

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

MISC. LAND APPEAL NO.53 OF 2019

(Arising from the Ruling of the District Land and Housing Tribunal of Mwanza at Mwanza in misc. Land Application No. 27 of 2019 originating from Magu Urban Ward Tribunal land application No. 12 of 2018)

JULIUS MATOGOLO APPELLANT

VERSUS

HENERICO LUGAYILA RESPONDENT

JUDGMENT

Last Order: 30.03.2020

Judgment date: 21.04.2020

A.Z.MGEYEKWA, J

The Appellant is appealing against the decision of the District Land and Housing Tribunal of Mwanza in Misc. Land Application No. 27 of 2019 which was dismissed.

This appeal is against a Ruling of the District Land and Housing Tribunal for Mwanza at Mwanza which was delivered on 25th October, 2019 denying the appellant extension of time to appeal out of time against the decision of Magu Urban Ward Tribunal in respect with Land Application No. 12 of 2018. The appellant did not see justice hence this appeal to this court. The grounds upon which this appeal is based are as follows:-

- 1. That the trial Chairman of DLHT erred in law and fact by holding that the appellant encroached 3 paces in the suit land and that was to determine the jurisdiction of the tribunal and not whole plot which its value is more than 3,000,000/=.*
- 2. That the trial Chairman of DLHT erred in law and fact by failing to scrutinize and access the reasons advanced by the appellant in hearing the application and the case law attached thereto which together prove that there were good reasons for the extension of time to file an appeal.*
- 3. That the trial Chairman of DLHT erred in law and fact by holding that the appellant did not give evidence, that he was denied a right to be represented by the advocate while there is evidence on record that the appellant prayed to have a representation of an advocate and denied that has offended a right to be heard.*

4. *That the trial Chairman of DLHT erred in law and fact by failing to take into consideration that Magu Mjini WT disobeyed an order of transmitting the record before the judgment on 05.03.2018 and the tribunal proceed to hear and determine the case on 07.03.2018 in favour of the respondent.*

In prosecuting his appeal, the appellant appeared in person while the respondent afforded the service of Mr. Kabogo learned Advocate.

Commencing his submission, the appellant prays this court to adopt his grounds of appeal to form part of his submissions. Fending his 1st ground of appeal, he argued that the Chairman erred in law for failing to scrutinize and analyse the reason given for the application. He argued that the value of the disputed land is more than Tshs 3,000,000/=.

As to the 2nd ground of appeal, he avers that, the Chairman erred in law and fact for failure to acknowledge his application of extension of time on the ground that the application was not found in court records.

Concerning the 3rd ground of appeal, the appellant lamented that he was not afforded a right to state his case while he availed the tribunal a letter of representation but the tribunal did not consider his request.

Lastly, the appellant forcefully argued that the Chairman failed to consider his order dated 05th March, 2018 as directed to the trial tribunal instead the trial tribunal proceeded and made his decision.

In conclusion, the appellant prays this court to quash the decision of the District Land and Housing Tribunal and afford him right to be heard.

Responding to the appellant submissions, the learned Advocate for the respondent prays this court to dismiss the appeal with costs for the reasons advanced hereunder:-

On the 1st ground of appeal, Mr. Kabago argued that at the trial tribunal, the appellant trespassed the respondent area and build a foundation. He added that the value of the said foundation did not exceed Tshs. 3,000,000/=. Mr. Kabago went on to submit that the matter was discussed at the Ward Tribunal and the District Land and Housing Tribunal

but the appellant did not tender a valuation report to support his claims. He further argued that failure for the appellant to prove his claims rendered the District Land and Housing Tribunal to decide that the value of the disputed area was not more than Tshs. 3,000,000/=, therefore the subject matter was within the Ward Tribuna jurisdiction. The learned advocate urges this court to disregard this ground.

Submitting on the 2nd ground of appeal, the learned counsel argued that the appellant failed to account for each day of delay starting from 07th March, 2018 when the trial tribunal delivered its judgment to 22nd February, 2019 when the appellant lodged her appeal, a delay of 11 months. Mr. Kabago avers that, the appellant's appeal which was filed prematurely was struck out on 11th January, 2019 and the appellant failed to account the 41 days of delay.

