

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TANGA

MISC. LAND APPEAL NO. 18 OF 2018

(Arising from Misc. Application no. 122 of 2017 at District Land and Housing Tribunal, originating from Land Appeal No. 112/2013 of Korogwe District Land and Housing Tribunal)

DANIEL LUKINDO..... APPELLANT

VERSUS

THOMAS AMOS MNKAMA.....RESPONDENT

JUDGMENT

Mruma, J.

The Appellant Daniel Lukindo was the Applicant in Miscellaneous Application No. 122 of 2017 before the District Land and Housing Tribunal for Korogwe District. In that Application he had applied for extension of time within which he could make an application to the said tribunal to have an ex-parte judgment passed against him in Land Appeal No. 13 of 2013 be set aside. The Application to set aside the said ex-parte judgment was instituted three (3) years after the said ex-parte judgment was handed down.

In its ruling dated 08/12/2017, the District Tribunal the District Tribunal dismissed the Applicant's application on two grounds namely:

- (i) That the Applicant failed to show sufficient cause to warrant the tribunal to exercise its discretionary powers to extend time.
- (ii) That the matter had already been overtaken by events as by the time the application was filed execution had already taken place and suit land handed over to the respondent.

The Appellant was aggrieved and has appealed to this court on one ground that.

"The honourable Chairman erred in fact and law to deny the Appellant extension of time to file an application to set aside ex-parte judgment despite strong reasons for delay advanced by the Appellant".

Submitting in support of the Appeal, counsel for the Appellant submitted that his client had advanced sufficient reasons for delay in filing an application for extension time within which to file an application to set aside ex-parte judgment but for no sufficient ground the District Tribunal refused them. He contended that the reason that the appellant was

attending his beloved father who consequently passed away was in any standard sufficient reason.

Responding to the submissions of the counsel for the Appellant Mr. Justus J. Ilyarugo, Advocate for the Respondent submitted that in the first place this appeal is time barred because the impugned ruling was delivered on 08/12/2017 and copies of the ruling and proceedings were ready for collection on 10/05/2018. The Appeal was presented for filing on 25/06/2018. Counsel for the Appellant did not file any rejoinder to counter this assertion.

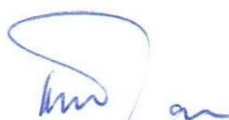
From the records of the District Tribunal and submission of the learned counsel for the Respondent, this appeal is clearly out of time. Ruling of the District Tribunal which the Appellant seeks to impugn was delivered on 08/12/2017 and the present appeal was presented for filing on 25/06/2018 which is 280 days or 9 months and 7 days after the ruling which the Appellant is challenging. As rightly observed by Mr. Justus time available for an appeal under section 41 (2) of the Land Disputes Courts Act [Cap 216 R.E. 2019] is 45 days.

Secondly, even if we assume that the appeal was in time (which is not the case), yet the reason that for three (3) years the Appellant was neither a

sufficient cause nor was it substantiated. In the first place attending a sick person entails nursing or looking after a sick person. By saying that he was attending his father for three (3) years it means he wanted the tribunal to believe that for the period of three years he stayed at home nursing his father with no break or opportunity of attending other family matters including his case. This cannot be true and there was no evidence that he was sitting at the bed side attending his father all that time.

Thirdly, there was no evidence that he had a sick father who consequently passed away.

That said, this appeal has no merits and it is dismissed with costs to the Respondent.



A.R. MRUMA

JUDGE

06/11/2020

Date: 06/11/2020

Coram: A.R. Mruma, J.

Appellant: Present in person, Mr. Justus Josephat for Mr. Rwegasira for the Appellant

Respondent: Mr. Justus Josephat for the Respondent.

Court Clerk: Nakijwa

COURT:

Judgment delivered.




A.R. MRUMA

JUDGE

Dated at Tanga this 6th Day of November, 2020.