

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

LAND APPEAL NO. 15 OF 2020

*(Arising from the decision of District Land and Housing Tribunal of
Tabora District at Tabora in Land Case No. 240 of 2020)*

KESSY AMBONISYE ----- APPELLANT

VERSUS

MGALAGALE MYAZI ----- RESPONDENT

JUDGMENT

Date: 25/08/2021&10/09/2021

BAHATI, J.:

This is an appeal originating from the decisions of the District Land and Housing Tribunal of Tabora in Land application No. 5 of 2020 whereby the appellant's application for extension of time was rejected by the District Land and Housing Tribunal for lack of good and tangible cause hence this appeal.

The appellant has levelled four grounds of appeal to wit: -

- 1. That, the Honourable Chairman of the tribunal erred in law and fact for its failure to consider the applicant's reasons he was late to appeal in time because he was denied to be supplied a copy of judgment/he received it after a hard struggle when he was already late.*

2. *That, the Honourable Chairman of the tribunal erred in law and fact by dismissing the application without taking in mind that there was a second good cause for the delay because by then he filed his appeal the trial Chairman was conducting sessions in Nzega District Land and Housing Tribunal.*
3. *That, the learned Chairman of the tribunal erred in law and fact by dismissing the appeal because apart from the second good cause there was a third cause where after the chair returned from Nzega left immediately for Dar es salaam to finalize funeral of his late parent.*
4. *That, furthermore he has been late to file the appeal he was told to improve his appeal by obtaining the power of being a proper administrator of probate in this matter under review.*

When the appeal was called on for hearing, both the appellant and the respondent appeared in person unrepresented.

In his submission, the appellant stated that the delay occurred because he was denied a copy of the judgment by the trial tribunal, also when he approached the district tribunal the Chairman was at Nzega and that he was late as he was tracing letters of administration of the estate.

Responding, the respondent stated that, it is not true that the tribunal chairman was bereaved; he was present. He added that the appellant was told to pay the cost of the case so that he can be supplied with the judgment but he refused.

Having visited the proceedings of the trial tribunal, the issue is whether the appeal has merit.

It is a settled position of law that an application for extension of time is grantable only upon the court's satisfaction that the applicant has presented a credible case warrants grant of the extension. The rationale for this requirement has been succinctly laid down in the case of **Juluba General Supplies Ltd vs Stanbic Bank Limited Civil Application No. 48 of 2014** where the Court of Appeal held;

"All applicants should be concerned in showing sufficient reasons why he should be given more time and the most persuasive reason that he can show us that the delay has not been caused or contributed by the dilatory conduct on his part."

As pointed out by the appellant that the delay was caused by making a follow-up on the letter of administration of the estate. The court has found that there is an illegality that needs intervention by the District Land and Housing Tribunal so that the proper process of law may be followed to attain justice. In his submission, the appellant claimed that the delay occurred because he was seeking letters of administration of the estate.

That fact prompted me to revisit the proceedings of the trial tribunal to ascertain whose estate the appellant was seeking administration. On 23/12/2019 the appellant stated before the trial tribunal that:-

“Mwaka 1981 shamba alinunua Marehemu Ambonisye kwa Mzee ambaye nimemsahau jina, baada ya Mzee kununua mashamba hayo yenye ukubwa usiopungua ekari kumi na nane baada ya hapo mzee aliendela kulima kilimo cha Tumbaku mpaka mwaka 2013 alipoanza kuugua ndipo akawa ameachana na kilimo cha Tumbaku. Tukiwa kama Watoto wa marehemu Ambonisye tuliendeleza kilimo cha mahindi na mazao mengine...”

As the above-quoted paragraph, it is apparent that the land in dispute belongs to the appellant's father that is why the appellant claimed he was late to appeal because he was making follow up on the administration of the estate. Now the question comes at what capacity he stood before the trial tribunal to prosecute his case? I think a proper forum to answer that question will be through an appeal before the District Land and Housing Tribunal.

I wish to state at this juncture that illegality is a ground of extension of time whether there is an explanation for the delay or not. In **VIP Engineering and Marketing Limited and two others vs Citi bank Tanzania Limited Consolidated**, Civil Reference No.6, 7, and 8 of 2008 where the court held that:

“Notwithstanding the fact that the applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that there

*is an illegality in the decision intended to be impugned
.... Suffices to move the court to grant an extension of
time so that the alleged illegality can be addressed by
the court”*

In the light of the foregoing, I allow the appeal and quash the decision of the District Land and Housing Tribunal. I further order a retrial of the appellant's application. Costs to follow the event.

Order accordingly.



A.A. BAHATI

JUDGE

10/09/2021



Date: 10/09/2021

Coram: Hon. N. Mwakatobe, DR

Appellant: Present

Respondent: Present

B/C Grace Mkemwa, RMA

Court: Judgment delivered this 10th day of September, 2021 in the presence of appellant in person and Respondent in person.

N. MWAKATOBÉ

DEPTY REGISTRAR

10/9/2021

Right to appeal is explained.

N. MWAKATOBÉ

DEPTY REGISTRAR

10/9/2021