The respondent learned counsel objected the 3rd ground of appeal by stating that the appellant was playing delaying tactics because he wrote a letter requesting to be represented while he had disobeyed several court orders which were issued by the Ward Tribunal, restricting the appellant to continue to build in the disputed land. He avers that after several

adjournments on 02nd March, 2018, the trial tribunal delivered a Ruling and set for a hearing date whereas, the respondent testified but the appellant denied to testify. It was his further submission that on 05th March, 2018 the trial tribunal visited *locus in quo* and the appellant was heard on merit. Mr. Kabogo fortified his submission by referring this court to page 8 of the trial tribunal. He prays this court to disregard this ground of appeal.

With regard to the 4th ground of appeal, the learned counsel for the respondent argued that it is a new issue that was not raised at the Ward Tribunal and was not brought to the attention of the District Land and Housing Tribunal. He, therefore, urged this court to disregard this ground of appeal and dismiss the appeal with costs.

In his brief rejoinder, the appellant insisted that the house valued more than Tshs, 3,000,000/=. He went on arguing that he delayed filing his application for 45 days because he was nursing her wife (now deceased). He avers that he was issued with an order to restrain him to continue with construction. He, ended by urging this court to grant his appeal and allow him to be heard as the respondent will not be prejudiced.

I have soberly considered the rival submissions for and against the appeal and the main issue for determination is ***whether the appeal is meritorious.***

I will start with the first ground of appeal that, the trial Chairman of District Land and Housing Tribunal erred in law and fact by holding that the appellant encroached 3 paces in the suit land valued Tshs. 3,000,000/= and that was to determine the jurisdiction of the trial tribunal. It was Mr. Kabogo submission that this allegation was not proved at the trial tribunal and the appellate tribunal. Having in mind that this is an appeal against the ruling of the District Land and Housing Tribunal for the extension of time to appeal out of time which was dismissed by the District Land and Housing Tribunal for Mwanza, and as the appellant's allegation raises the legality of the case at issue, I see it positive to venture directly to determine the jurisdiction of the Ward Tribunal and I will be guided by the case of **Richard Julius Rukambura v Issack Ntwa Mwakajila And Tanzania Railways Corporation**, Civil Application No. 3 OF 2004, the Court of Appeal of Tanzania was held that:-

"The question of jurisdiction is fundamental in court proceedings and can be raised at any stage, even at the appeal state."

Upon going through the tribunal records, it is my findings that the appellant submissions on the first ground of appeal are unfound on the trial records. The law is clear under section 15 of the Land Disputes Courts Act Cap. 216 [RE 2019] that:-

" Notwithstanding the provisions of section 10 of the Ward Tribunals Act, the Jurisdiction of the Tribunal shall in all proceedings of a civil nature relating to land be limited to the disputed land or property valued at three million shillings."

At page 10 of the Ward Tribunal proceedings, it is revealed that the disputed land is measured 6.3 m long and 3.25 meters width and the same is reflected on the Map which is in the trial tribunal records. I am in accord with Mr. Kabago and the holding of the District Land and Housing Tribunal that, the dispute involved only part of the disputed property and not the whole plot of the respondent which was measured 62 paces long and 38 paces width as claimed by the appellant. Again, it was the founding of the appellate tribunal that the appellant did not prove his allegations that the disputed land was above the jurisdiction of the trial tribunal as no valuation

report was tendered to exhibit that the WT has no pecuniary jurisdiction to entertain the matter. It is from those findings that both tribunals found that the issue of jurisdiction did not stand and I did not have any reason to fault the decision of both tribunals on this ground.

On the second ground of appeal, the appellant asserts that the District Land and Housing Tribunal erred in law and fact by failing to scrutinize and access the reasons advanced by the appellant in hearing the application and the case law attached thereto which together prove that there were good reasons for the extension of time to file an appeal. It is on records that the appellant filed an Application No. 27 of 2019 on 21st February, 2019, after 11 months from the date when the trial tribunal delivered its decision on 07th May, 2018. I see chains of events that transpired as the appellant's first appeal was on filed 05th May, 2018 before the DLHT which was struck out on 11th January, 2019 for being premature. It is vivid that the appellant did not state good reasons for his delay as required by the law. Court has consistently been to the effect that in an application for extension of time, the applicant has to account for every day of the delay. In the case of **Sebastian Ndaula v Grace Rwamafa Civil Application** No. 4 Of 2014 CAT, (Unreported).

