

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPEAL No. 05 OF 2021

(Originating from the decision of the DLHT Misc. Land Application No. 108C of 2020)

TANDA NDUKI.....APPELLANT

VERSUS

JOSEPH SYLVERY MASABA.....1ST RESPONDENT

JOSINA CO. LTD & AUCTIONEERS.....2ND RESPONDENT

JUDGMENT

24th June & 20th July 2021.

TIGANGA, J.

Against the decision of the District Land and Housing Tribunal for Mwanza (DLHT), the appellant herein lodged this appeal challenging the said decision and below are the grounds upon which the appeal is preferred;

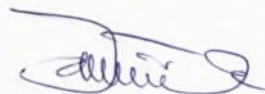
1. The Honourable Chairman of the Tribunal erred in fact and in law by making a finding based on own an assumption that the applicant/appellant has not shown good cause for extension of time to file an appeal out of time while the applicant had indicated an error on the face of the record that the said judgment was obtained illegally the fact which required attention on the Tribunal.

2. That the Honourable Chairman grossly misdirected himself in law by relying on extraneous matters in his decision.
3. That the Honourable Chairman erred in law and fact by invoking his personal views and emotions in reaching to his decision by saying that "hukumu hiyo haikuwa na mapungufu yoyote" the fact which was untrue.
4. That the tribunal erred in law and in fact by misconceiving the facts of the case by saying that "kitendo hiki cha amri kutolewa na baraza na utekelezaji kufanyika kunalifunga baraza lisiweze kuendelea kutoa amri zingine" without appreciating the fact that the application before the tribunal was for extension of time to file an appeal out of time and not an application for stay.

The appellant is praying that the appeal be allowed with costs.

This appeal was objected by the 1st respondent who filed his reply to the petition of appeal. The 2nd respondent however, despite being served, never entered appearance nor objected the appeal thus against the 2nd respondent the appeal proceeded exparte.

On the date the appeal was called on for hearing, the appellant was represented by the learned counsel Mr. Mela whereas the 1st respondent appeared and defended himself in person.



In support of the appeal, counsel for the applicant began his submission by praying to abandon the third and fourth grounds of appeal and consolidate the first and second grounds. He stated that the appeal at hand originates from the decision of the DLHT refusing an Application No. 180C of 2020 in which the appellant was applying for extension of time to file an appeal out of time. He told this court that, in the two consolidated grounds of appeal, the main issue for determination is whether the Chairman gave reasons when he refused to grant the application for extension of time.

Regarding that main issue, counsel stated that the law requires any person applying for extension of time to give good cause as to why he failed to appeal within time and it is in the discretion of the court to grant or refuse the said extension basing on the reasons so given. He cited **Mumello vs BOT**, [2006] EA 227 CAT to that effect.

He was of the view that, although it is not in dispute that the appellant failed to file his appeal within the prescribed time and that he also failed to account for the delay, considering his age and understanding, the tribunal ought to have asked itself whether or not the respondent would be prejudiced if the application were granted. He went on stating that the right to appeal is both statutory and

constitutional which cannot be easily denied, thus any person intending to appeal should not be unreasonably prevented to do so.

Further to that, the counsel referred this court to the cases of **Julius Shabani Ugolole vs Said Finyula Lubibi**, Land Appeal No. 04 of 2020 HC-Tabora and **Renatus Mageko vs Samwel George**, Criminal Appeal No. 26 of 2020, HC-Mwanza, where this court looked at the right of the parties even though they exhibited to be late. Lastly, he prayed that the appeal be allowed and the District Land and Housing Tribunal be directed to receive the appeal so that parties can be heard on merits.

Called upon to make a reply, the respondent submitted that, the appellant though was given 45 days within which to appeal, he did not appeal. So the respondent went on and filed execution proceedings which when served to the appellant, the appellant refused service. However, he went to the tribunal as soon as he received the eviction notice and filed an application for extension of time to appeal which application did not succeed because he failed to give reasons as to why he did not appeal on time. He was of the view that, the District Land and Housing Tribunal was correct on their reasons and grounds they

relied on in the decision not to grant the appellant's application as there was no ground upon which the application could be granted.

The appellant made a short rejoinder that both parties need to be substantively heard; he prayed that this appeal be allowed so that the dispute can reach to an end.

That being the summary of the submissions by both parties, the issue for determination is whether this appeal has merit. As stated earlier on, the appellant had filed four grounds of appeal, but at the hearing, abandoned two and consolidated the remaining two by raising an issue whether the Honourable Chairman gave reasons when refusing the application for extension of time?

In his submissions in support of the appeal, the counsel for the appellant admitted the fact that the appellant failed to file his appeal within the prescribed period of 45 days from the date the impugned decision was given. He also admitted the fact that the appellant failed to account for the delay. But he insisted that the District Land and Housing Tribunal ought to have looked at the age of the appellant and his understanding and ask itself, whether the extension of time would prejudice the respondent.

