

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(LAND DIVISION)

APPELLATE JURISDICTION

MISC. LAND APPLICATION NO. 23 OF 2021

(Arising from Land Application No. 106/2015 of the District Land and Housing Tribunal at Kigoma before Hon. F. Chinuku)

LUBAMBO RAJABU MRISHO RUHOMWA APPLICANT

VERSUS

JOHN ILONGA 1ST RESPONDENT

HIMIDI KISOGWE 2ND RESPONDENT

ASA YALEDI 3RD RESPONDENT

RULING

26/10/2021 & 29/10/2021

L.M. MLACHA, J.

This is a ruling on an application for extension of time within which to file an appeal against the decision of the District Land and Housing Tribunal for Kigoma (the DLHT) made in Land Application No. 71 of 2014. The application was filed by Mr. Lubambo Rajabu Mrisho Ruhomwa. It is made under section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 as amended by the Written Laws Miscellaneous Amendments Act No. 2 of 2016 and is supported by the affidavit of the applicant, Lubambo Rajabu Mrisho Ruhomwa. The respondents in the application are John Ilonga, Himid Kisonge and Asa Yaled. The decision sought to be

challenged was made on 2/5/2016. The ruling and two letters were attached to the affidavit. The letters are a letter dated 20/5/2016 headed "MAOMBI YA NAKALA YA HUKUMU KATIKA SHAURI NO. 71 LA MWAKA 2014 ILI NIWEZE KUKATA RUFAA" and a letter dated 12/4/2021 headed "KUKUMBUSHIA NAKALA YA HUKUMU KATIKA SHAURI LA ARDHI NA. 71/2014". The respondents were duly served and filed a joint counter affidavit to oppose the application.

Mr. Silvester Damas Sogomba who represented the applicant had two points in support of the application. One, that the applicant could not get a copy of the decision in time. He relied on the two letters to support his view. He argued that the applicant could not file the application in time for lack of a copy of the decision which is a necessary document. Two, that the ruling of the DLHT is backed by illegal proceedings. Giving details he said that the parties could not be heard by the ward tribunal. The tribunal visited the suit premises and pronounced its decision without hearing the parties he submitted.

The respondents made submissions and accused the applicant for failure to make a follow up for the ruling from 2/5/2016 when the decision was made up to 10th May 2021 when the present application was filed. They questioned the gap which is too big (5years). They agreed that they visited the locus in quo but said that evidence was duly recorded. The

second respondent said that they took oath and gave evidence. The 3rd respondent appeared to have lost confidence in the case. He was recorded saying "I am tired of this case" arguing that it has been a subject of both civil and criminal cases against him leading to serious difficulties.

For what it worthy, and as a matter of practice and necessity, I issued a calling for the records. The Chairman responded promptly and sent two files; Land Application No. 71 of 2014 and Land Miscellaneous Application No. 44 of 2021. The latter is still pending and was lodged by the respondents to execute the ruling made in Land Application No. 71 of 2014 and is still pending. I had a look of both files.

In our case, the ruling was delivered on 2/5/2016 and the current application was lodged on 10/5/2021, more than 5 years later. The applicant assigned just one reason for the delay, that is lack of a copy of the ruling. He attached the first letter dated 20/5/2016 and the second letter dated 21/4/2021 to justify the delay. There is nothing in between. The applicant want me to believe that he could not file the application at an early moment due to lack of the copy of the ruling. With respect to Mr. Sogomba, I have failed to believe the story. The reality which I perceive is that he wrote the second letter for purposes of creating a link something which they have failed because the letter could not even be seen in the record of the DLHT when checked.

Further to that, the delay for five years, which was supposed to be counted on daily basis, cannot be justified by the letters. There must have been some other concrete reasons like refusal or neglect on the part of the Chairman to issue the copy of the judgment and steps taken in that behalf and not a mere attachment of letters. The attempt made to bridge the gap by the two letters was thus baseless and with respect, rejected. It follows that there is a period of five years which could not be accounted for.

Next for discussion is the allegation of illegality of the decisions. I have perused the proceedings and the decisions. Truly, the Chairman did not record any evidence. He just moved to the suit premises in the company of the assessors, the parties and land surveyors. They appear to have spent a lot of time at the suit premises in what appeared as a move to identify the plots and reconcile the parties. There must have been a lot of discussions (off record) which lead to the ruling of the tribunal. The ruling showed the findings of the tribunal and options given to the parties. The plots were identified and the parties were adviced to take some steps to ensure that each enjoys his plot for each had a structure which had crossed the boundary to the other. The respondents took steps to demolish the toilet which was on the side of the applicant. The applicant was supposed to demolish part of the mashine building which have

crossed to the respondents but he could not do so. He could not even appeal. Aggrieved, the respondents returned to the tribunal for orders to demolish it. The applicant sensed danger and rushed to this court to file the present application.

I think that, much as the procedure adopted by the tribunal to reach its decision had errors, but it did not cause a failure of justice. It gave a decision which was accepted by both parties. None of them lodged an appeal showing willingness and consent. Life went on well on the part of the applicant. The respondents were not happy for failure to demolish the building.

Given the lapse of time and the fact that parties appear to have been instrumental to move the tribunal to make the orders, I don't think that an interference at this stage, five years later, can bring justice home. At most it will frustrate the matter more. I cannot do that.

That said, the application is dismissed with costs. The records of the DLHT should be returned to the tribunal to proceed with execution according to the Law. It is ordered so.




L.M. Mlacha

JUDGE

29/10/2021

Court: Ruling delivered. Right of Appeal Explained.




L.M. Mlacha

JUDGE

29/10/2021