

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TANGA

MISC. LAND APPLICATION NO. 93 OF 2018

(From the Decision of the District Land and Housing Tribunal
for Tanga in Application for Execution No. 15 of 2017)

RICHARD MBWANA..... APPELANT

VERSUS

JOSEPH MANGENYA RESPONDENT

RULING

MKASIMONGWA, J.

This is an Application by **RICHARD MBWANA** for extension of time in which to appeal against the decision in an Application for Execution No. 15 of 2017 of the District Land and Housing Tribunal for Tanga District delivered on 28/04/2017. The Application is made by way of Chamber Summons filed under the provisions of Section 41 (2) of the Land Disputes Courts Act [Cap 216 R.E 2002] as amended by the Written Laws (Miscellaneous Amendment (No. 2). Act, 2016 and it is supported by the Affidavit of Richard Mbwana.

The Respondent, Joseph Mang'anya, resisted to the Application. The Respondent did not however file a Counter Affidavit. On the date the Application came for hearing the Applicant appeared in person whereas Media Joseph Mang'eya, the Respondent's attorney appeared on behalf of the Respondent.



In his submission, the applicant simply stated that he is adopting the contents of the Affidavit filed in support of the Application. In the Affidavit the Applicant averred that he was the Appellant in Land Appeal No. 168 of 2009 of the District Land and Housing Tribunal for Tanga District. The Appeal was however struck out later on 09/11/2010 on ground that the Appellant was not a party to the proceedings before the Ward Tribunal. Later on the Respondent filed an Application for Execution of the decree in the matter (Application for execution No. 15/2017) in which was granted and an Order for Execution was issued on 28/04/2017 and served upon the Applicant later on 04/10/2017. The Applicant averred that he was not aware of the existence of the execution proceedings instituted in the District Land and Housing Tribunal until when the order for execution was served to him. He added that that from 06/10/2017 to 24/09/2018, the Applicant was in court litigating this similar Application (Misc Land Application on 99/2017) which was eventually struck out for it was instituted under a wrong provision of the law. From when the former application was struck out to the time this matter was instituted on 28/11/2018 the Applicant was searching for a legal expert and for paper works. He prayed the court that the Application be granted.


As pointed out earlier the Respondent did not file a counter Affidavit against the Affidavit filed in support of the Application. When however, the court invited him to argue the Application the Respondent's Attorney was heard and recorded saying that:

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"The Applicant disputes the names. We Africans have many names what is in issues is the land whose rights were determined by the Tribunal"

In a short rejoinder, the Applicant submitted that the Respondent admitted before the Tribunal that he is not Richard Mbwana but Richard Barua. He reiterated that he is not Richard Mbwana.


I have considered the above submissions along with the record. Going by the record, it is clear that the Respondent did successfully sue Richard Barua before Tingeni Ward Tribunal claiming for a piece of land. Being aggrieved by the decision, Richard Mbwana came to the District Land and Housing Tribunal armed with a Petition of Appeal appealing against the decision of the Ward Tribunal. In the District Land and Housing Tribunal the Appellant's counsel was heard pointing out that the Appellant is called Richard Mbwana and not Richard Barua and prayed that any document written Richard Barua should be discarded. This in my view meant that Richard Barua and Richard Mbwana is one and same person. In determining the issue the District Land and Housing Tribunal Chairman stated that it was not raised before the Ward Tribunal that the Respondent's name is Richard Mbwana and not Richard Barua. When in the appeal the appellant posed as Richard Mbwana sufficed, the finding that the appeal was brought by a wrong person that is; one who was not a party to the proceedings. As such the Appeal was struck out. The record again is to the effect that, later Joseph Mang'anya went to the District



Land and Housing Tribunal for Execution of the decision in Land Case No. 432 KF (A) 2009. He brought the Application against RICHARD MBWANA. It is Application for Execution No 15 of 2017. The execution order was granted later on 28/04/2017. The same was issued against Richard Mbwana. The issues is where the Ward Tribunal declared the Respondent one Joseph Mang'anya the lawful owner of the disputed land against Richard Barua, and where the Appeal filed by Richard Mbwana, against that decision of the Ward Tribunal was not successful on ground, among others, that Richard Mbwana was not a party to the case, could execution proceeding be brought and granted against Richard Mbwana? This is a legal issue and under paragraph 15 of the Affidavit filed in support of the Application the Applicant averred that there are legal issues to be determined by the High Court. An allegation of illegality of the decision being challenged constitutes a sufficient cause warranting extension of time. This was the view of the court in the case of **Principal Secretary, Ministry of Defence and National Defence v. Devram Valambhia (1992) TLR 182 (CAT)** where it stated that:

In our view when the point at issues is one alleging illegality of the decision being challenged the court has a duty even if it means extending the time for the purpose, to ascertain the point of the alleged illegality be established; to take appropriate measures to put the matter and the record straight"

Based on the above authority, I grant this Application for extension of time. The time within which to file an Appeal against



the Execution Order made in an Application for Execution No. 15 of 2017 is extended. The Applicant shall file the Application within forty five days from today.

Dated at Tanga this 26th of October, 2020.



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E. J. Mkasimongwa

JUDGE

26/10/2020