

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

MISC. LAND APPLICATION No. 57 OF 2020
**(Arising from the judgment of the Maswa District Land and Housing
Tribunal in Land Appeal No 84 of 2016, originating from Chamgasa Ward
Tribunal in Land Complaint No. 36 of 2014)**

HADIJA SHABANI.....APPLICANT
VERSUS

DOTO PAULO.....RESPONDENT

RULING

17th & 25th May, 2021

MKWIZU,J

The applicant **HADIJA SHABAN** is moving this court under section 38 (1) of the Land Disputes Court Act (Cap 216 R.E 2019) for extension of time to appeal out of time against the decision of Maswa District Land and Housing tribunal in Land Appeal No. 83 of 2016. The applicant's application is supported by his own affidavit.

A brief background leading to this application go thus: the applicant was the respondent in Land dispute No. 3 of 2016 before Chamgasa ward tribunal. Her appeal to the District Land and Housing Tribunal was unsuccessfully. The first appellate tribunal determine the appeal on merit and upheld the

Ward Tribunal decisions that the respondent is a legal owner of the disputed land . Applicant was aggrieved. She immediately wrote a letter to the said tribunal requesting to be supplied with a copy of judgment and proceedings for appealing purposes and on 2/01/2020 she successful lodged Land Appeal No. 01 of 2020 in this Court to challenge the decision of Land Appeal No 83 of 2016 of Maswa District Land and Housing Tribunal. Unfortunately her appeal was on 17/07/2020 dismissed for being time barred pursuant to section 3 (1) and (2) of the Law of Limitation Act Cap 89 hence this application .

When the matter was called on for hearing, applicant was represented by Mr. Dutu Chebwa Advocate while the respondent appeared in person unrepresented.

Submitting in support of the application, Mr. Dutu argued that the reasons for delay is as deposed in paragraph 11 of the supporting affidavit that the Chamgasa Ward Tribunal had no jurisdiction to hear the matter. The value of the land as reflected in the decision of the Tribunal was 10,000,000/= Tsh which is above the pecuniary jurisdiction of the said tribunal and that the attempt to appeal was unsuccessfully due to time limitations.

He prayed for the application to be allowed so as to allow rectification of the irregularity on the proceedings . He, in support of his argument cited a Court of Appeal decision in Civil Application No. 365/01/2019 between **Zito Zuberi Kabuce and 2 others V. AG**, at page 12.

The application was opposed, respondent submitted that there is no reason why the applicant failed to appeal within time. He prayed for the dismissal of the application with costs.

I have inquiringly gone through the application , the supporting affidavit as well as the parties submissions. Paragraph 11 and 12 of the affidavit in support of the application alleges an illegality in the trial courts proceedings. It is said that, the trial tribunal entertained the dispute without pecuniary jurisdiction. It is true that the trial tribunals decision prescribes a proper value of the land in dispute. The 1st paragraph of the said decision partly reads:

Tarehe 12/9/2016 baraza la ardhi la kata lilipokea madai ya madai yaliyotolewa nay eye mwenyewe na yaliyofuatiwa na ushahidi uliowasilishwa na M/kitongoji cha Nyakulunduma ndugu Elias Ngongo. mYeye anatambua kuwa tarehe 04/6/2015

alithibitisha mauziano ya shamaba ekari kumi na tatu (13) dhidi yad otto Paul na hadija Shabani kwa thamani ya shilingi milioni kumi tu, Tsh 10,000,000/= na kusain mbele yake na watendaji wa Kijiji wote walikuwepo"

It is obvious therefore that the dispute that was before Chamugasa tribunal had a value of 10,000,000/=.

Section 15 of the Land Disputes Court Act, Cap 216 prescribes the pecuniary jurisdiction of the Ward tribunal as three million The section reads:

"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."

Now, having determined a dispute beyond its pecuniary value, the ward tribunal went beyond its powers. This is an irregularity which need to be corrected by the court on an appeal. It is a settled law that a claim of illegality of the challenge decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay. See for instance the

case of **Zito Zuberi Kabwe & 2 others vs The Honourable Attorney General**, Civil Application No. 365 of 2019.

With the glaring illegality pointed out, this court allows the application. The intended appeal to be filed within sixty **(60) days** from the date of this ruling. No order as to costs.

Order accordingly.

Dated at Shinyanga this 25th day of **May**, 2021

