

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC. CIVIL APPLICATION NO. 48 OF 2021
(Arising from Misc. Land Case No. 57 of 2019)

SUMAI GISABUAPPLICANT

Versus

MARIA KASUMBAKABORESPONDENT

RULING

10th & 18th August, 2021

RUMANYIKA, J.:

With respect to judgment and decree of this court (Manyanda, J) dated 19/2/2021, the dual application, **one**, for extension of time within which Sumai Gisabu (the applicant) to apply for leave and, **two**, for certification on point of law by way of appeal determinable by the Court of Appeal of Tanzania it was brought under Section 11 (1) of the Appellate Jurisdiction Act Cap 141 RE. 2019. The application was supported by affidavit of Sumai Gisabu whose contents Ms. Hidaya Haruna learned counsel adopted on 10/8/2021 during audio teleconference hearing. Maria Kasumbakabo (the respondent) appeared in person. I heard them through mobile numbers 0766 308 358 and 0742 063 589 respectively.

In a nutshell Ms. Hidaya Haruna learned counsel submitted; **(a)** that the applicant had service of Innocent Benard learned counsel who, for reason of unnecessarily waiting for copy of the decision he couldn't have filed the instant application, in lieu thereof, but late in the day the applicant engaged her (Ms. Hidaya Haruna advocate). That the delay wasn't the applicant's fault (paragraphs 4 – 7 of the supporting affidavit) **(b)** that looking at the Coram and jurisdiction the trial tribunal's decision was tainted with illegalities namely; **(i)** Contrary to provisions of Section 4 of the Ward Tribunals Act, instead of 4-8 members only three of them sat in the proceedings sufficed the point (see the cases of **David Mkwanga v. Julius Lusinde**, Land Case Appeal no. 3 of 2011 HC at Dodoma and **Finca Limited Kitundogoro v. Boniface Mwalukisa**, Application No. 518 of 2018 (CA) at Iringa, both unreported much as alone illegality constituted a sufficient ground for extension of time that the disputed land measured say 30 acres therefore its value estimated at more than shs. 3,000,000/= therefore it exceeded the trial tribunal's pecuniary jurisdiction. That is all.

The respondent adopted the contents of the counter affidavit and she submitted that the application lacked merits as it was mere delaying tactics. That is it.

The central issue and, it was trite law is whether the applicant has assigned sufficient ground for extension of time.

The applicant may have had legal service of one Innocent Benard advocate if at all whose inaction caused the delay but there was, to that effect no supplementary affidavit of the latter yes, but the respondent did not even attempt to dispute the serious and material allegations much as it is now settled law that in action or negligence of advocate resulting to delay of a party represented by him it constituted a sufficient ground for extension of time (case of **Felix Tumbo v. TTCL & Another** (1997) TLR 57 (CA)) suffices the point to dispose of the application.

With greatest respect to the learned counsel the actual size of the disputed land therefore pecuniary jurisdiction of the trial ward tribunal it needed not to detain me because unlike territorial jurisdiction, at times, a proof of which courts take judicial notices, court's pecuniary jurisdiction needed evidence and proof by the parties not advocates from the bar. With greatest respect Ms. Hidayah Haruna learned counsel may be right that

market and perhaps use value of the disputed 30 acres of land it may have had exceeded shs. 3.0m yes, but as said this was no forum for the fact to be established and proved.

In the upshot, the application is granted. However, as the applicant enjoyed her right to appeal and wished to further navigate, perhaps with a view to exhausting the court vertical hierarchy and justice of the case demanded as such, nothing shall preclude the decree holder now respondent from enjoying fruits of her judgment and decree provided that one shall, until such time not in any way effect any permanent development without running risks of the intended appeal. Each party shall bear their costs. It is so ordered.

Right of appeal explained.

S. M. RUMANYIKA
JUDGE
14/08/2021

The ruling delivered under my hand and seal of the court in chambers this 18/8/2021 in the absence of the parties.



S. M. RUMANYIKA
JUDGE
18/08/2021