He made a point that the right to appeal is both statutory and constitutional and persons intending to appeal should not be prevented from doing so.

The respondent on the other hand was of the firm view that the tribunal was right to refuse the application because the appellant failed to account for the delayed days and that he had no reasonable cause for such delay.

In his submissions, counsel for the appellant stated that he is fully aware of the principle that whoever applies for extension of time is required to give good cause as to why he failed to appeal within time. He also referred this court to a case of **Mumello vs BOT** (supra) to that effect.

Looking at the submission by both parties, it is evident that both parties are aware of the statutory limit of time within which for a person aggrieved by the decision of the Ward Tribunal to appeal within 45 days, as provided by section 20(1) of the Land Disputes Courts Act, [Cap 216 R.E 2019]. It is also the law that under section 20(2) of the same Act, the District Land and Housing Tribunal, may, for good and sufficient cause, extend time for a person aggrieved to appeal out of time. That extension may be made either before or after the expiration of 45 days.

It is evident that the applicant before the District Court, who is the appellant was aware of these provisions that is why he applied for extension of time.

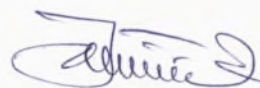
Now, from the provision, which for easy reference I quote it hereunder,

*"20.-(1) Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing **Tribunal within forty five days after the date of the decision or order against which the appeal is brought.***

*(2) Notwithstanding the provisions of subsection (1), the District Land and Housing Tribunal may **for good and sufficient cause extend the time for filing an appeal either before or after the expiration of forty five days.**"*
[Emphasis added]

From the provision it is a condition precedent that, for a person to be entitled for extension of time, it is the requirement that good and sufficient cause be shown as to why the applicant, failed to do so within time, in essence the applicant needs to say what prevented him to do so.

Now, the term good or sufficient cause has not been given the statutory meaning, they have been interpreted in a number of cases one of them **Lyamuya Construction Company Limited vs. Board of**



Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.02 of 2010 (unreported), CAT, in which the following guidelines were formulated in considering of what amounts to good cause:-

- (a) The applicant must account for all days of the delay,*
- (b) The delay should not be inordinate,*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in prosecuting the action that he intends to take,*
- (d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

It is therefore my opinion that what the Honourable Chairman was supposed to do was to satisfy himself that the appellant showed good cause for his delay by accounting for all days of delay or showing that there exists an illegality in the impugned decision.

It is not the requirement of the law or case laws, in **Lyamuya Construction's case** or any other case decided by the court of record, that the court need to look at the age of the appellant and his understanding and ask itself, whether the extension of time would prejudice the respondent. If that is the reason which the appellant

considers to be good cause, then it was the duty of the appellant to raise it before the District Land and Housing Tribunal, in the application for extension of time, it cannot be the duty of the court to look at the age and understanding of the party. If the court or tribunal goes that far, I am afraid that it will be doing more than what the law requires it to do, thereby creating the kind of biasness which would prejudice the side of the respondent.

Even in customer care age preference, is meant to give priority to the aged in terms of early attendance, but not in favouritism. In this case what the tribunal was blamed to have not done was not service priority but favouritism which in justice dispensation is not allowed.

Going through the impugned decision, it shows clearly that the Honourable Chairman did satisfy himself that the appellant failed to account for all the days of delay, the fact which has not been disputed by the appellant through his counsel in this appeal.

Also, on the issue of illegality apparent on the face of the record, the Honourable Chairman found that the appellant only mentioned that there were defects in the Trial Ward Tribunal decision that rendered the decision illegal but did not show or explain the said defects.

I have gone through the appellant's affidavit in support of the application for extension of time before the District Land and Housing Tribunal, and on the issue of illegality he claimed that the Ward Tribunal fraudulently heard and determined the matter ex parte without notifying him.

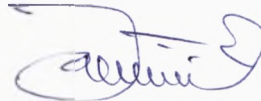
However, the records speak otherwise because the attached copy of the proceedings and decision of the ward Tribunal show that the appellant was in fact present throughout the hearing in the ward Tribunal and was also present when the decision was given. The appellant cannot claim now that there is illegality in the decision of the Ward Tribunal because the said Tribunal heard and determined the matter ex parte without notifying him.

Having said as above, I am of the view that the District Land and Housing Tribunal was right in refusing the application for extension of time as no good and sufficient cause was shown. This appeal therefore lacks merits and the same fails for the reasons given herein above. The appellant pay costs of this appeal.

It is accordingly ordered.



DATED at MWANZA this 20th day of July, 2021



J.C. Tiganga

Judge

20/07/2021

Judgment delivered in open chambers in the presence of the parties on line through audio tele-conference



J.C. Tiganga

Judge

20/07/2021