

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND CASE APPLICATION NO. 22 OF 2021

(Arising from Ruling of Mwanza District Land and Housing Tribunal Misc. Application No. 13 of 2019.)

KHAMISI NDURWEAPPLICANT

VERSUS

ADONIAS. E. DOMINICO RESPONDENT

RULING

22 & 29/04/2021

RUMANYIKA, J.:

The application for extension of time within which Khamis Ndurwe (the applicant) to lodge an appeal it is with respect to an application for execution, the subsequent decision and order dated 16/9/2020 of the District Land and Housing Tribunal for Mwanza (the DLHT) that in fact therein the proceedings having had been quashed and the parties were directed to go back for a trial denovo, as it stood there was no executable decree since. The application is supported by affidavit of the said Khamis Ndurwe whose contents he adopted during the audio teleconferencing on

22/4/2021. Unlike the applicant who appeared in person, Adonias E. Dominico (the respondent) appeared represented by Ms. Kundi learned counsel. I heard them through mobile numbers 0757249978 and 0734053538 respectively.

The applicant, in a nutshell he submitted that the delay wasn't his fault but for the DLHT which supplied him copies of the impugned judgment and decree late in the day on 2/11/2020. That is all.

It seems having had adopted contents of the counter affidavit and she raised a novel point, Ms. Kundi learned counsel submitted that the matter lacked merits because the applicant was duty bound to, and he should have followed up for the copies tirelessly therefore had assigned no sufficient ground for the delay that the application was liable to be dismissed with costs. That is all.

The bottom line and issue here is whether the applicant had shown sufficient grounds for extension of time. At least with his letter of even reference number dated 17/9/2020 he is on record, just a day later having had applied for copy(s) of the impugned judgment and proceedings and it appears through endorsement overleaf the DLHT did acknowledge receipt of the letter. According to records, the DLHT seems

to have had certified copy of the judgment say a month later on 13/10/2020. I think the moment he had applied for the copies, ordinarily the applicant was "home and dry" until when he may have been informed and invited that the copies were now ready for collection but contrary to the practice and courtesy the DLHT didn't. Arguing the contrary, Ms. Kundi learned counsel could not be more incorrect to be frank. There is no wonder therefore, if at all finally and as alleged by him, the applicant was supplied with the copy only on 02/11/2020 but contrary to the long established and accepted legal principle without accounting for each day of the delay he did not lodge the instant application until on 24/02/2021 say another 3 21/30 months later (see the **case of Lyamuya Construction Co. Limited V. Board of Registration Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010 (CA) unreported.

However, the respondent was on records having had averred that for some reasons the DLHT having had nullified the proceedings and ordered a fresh hearing all over, again they went back but this time around through Misc. Land Application No. 20B of 2018. In my considered view unusually, therein the applicant was declared lawful owner of the

disputed land and, by the DLHT's execution order of 3/1/2019 the respective court broker was done since. Like the applicant, it appears even the executing tribunal chair wasn't aware of the alleged fresh order of 3rd January, 2019. I think it is common knowledge that except interim orders, judgments and decrees did not come from Miscellaneous Applications. What a point of illegality! Alone, the point sufficiently constituted a ground for extension of time.

The application is only on that basis granted with costs. It is so ordered.

Right of appeal explained.

S. M. RUMANYIKA

JUDGE

26/04/2021

The ruling delivered under my hand and seal of the court in chambers this 29/4/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

26/04/2021