in person or by an advocate **or other representatives in accordance with the Civil Procedure Code.*** (Emphasis is Mine).

Civil Procedure Act, Cap 33 R. E. 2002 defines a legal representative at Section 3 as follows;

*"legal representative" means a person who in law represents the estate of a deceased person, and includes **any person who intermeddles with the estate of the deceased** and where a party sue or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued;* (Emphasis is Mine).

It follows therefore that since the Applicant is evidenced to be the one who intermeddles with the suit land, there can be no illegality in her being made a party to the said land dispute. This is vividly seen at page two of the Ward Tribunal decision where one witness Mama Zefania is quoted to answered ;

(2) Je mama unaelewa nini juu ya eneo hili lenye mgogoro?

Jibu:- Hapa sisi tulikodishwa na huyu Fatuma muda mrefu sana tunaendelea kulima ninavyofahamu eneo hili ni la hawa kina Fatuma.

Swali la Pili: Je huyu John hujamuona akilima hapa?

Jibu:- Nimemuona mwaka jana tu kuingia kinyemela kwenye eneo la Fatuma ndipo tukamweleza mwenyewe Fatuma.

Thus, without further ado it is suffice to say that there was no illegality for the Applicant to be made a party at the lower tribunals' stage and therefore this ground too fails and as a result mark the whole application fruitless.

Accordingly, the Application is dismissed with costs to the Respondent.


A.R. Mruma,

Judge.

Dated at Tanga this 22nd Day of June 2020.