

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**LAND CASE APPEAL NO. 42 OF 2019**

*(Arising from Chato District Land and Housing Tribunal Misc. Application No. 40/011 and Application No. 22/2010)*

**GEORGE TOYI RUTANGANTEVYE ..... APPELLANT**

***VERSUS***

**ANISSET KAROLI MFARANSA ..... RESPONDENT**

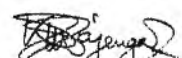
**JUDGMENT**

*3<sup>d</sup> August & 20<sup>th</sup> August 2021*

***Kilekamajenga, J.***

The background of this case is as follows: On 21<sup>st</sup> March 2011, the respondent secured an *exparte* judgment against the appellant vide application No. 22 of 2010 at Chato District Land and Housing tribunal. After six months, the appellant filed an application at the same District Land and Housing Tribunal seeking an order of extension of time to set aside the *exparte* judgment. The application for extension of time was made vide Misc. application No. 40 of 2011. Due to lack of evidence to support the application, the same was dismissed for lack of merit.

In 2012, the appellant approached this Court through land case appeal No. 04 of 2012. The appeal was objected hence struck out on 30/10/2015. Therefore, he was already time – barred to file another appeal before filing an application for extension of time. He lodged an application for extension of time vide Misc. Land



Application Case No. 08 of 2019. The Court enlarged time for him to file the appeal within 21 days.

The ruling to allow the application was delivered on 25<sup>th</sup> July 2019. On 14<sup>th</sup> August 2019, the appellant lodged the instant appeal. He advanced seven (7) grounds of appeal to challenge the ruling of the District Land and Housing tribunal. The grounds are coached thus:

- 1. That the ruling and order for dismissing the application for extension of time to file the same and set aside ex parte judgment was delivered without involving the assessors nor seeking the opinion contrary to the law hence the Court was not properly constituted;*
- 2. That the ground relied upon by the trial chairman to dismiss the application that there was no proof nor evidence to support the appellant's claim for his non – appearance on the date for hearing was arrived at a higher standard of proof required in the civil suits, **id est**, on balance of probabilities;*
- 3. That even on the date when the said ex parte order was granted, the tribunal was not properly constituted as it had one assessor namely Mduka Mlingwa and had not yet ordered to hear the suit in the absence of the other to make the Court properly constituted.*

4. *That the trial chairman erred in law to grant an order to hear the case ex parte while the appellant had previously participated in the proceedings until the chairman misdirected himself to grant the said order;*
5. *That the tribunal was wrong to refuse to set aside the ex parte judgment for want of the respondent proving his case as the said respondent being illegitimate son of the deceased Kaloly Ndaya Mfaransa whose mother was not legally married and the respondent at the time of death and filing the suit was not a child, but a major hence relied only on one ground that the appellant did not tender evidence for his non – appearance;*
6. *That the trial chairman did not put into consideration the rationale of setting aside ex parte judgment which is to avoid injustice resulting from accident or excusable mistake or error;*
7. *That assuming the judgment was ex parte, then the trial chairman erred in law for not summoning the appellant to appear on the date of judgment to take over the consequences thereto;*

When the appeal came for hearing, the appellant was present and enjoyed legal services of the learned advocate, Mr. Alli Chamani whereas the respondent was absent. In his oral submission, the counsel for the appellant argued that, the ruling of the District Land and Housing Tribunal did not involve assessors

something which contrary to Section 23 of the Land Disputes Courts Act, Cap. 216 RE 2019. Mr Chamani referred the Court to Section 2 of the same Act which defines decision to include judgment findings and ruling. He argued further that when the DLHT was determining the appellant's application, the tribunal applied a nigner standard than the one required in civil cases.

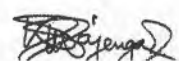
Mr. Chamani also informed the Court that the respondent had no right to inherit from his father's estates as he was above 18 years old. He cited this point as a major illegality in this case. He urged the Court to allow the appeal and set aside the ruling of the District Land and Housing tribunal.

In concluding the submission, Mr. Chamani urged the Court to consider the case of **A. R. Sendeu v. Tanzania Leather Associated Industries Ltd, Civil Appeal No. 34 of 1996.**

I have considered the counsel's submission and the grounds of appeal advanced by the appellant. The counsel invited Court to consider an illegality that the tribunal did not involve assessors when determining the appellant's application for extension of time. With respect, it seems, the counsel did not take time to read Regulation 22 of the land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 which provides that:

*"22. The chairman shall have powers to determine:*

*a) Preliminary objections based on points of law;*



*b) Applications for execution of ordered and decrees;*

*c) Objections arising out of execution of orders and decrees;*

*d) Interlocutory application*

*Provided that a ruling on a preliminary point of law or any interlocutory application which have no effect of finally deciding the case shall not be appealable.*

According to the above provisions of the law, the chairman has power to determine an application even without involving assessors. So, this is not an illegality but a mere mis – conception on the part of the counsel for the appellant.

Mr. Chamani further argued that only a child under the age of 18 years have the right to inherit from his/her parent. In my view, the counsel raised a point which does not even feature the position of the law. This also is not an illegality.

Therefore, the major issue in this appeal is whether the appellant had advanced sufficient reason for the tribunal to extend time. The Court/tribunal may only extend time where the applicant has advanced sufficient cause or good reasons for the delay. As stated above, the appellant applied for extension of time. The only reason he advanced was, he failed to attend to the case before the District Land and Housing Tribunal because, on the date when the case was fixed for hearing, he was involved in an accident on the way to the tribunal.

The accident also affected his witnesses. However, there is colour of evidence in the whole file to prove the allegation that he was involved in an accident. Though, he knew that the case was heard ex parte, he still delayed to apply for setting aside the decision of the trial tribunal. He filed an application for extension of time six months later.

Again, when his initial appeal was struck out in on 30<sup>th</sup> October, 2015 he lodged the application for extension of time to file the appeal before this Court in 2019, that was after expiry of about four years. It seems, the appellant is employing some delaying tactics for his own reasons.

In exercising the discretion of this Court in extension of time, I have considered the merit of the whole case, despite dearth of sufficient cause for extension of time, the appellant's case seems devoid of merit. I have failed to get good reasons to set aside the decision or ruling of the tribunal. I hereby dismiss the appeal for want of merit. No order as to costs. It is so ordered.

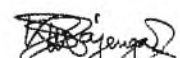
**Dated at Bukoba** this 20<sup>th</sup> August 2021.



  
**Ntemi N. Kilekamajenga**

**JUDGE**

**20/08/2021**



**Court:**

Judgment delivered this 20/08/2021 in the presence of the appellant but in the absence of the respondent. Right of appeal Explained.



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**Ntemi N. Kilekamajenga**

**JUDGE**

**20/08/2021**

A small, handwritten signature in blue ink, identical to the one above.