

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISCELLANEOUS LAND APPEAL NO. 11 OF 2021

(Arising from the decision of the District Land and Housing Tribunal for Mtwara at Mtwara in Misc. Land Application No.334 of 2020 and originating from Mayanga Ward Tribunal in Land Application No.8 of 2015)

SOFIA ALI MNYUMANGA.....1ST APPELLANT

YUSUFU ALI MNYUMANGA.....2ND APPELLANT

VERSUS

ALI SAID MANGAKA.....RESPONDENT

JUDGMENT

25 Oct. & 16 Nov., 2021

DYANSOBERA, J.:

The appellants, Sofia Ali Mnyumanga and Yusufu Ali Mnyumanga, are challenging the decision of the District Land and Housing Tribunal for Mtwara at Mtwara in Miscellaneous Land Application No.334 of 2020 delivered on 4th day of March, 2021 in favour of the respondent, Ali Said Mangaka.

The factual background of the matter leading to this appeal is the following: The respondent, on 14.4.2015, filed Land Application No.8 of 2015 before Mayanga Ward Tribunal against the appellants suing them on trespass over the suit land which he allegedly inherited from his late father. In its judgment, the trial Tribunal declared that the areas of *bondeni* which are characterised with the cashewnuts and mango trees were legally owned by the respondent. It also declared the second appellant the lawful owner of his land and permitting him to continue with his usual activities in the same premises. In addition, the same Tribunal ordered the appellants to pay the costs at the tune of Tshs.65, 000/=.

The appellants did not seek to impugn the said decision within the time prescribed by law and it is after a lapse of good five years from the date of the decision of the trial Tribunal that is on 30th day of November, 2020 when the appellants filed their Miscellaneous Land Application No. 334 of 2020 before the District Land and Housing Tribunal for Mtwara at Mtwara seeking an extension of time to appeal against the decision of Mayanga Ward Tribunal in Land Case No.08 of 2015 which had been delivered on 14th day of April, 2015. The District Land and Housing Tribunal heard the parties and ultimately dismissed the application with costs.

Aggrieved, the appellants have come to this court impugning the decision of District Land and Housing Tribunal by filing their memorandum of appeal which is predicated on two grounds as follows:-

1. That the Hon. Chairman erred in law and in fact by ruling in favour of the Respondent without giving weight to the reasons of delay given by the appellants that their farm was their source of income was given to the respondent hence leaving them with no income to enable to file appeal on time.
2. That the trial tribunal erred in law and facts by ruling out in favour of the respondent without considering that execution does not bar an appeal.

At the hearing of the appeal, the appellants were represented by Mubaraka Said Amri holding a Special Power of Attorney donated to him by the appellants to represent them in this appeal. The respondent appeared in person and without representation.

Submitting in chief on the grounds of appeal, Mr. Mubaraka Said Amri complained that the law was not followed. He argued that the appellants delayed to file their appeal on time because after the land was given to the respondent they lost control and had no income and it was until they obtained the money elsewhere that is when they appealed. Mr.

Amri further insisted that their evidence was not considered in prosecuting the case since one has to have money.

Opposing the appeal, the respondent submitted that the decision of the lower Tribunal was impeccable. He said that after the suit was determined the appellants did not appeal in time. He urged this court to find the complaints by the appellants having no basis.

In a very brief rejoinder, Mr. Amri insisted that the lower Tribunal was wrong otherwise the decision would not have been based on one side.

Having perused the records of the lower Tribunals and having considered the grounds of appeal and the rival submissions by the parties, I undertake to start with the second ground of appeal, which is to the effect that the trial Tribunal erred in law and facts by ruling out in favour of the respondent without considering that the execution does not bar an appeal. This ground, in my view, should not detain me as the appellants have not submitted on it. Suffice it to say that although it is true that execution does not bar an aggrieved party to bring his appeal, the respondent in this matter has already executed the order or decree of the decision intended to be impugned and, therefore, this complaint has been overtaken by events.

On the first ground of appeal, the issue is whether the District Land and Housing Tribunal gave its decision in favour of the respondent without giving weight to the reasons of delay given by the appellants which was

that the act of giving the suit farm to the respondent left the appellants with no income to enable them to appeal on time.

A close look at the record of the District Land and Housing Tribunal speaks against the appellants' complaint that their reason for the delay was not considered. My finding is that the District Land and Housing Tribunal considered the reason for the delay the appellants had advanced and accorded it no weight. In its deliberation, the District Land and Housing Tribunal made reference to the provisions of section 20 (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] which permits it to grant an extension of time upon being satisfied that sufficient cause has been given.

In the present appeal, the appellant vide their joint affirmed affidavit especially at paragraphs 3 and 4 averred that they failed to appeal on time because their farm which they depended on for income was taken and given to the respondent the act which made them to have no money for filing their appeal on time. On this, the District Land and Housing Tribunal was of the view that the appellants failed to give sufficient reason (s) for their delay to file their appeal on time in that they failed to give a plausible explanation on when they exactly got the money which enabled them to file their application. Their joint affirmed affidavit is silent on that crucial issue of the time when they obtained the money to run the case.

Besides, the District Land and Housing Tribunal found that the appellants were negligent as they failed to account for their delay to file their appeal on time for five years. It concluded that the appellants did not

account for delay of each day of five years which is equivalent to 1827 days.

It is my finding that the District Land and Housing Tribunal considered the appellants' reason for the delay but accorded it no weight as it did not amount to a cause sufficient to explain such an inordinate delay of five years.

The Tribunal had discretion to extend time but the law did not bestow unlimited and unbridled discretionary powers to it. Every discretionary power has to be exercised reasonably and within a well-established framework of principles. One of such principle is the demonstration of sufficient cause. This means that the appellants were duty bound to give sufficient cause in the sense that it was not only just but also adequate lest the provisions which provides time period within which a party has to pursue his or her cause be used to prolong incessantly litigation.

It should be borne in mind that the expiry of time period leads to the extinguishing the remedy of the aggrieved party.

Besides, the predicated guidelines for grant of extension of time as it was stated in the case of **Lyamuya Construction Ltd. v. The Board of Trustees of Young Women's Christian Association of Tanzania**, where the Court stated as follows:-

"(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

In the light of the above guidelines and reasoned finding of the District Land and Housing Tribunal, the appellants miserably failed to demonstrate sufficient cause for their delay. The appellants should be reminded that the law is made to protect only diligent and vigilant people but not the indolent.

For the reasons I have stated, I find no material to fault the decision of the District Land and Housing Tribunal. This appeal fails and is, accordingly, dismissed with costs to the respondent.

It is so ordered.



W.P.Dyansobera

Judge

16.11.2021

This judgment is delivered under my hand and the seal of this Court on this 16th day of November, 2021 in the presence of Mr. Mubaraka Said Amri for the appellants and the respondent who has appeared in person.



W.P.Dyansobera

Judge