

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT COURT OF ARUSHA

AT ARUSHA

LAND APPEAL NO 56 OF 2019

**(C/F: Land Application No. 40 of 2018, in the District Land and Housing Tribunal for
Manyara, Original: Land Case No. 17 of 2016 from Bagara Ward Tribunal)**

ESTER DAMBAY.....APPELLANT

VERSUS

SAMWEL LAIDA.....RESPONDENT

JUDGMENT

~~19/02/2021 & 27/04/2021~~

GWAE, J

The appellant above was dissatisfied with the decision of the District Land and Housing Tribunal which dismissed her application for extension of time for failure to adduce sufficient cause for the delay. The appellant is now before this court. Basically, she was supposed to challenge the decision of the District Land and housing Tribunal however looking at the grounds of appeal which are before this court the appellant is challenging the decision of the Bagara Ward Tribunal (Trial Court). Perhaps the grounds of appeal should be reproduced for easy of clarity;

1. That, the trial tribunal erred in law and in fact for ruling in favour of the respondent while at the ward tribunal lodged his land case out of time, as a result has occasioned a failure of justice.
2. That, the trial tribunal ought to have made a finding of fact that the decision of the Ward Tribunal was illegal as the necessary party one LUCAS K. DAATA was not joined by the respondent which made the decision was not according to the law.
3. That, the trial tribunal erred in law and fact for failure to observe the law in its ruling, as a result occasioned a failure of justice.

When the matter came for hearing before me, the parties appeared in person, unrepresented and when asked to submit on the grounds of appeal, their submission based on what transpired before the trial tribunal.

I wish to have stated the material background leading to this appeal however as there are no records from the trial tribunal and those at the District Land and Housing tribunal which dismissed the appellant's case which probably had the trial tribunal record, I shall therefore refrain from doing so by relying on mere assertions from the parties.

The appellant filed her application before the District Land and Housing Tribunal seeking for enlargement of time to file an application for setting aside the dismissal order. The DLHT findings were that the reasons that the appellant had

hearing problems and that she had financial difficulties were not sufficient for the tribunal to grant extension of time, consequently the application was dismissed. By necessary implication the appellant coming to this court she was expected to have expressed her dissatisfaction of the decision of the DLHT by stating the reasons as to why she thinks time should be extended.

Looking at the grounds before this court, it is as if the appellant is forceful requesting this court to act as the first appellate court from the decision of the Ward tribunal before the same is determined by the DLHT. This is incorrect and a absolutely a misconception.

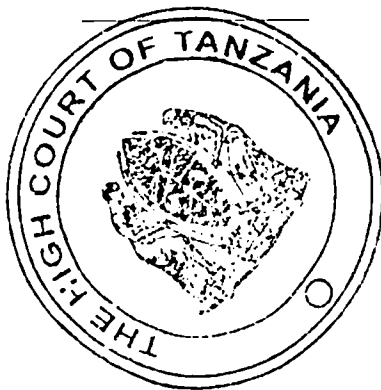
I am guided of this position by the decision of the Court of Appeal of Tanzania in the case of **Kibuna Makuri @ Kimwi vs. The Republic**, Criminal Appeal No. 404 of 2017 (CAT Unreported) where the Court was faced with similar situation and held as follows;


"....this court cannot legally entertain and hear an appeal from the trial court before the same is heard by the High Court. The Court is not the first appellate court from the District Court, rather, it is an appellate court from the High Court and from subordinate courts with extended jurisdiction as provided for by the provision article 117 (3) of the Constitution and Section 4 (1) of the AJA."

I wish to add that if the appellant is dissatisfied with the decision of the trial tribunal (Bagara Ward Tribunal) and wishes to pursue her appeal she should follow the appropriate path by lodging a proper appeal before this court and only if extension was granted, she will have to file the application to set aside the dismissal order before the DLHT, and if the same is allowed and her appeal is heard on merit but determined not her favour by the appellate tribunal. After being dissatisfied with the decision of the DLHT is when she could advance the above grounds of appeal.

In the end result, I find this appeal misconceived and therefore incompetent.

~~It is therefore struck out with costs.~~




M. R. GWAE
JUDGE
27/04/2021