Similarly, in the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) which was delivered in May, 2019, the Court of Appeal of Tanzania observed that in order for the court to grant an extension of time, the applicant must state sufficient reasons for his delay and account for each day of delay. On a closer look, I see no reason advanced by the appellant accounting for the days of his delay. For instance, he has not accounted the 11 months of delay starting from 07th March, 2018 the date when the decision of the Ward Tribunal was delivered to 22nd February, 2019 when he filed the Application No. 27 of 2019 before the appellate tribunal seeking for an extension of time. This interlude begs the question of why the appellant did not account for days of his delay knowingly that he filed an appeal to the District Land and Housing Tribunal before the decision of Ward Tribunal was delivered. The appeal which had no basis as it was from the unfound decision of the Ward Tribunal and the same was dismissed for being prematurely filed. The appellant failed to discharge his required obligations and his failure should not be taken lightly as the court of law is made up of uniformity procedures that accommodate and treats

subject equally. It is my findings that the District Land and Housing Tribunal was right and I find no reason to fault its findings on this ground.

On the 3rd ground of appeal, it was the appellants' submission that he prayed to have a representation of an advocate and denied that he was offended a right to be heard. Admittedly, the right to adversarial proceedings which is one of the elements of fair hearing within Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, means that each party to a trial, have the opportunity to have knowledge of evidence against and make comments as it may be, in view to influencing the court's decision. The Court of Appeal in **Mbeya-Rukwa Auto Parts & Transport Limited Vs Jestina George Mwakyoma**, Civil Appeal No. 45 of 2000 and definitively held that:-

"Natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard amongst the attributes of equality before the law."

I have laboured to go through the trial tribunal records in order to ascertain the appellant's claims that he was denied his fundamental right, I have found that what transpired at the trial tribunal does not accommodate

the appellant's claim. As the records reveal that the appellant was afforded right to be heard at the trial tribunal to the time. I have noted that in the Ward Tribunal proceedings and on page 7 of the trial tribunal judgment it is shown that on 02nd March, 2018 when the appellant was required to give his defense, he ended addressing the Chairman of the Ward Tribunal in an awkward and unpleasant language and on 05th March, 2018 when the trial tribunal visited locus *in quo*, the appellant apologized for his earlier act and defended his course.

On records, the appellant indeed wrote a letter requesting the matter to be transferred to the District Land and Housing Tribunal for the reason that he wanted to engage an advocate. But I have to say that the appellant act was un-procedural since his ground to engage and advocate was not backed up by any law of the land. As a matter of practice, the appellant was required to write a letter or inform the District Land and Housing Tribunal requesting to move the application from the trial tribunal to the District Land and Housing Tribunal. He could have been allowed to close the matter and lodged the same application before the District Land and Housing Tribunal. In short, the appellant did not pursue this road. It is my finding that all the time during trial, the appellant was equally afforded

right to defend his case but he failed to move the tribunals to decide his application on his favour, therefore this ground has no merit.

On the 4th ground of appeal, it was the appellant submission that the District Land and Housing Tribunal erred in law and fact by failing to take into consideration that Magu Urban Ward Tribunal disobeyed the appellate tribunal order to transmit the record instead it proceed with hearing the application and decided in favour of the respondent. I have traveled through the tribunal records and I am in accord with the learned counsel for the respondent that this ground is a new issue which was not raised before the trial tribunal hence it was not dealt with. The same was observed in the case of **Juma v Manager PBZ Ltd and others** [2004] I EA 62 Court of Appeal Tanzania at Zanzibar, it was held that: -

"...the first appellate Judge, therefore, erred in deliberating and deciding upon an issue which was not pleaded in the first place".

For the above reason, I find there is no legal basis for this court to determine this ground of appeal.

In the upshot, I will not disturb the decision of both tribunals and proceed to dismiss the appeal. I make no order to costs each party to shoulder his own costs.

order accordingly.

DATED at Mwanza this day of 24th April, 2020.


A.Z. MGEYEKWA

JUDGE

24.04.2020

Ruling delivered on 24th April, 2020 via audio teleconference, and both parties were remotely present.




A.Z. MGEYEKWA

JUDGE

24.04.2020

Right to appeal full explained.