

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

(APPELLATE JURISDICTION)

MISC. LAND APPEAL NO. 40 OF 2021

(Arising from Land Application No. 139/2019 of the District Land and Housing Tribunal – Kigoma before F. Nyika, Original Land Case No. 7/2017 from Buzebazeba Ward Tribunal)

HUSSEIN ALLY KAMFUNGE (Administrator of the Estate of the late MASUMA SOUD MLOMBO) **APPELLANT**

VERSUS

AMRI MBARUKU **1ST RESPONDENT**

SEIF AHMAD SOUD **2ND RESPONDENT**

JUDGMENT

28/10/2021 & 1/11/2021

L.M. MLACHA, J.

The appellant, Hussein Ally Kamfunge filed an appeal against the decision of the District Land and Housing Tribunal for Kigoma (the DLHT) made in Miscellaneous Land Application No. 139 of 2019. He had four grounds of appeal which can be reduced to two grounds and put as under;

- 1. That, the DLHT erred in law and facts for failing to know that the appellant was condemned unheard.*
- 2. That, the DLHT erred in law and fact for failing to know that there were valid grounds to extend the time.*

The respondents, Amri Mbaruku and Seifu Ahmad Soud were duly served and filed reply to the Petition of Appeal in two separate documents. They

opposed the appeal.

The brief back ground of the matter can be put as follows. The first respondent, Amiri Mbaruku filed Application No. 7 of 2017 at Buzebazeba Ward Tribunal Kigoma Municipal against the second respondent, Seifu Ahmad Soud Claiming ownership of Plot No. 21, Block B, Beach Plot Burega area, Kigoma Municipal. The tribunal found for the first respondent who is the administrator of the estate of the late Bi Tamasha Nyunguye. The judgment was delivered on 7/4/2017 affecting the interests of the applicant. The appellant felt aggrieved by the decision and knowing that he was out of time, lodged Miscellaneous Land Application No. 139 of 2019 seeking extension of time within which to file an application for revision out of time. The application was dismissed hence this appeal.

Going by the decision of the DLHT, one can see that the application was dismissed for failure on the part of the applicant to account for each day of delay. Illegality of the decision of the ward tribunal was not given due attention.

Submitting before the court the appellant said that he was not a party and was not involved in the conduct of proceeding but the decision was made against him. He denied the name of Hussein Matuma appearing in the record of the ward tribunal. He went on to say that the DLHT erred in failing to extend the time because he was not aware of the decision of

the ward tribunal.

The first respondent submitted that the appellant was present and was heard. He called him a party to the case. He argued the court to dismiss the appeal. Ms. Victoria Nyembere who appeared for the second respondent supported the decision of the DLHT. She said that the DLHT exercised its discretion properly in refusing to extend the time because the appellant had failed to account for each day of delay. She proceeded to say that the court should not limit itself to the illegality of the decision of the lower court only. It should also see if the matter has any public importance. She could not see the matter as having any public importance. She referred the court **Giliad Lazaro and 65 others v. Mkurungenzi Wilaya Kasulu**, Miscellaneous Labour Application No. 12 of 2020 (High Court Kigoma) and **The Principal Secretary Ministry of Defence and National Service v. Duram P. Valambya** [1992] TLR 387 as her authorities on the points raised.

I had time to examine the records and submissions made. The record of the ward tribunal is clear that the appellant was not a party. The respondents were the parties but it is apparent that the order which was subsequently made affected him. If the appellant was not a party at the ward tribunal, it means that the time of delay can not be calculated as if he was a party and present on the day when the decision was made. In

other words, he cannot be required to account for each day of delay from 2017 to 2019. A party to a case seeking extension of time has to account for each day of delay from the date of the judgement to the date of filling the application. That is the rule see **Mohammed Hamisi Mawa (the Administrator of the estate of the late Hamisi Hassan Mawa) v. Selemani Omari Kikwala and another**, Misc. Land Cause Application No. 51 of 2013 High Court, **Sebastian Ndaula vs Grace Rwamafa**, Court of Appeal, Civil Application No. 4 of 2014, **Loshilu Karaiwe and 4 others vs. Abraham Melkizedeck Kaaya (suing as Legal personal represented of Gladness Kaaya)**, Court of Appeal, Civil Application No. 140/02 of 2018. Other people have to account for the delay from the date when they became aware of the decision or when they started to be affected by the decision. The appellant fell in the second category. Unfortunately, the DLHT did not address its mind to this area. This area, if properly examined, could be a base for extending the time for the appellant appear to have been informed of the decision at the execution stage.

Further, the record is clear that there is a decision affecting the rights of the appellant who was not a party at the ward tribunal. That is an illegality which called for extension of time to file a revision so as to establish whether it was correct or not.

That said, the appeal is allowed. The appellant is given fourteen (14) days from today within which to file an application for revision at the DLHT against the decision of the ward tribunal. It is ordered so. Costs to follow the event.



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L.M. Mlacha

JUDGE

1/11/2021

Court: Judgement delivered in the presence of the parties. Right of Appeal Explained.



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L.M. Mlacha

JUDGE

1/11/2021