

**IN THE HIGH OF THE UNITED REPUBLIC COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 34 OF 2020**

*(Based on Misc. Application No. 66 of 2013 in the District Land and Housing Tribunal at Arusha)*

**RICHARD EPHRAIM (As the Administrator**

**of the estate of the late EPHRAEM NANGESAI.....APPLICANT**

**VERSUS**

**AMON RICHARD .....RESPONDENT**

**RULING**

**09/09/2021 & 16/11/2021**

**M. R. GWAE, J**

The dispute between the parties has its own origin, it is from way back to the year 2007 when the respondent, Amon Richard instituted a land dispute against one Ephraim Nangesai who passed away in 2012 while the matter between them was still pending. However, for the purpose of this ruling I shall be brief as herein under.

Through an appeal filed to this court (Misc. Land Appeal No. 16 of 2016), the applicant was desirous to challenge the decision of the District

Land and Housing Tribunal for Arusha at Arusha (DLHT) dismissing his Application No. 66 of 2013 aimed at extending time within which to appeal to the DLHT out of time against the decision of Kiranyi Ward Tribunal (Application No. 65 of 2007).

Nevertheless, this court did strike out the appellant's appeal on the 15<sup>th</sup> September 2016 with liberty to re-file due to the defect appearing in the DLHT's ruling delivered on the 16<sup>th</sup> day of October 2015 whereas Miscellaneous Application No. 66 of 2013 was wrongly typed to read Miscellaneous Application No. 242 of 2013. The applicant after the order of the court striking it out, filed an application in the DLHT for review (Miscellaneous Application No. 243 of 2018) whose decision was delivered on the 5<sup>th</sup> December 2019.

After DLHT's issuance of the rectification order dated 5<sup>th</sup> December 2019, the applicant filed this application for extension of time on the 22<sup>nd</sup> June 2020 supported by a sworn affidavit of Richard Ephraim, an administrator on the grounds that, the delay to file an appeal to the court was out of his control as he was availed with a copy of the order rectifying the DLHT's apparent error in respect of Misc. Application No. 66 of 2013 on the 19<sup>th</sup> June 2020 and that, there are illegalities on the decision of the

ward tribunal; namely; that, the applicant was not heard and that the value of the suit land exceeded pecuniary jurisdiction of the ward tribunal.

Resisting this application, the respondent averred that, the applicant was heard and that, the applicant's application for enlargement of time in the DLHT (Miscellaneous Application No. 66 of 2013) was res-judicata as the application of the same nature was filed by him vide Misc. Application No. 93 of 2012. He further stated that the copies in respect of Misc. 243 of 2018 were ready for collection on the date the order was made that is on the 5<sup>th</sup> December 2019.

During hearing of this application, the applicant and respondent were duly represented by the learned advocates namely; Mr. Msuya and ~~Mr. F. Muhalila~~ respectively. ~~Mr. Msuya reiterated what is contained in the~~ applicant's affidavit as well as his supplementary affidavit. However, he added that, the pecuniary jurisdiction of the ward tribunal is questionable since the value of the suit land exceeds Tshs.60,000/=

In his response, the respondent's counsel orally added that, the issue of illegality ought to be apparent on the face of the record. He then cited a case of **Damas Assey and another vs. Raymond Mgonda Paula and**

**8 others**, Civil Application No. 32/17/2018 (unreported-CAT), **Tanzania Rent A Car vs. Peter Kimuhu**, Civil Application No. 226/01 of 2017 (unreported-CAT). The respondent's counsel went on submitting that the applicant's assertion that, there was jurisdictional issues in terms of pecuniary jurisdiction is unfounded since there is no valuation report of the suit land that was tendered by the applicant and that the applicant has failed to account each day of delay.

In his rejoinder, Mr. Msuya stated that the jurisdictional issue is apparent from the ward tribunal decision where it is indicated that there was an agreement between the parties and the value of the suit land is indicated therein at the last page and that they were not availed with the copy of the order timely as envisaged in their supplementary affidavit.

Having examined the parties' affidavits, documents annexed thereto as well as oral submission, therefore, an issue for determination by this court is, whether the applicant has been able to show good cause for the sought extension of time to file his appeal out of the prescribed time, this issue is split into two (2) sub issues namely; whether the applicant has accounted each day of delay and whether there are illegalities in the decision sought to be impugned.

**In the 1<sup>st</sup> sub issue**, whether the applicant has accounted for each day of his delay to file his intended appeal. It is apparently clear that the time during pendency of the former appeal filed by the applicant in this court and his subsequent filing of the application for the review (Misc. Application No. 243 of 2018) are subject to the principle of exclusion. This position of the law was judicially demonstrated in the case of **Citibank Tanzania Limited vs. TTCL and 4 others**, Civil Application No. 97 of 2003 (Unreported), the Court of Appeal stated:

“The delay was not deliberate as urged by the counsel; the time taken during pendency of Civil Application No. 64 of 2003 until it was struck out”.

In our instant application, the applicant is however found duty bound to account for his delay from the date of the delivery of the DLHT's order rectifying the error apparent on the face of its record (5<sup>th</sup> December 2019) to when he filed this application that is on the 22<sup>nd</sup> June 2020.

