

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

LAND APPEAL NO. 21 OF 2019

(Arising from Misc. Land Application No. 458 of 2019 of the Kahama District Land & Housing Tribunal emanating from Land Application No. 04 of 2019 of Ushetu Ward Tribunal)

**JOSEPH MASANJA APPELLANT
VERSUS**

CLEMENSIA JOSEPH..... RESPONDENT

JUDGMENT

Date: 15/04/2021 & 30/4/2021

MKWIZU J:

The Appellant one **JOSEPH MASANJA** on 13th September, 2021 lodge this Appeal against the decision of the District Land and Housing Tribunal for Kahama in Misc. Land Application No. 458 of 2019 where the Tribunal dismissed the Application for extension of time to file an Appeal out of time. The appeal was predicated on the following four grounds of appeal.

- 1. "That, the learned Chairman erred in law and in facts when he dismissed the Misc. Land Application No. 488 of 2019 on the allegation that the appellant's Affidavit was not proper while the same was properly prepared. Vide Annexure JM.1*

- 2. That, the Learned Chairman erred misdirected himself when he failed to consider the Preliminary objection on point of law which was raised by the Appellant that the counter affidavit of the Respondent was defective at law. Vide Annexure JM 2.*
- 3. That, the learned chairman misdirected himself as he dismissed the said Misc. Application on the day fixed for hearing of the preliminary objection raised by the appellant.*
- 4. That, the Learned Chairman erred in law and in facts as he failed to afford the Appellant an opportunity to defend his grounds for an application of extension of time within to file an appeal.”*

In Kahama District Land and Housing Tribunal appellant filed Misc. Land Application No. 458 of 2019 for extension of time to appeal out of time against the decision in Land Complaint No. 04/2019 of Ushetu Ward Tribunal. Respondent opposed the application by filling a counter affidavit. Appellant queried on the correctness of the filled counter affidavit on the ground that the jurat of attestation is not dated ,verification clause is not signed and that the Respondent did not sign at the drawn and filed clause. He was of the view that, the counter affidavit is defective. Having heard the preliminary objection, the tribunal dismissed the applicant's application hence this application.

At the hearing of this appeal both parties appeared in person/ unrepresented.

Supporting the appeal, appellant argued that, it was wrong for the tribunal to dismiss his appeal while the objection was raised against the counter affidavit. Instead of dealing with the respondent's counter affidavit, tribunal changed the facts and declared the appellant's affidavit defective. He submitted that, the Tribunal failed to consider that it is the appellant who raised the preliminary objection. He said, even assuming that it was the applicants affidavit that was defective, still the proper remedy was not to dismiss the application but to strike out so that he can amend the same and come again with the same prayers .

In reply, respondent in briefly opposed the appeal on the sole ground that the Land Tribunal did properly dismiss the appellant application .

I have curiously considered the appeal, the records and the rival submissions. The issue for this court's determination is whether the appeal have merit or not.

I have perused the trial tribunal's records and noticed that accurately on 15/08/2019 the appellant filed a notice of preliminary objection on point of

law against the respondent counter affidavit. On 20/08/2019 the tribunal heard the parties on the said preliminary objection. The proceedings on page 2 and 3 go thus:

"20/8/2019

Corum: LEKAMOI PLS

Applicant: Present

Respondent: Present

T/C: Moris

Applicant

I am ready for hg of P.o

Respondent

Iam redy for

Order

Hearing of P/ois hereby ordered to start

SGD Paulos L.S.Lekamoi

Chairman

20/8/2019

Applicant.

I pray for the dismissal of the counter affidavit as the affidavit is defective

Respondent:

It is true the applicant's affidavit is defective

Rejoinder:

I pray for necessary orders:

Tribunal:

Upon heard the parties. I made perusal of the affidavit of the applicant and noted that the jurat of attestation does not indicate as to whether the deponent known/identified to the commissioner for oath. Consequently, this application is hereby dismissed with costs. It is so ordered

SGD Paulos L.S.Lekamoi

Chairman

20/8/2019"

Looking closely on the proceedings above, while the appellant was attacking the respondent's counter affidavit, respondent on the other had criticized the applicant's affidavit. Without noticing the contending submissions between the parties, the tribunal treaded into the same error by dismissing the applicants application because of the defectiveness of the applicants Affidavit contrary to the raised and argued preliminary objection. This is an error that occasioned miscarriage of justice to the parties. I on that ground quash all the proceedings dated 20/8/2019 and set aside its resultant order . The file in Land application No 458 of 2019 is remitted back to the tribunal to properly hear the parties on the raised

preliminary objection and make a proper before taking any further steps on merit or otherwise of the application. Each part to bear owns costs.

Order accordingly,

Dated at Shinyanga this 30th, April, 2021


E.Y. MKWIZU
JUDGE
30/4/2021

Court: Right of appeal explained



E.Y. MKWIZU
JUDGE
30/4/2021