The applicant has averred that he was not timely supplied with the copy of the order till on the 19<sup>th</sup> June 2020 when he was availed with the same whilst the respondent has seriously argued that copies of the order were collectable on the same date when it was delivered. If the applicant's

assertion was supported by his letters requesting for the same and an exchequer receipt, that would be credible and satisfactory evidence to justify this court to extend time. Equally, the respondent's assertion that copies of the ruling delivered on the 5<sup>th</sup> December 2019 were available for collection from the date of its delivery is not supported by any tangible evidence. nevertheless, it was the duty of the applicant who desired this court to rely on the existence of that fact, that is to say, he was supposed to prove that he was actually availed with the copy on the 19<sup>th</sup> July 2020 as required under section 110 (1) of the Tanzania Evidence Act, Cap 6 Revised Edition, 2019.

As it is, this court cannot rely on mere assertions without persuasive proof. I am saying so simply because, litigants are required to apply for copies of judgment or decree or order to the DLHT and they are availed or supplied with the same upon payment of the requisite fees which are substantiated by exchequer receipts. Apparently, the applicant has been unable to annex letters requesting for the supply of the copies nor has he annexed any exchequer receipt to substantiate that he was availed with the copy on 19<sup>th</sup> June 2020. This reason is therefore bound to fail, it is therefore dismissed for lack of proof.

Now to **the 2<sup>nd</sup> sub-issue** on whether the applicant has accounted each day of delay and whether there are illegalities in the decision sought to be impugned. This sub issue is also divided into two issues, whether the applicant was denied a right to be heard and whether the ward tribunal clearly lacked jurisdiction. Starting with the 1<sup>st</sup> issue, as rightly argued by the respondent's counsel, the applicant was heard and in fact the dispute was heard on merit as plainly depicted in the ward tribunal decision dated 18<sup>th</sup> April 2008. It follows therefore, the applicant's assertion that, the applicant was not heard by the ward tribunal and that, he was not aware of the existence of the dispute till when he was required to sign a handing over note is, in the circumstance, unfounded and unjustified.

On the issue of the raised issue of lack of pecuniary jurisdiction of the ward tribunal, the applicant has said that the error is so apparent and it is on the face of the decision that is in the last page. It is statutorily spelt out that, the ward tribunal when hearing and determining a land dispute its pecuniary jurisdiction should not be more than three million. Section 13 of the Land Disputes Act, Cap 216, Revised Edition, 2019 provides and I quote;

“15 Notwithstanding the provisions of section 10 of the Ward Tribunals Act, the jurisdiction of the Tribunal shall in all proceedings of a civil nature relating to land be limited to the disputed land or property **valued at three million shillings** (emphasis mine)”.

The above quoted statutory provision, in my understanding, entails that the pecuniary jurisdiction of the ward tribunals to entertain land disputes is limited to the value of the land which is does not exceed three million shillings. Examining the Kiranyi ward tribunal’s decision, I have found that, the ward tribunal was plainly aware of the exchange value of the suit land with costs of construction of two houses since it glaringly held that, there was an agreement entered by the parties with effect that, the respondent was to build two houses for his two mothers (wives of the late Ephraim Nangesai) and he subsequently accomplished his contractual obligation and the ward tribunal approximated the value of the two houses bult by the respondent to be Tshs. 65, 000, 000/= which is extremely higher than what is required by the law cited herein.

In the decision of the Court of Appeal in **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women’s Christian Association of Tanzania**, Civil Application No. 2 of 2010



(unreported) approved in **Omari R. I brahim v. Ndege Commercial Services Ltd**, Civil Application No. 83/01/2020, it was stated that;


"Since every party intending to appeal to challenge a decision either in points of law or facts. It cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should , as of right, be granted extension of time if applies for one ...The court there emphasized that such point of law must be that of sufficient importance and , I would add that it must be apparent on the face of the record as such as question of jurisdiction, not one that will be discovered by a long drawn argument or process".

Basing on the nature of the decision of the ward tribunal especially in the agreement that was entered between the parties and the value of the two houses erected by the respondent as earlier explained and being guided by the decision in the Lyamuya's case supra), this application is suggestive that, the pecuniary jurisdiction of the ward tribunal is seriously questionable as, under normal circumstances, the respondent would not build two (2) houses worth more than Tshs. 50,000,000/= with a piece of land (suit land) worth Tshs. 3,000,000/= or less. In light of the observation

in respect of the questionable pecuniary jurisdiction of the ward tribunal notwithstanding the absence of a valuation report suggested by the respondent's counsel and taking into account that, the applicant's long strife to have his grievances heard and determined, I find this application is grantable for that reasons.

For the foregoing reason, the issue of jurisdiction is apparent on the face of the ward tribunal's decision sought to be appealed to the District Land and Housing Tribunal. That alone, in my firm view, warrants this court to extend time as sought and as I hereby do. The applicant is therefore given **ten (10)** days within which to file his appeal to the court. Costs of this application shall be in the course.



  
**M. R. GWAE**  
**JUDGE**  
**16//2021**