

IN THE HIGH COURT OF TANZANIA

AT TABORA

LAND APPEAL NO. 14 OF 2019

[Arising from the District Land and Housing Tribunal for Nzega in

Misc. Land Application No. 114 of 2018]

KULWA SWEYA APPELLANT

VERSUS

MABELE MDUBA RESPONDENT

JUDGMENT

Date of Last Order: 02/11/2021

Date of Delivery: 11/11/2021

AMOUR S. KHAMIS, J.

Before the District Land and Housing Tribunal for Nzega the appellant herein named Kulwa Sweya filed an application seeking extension of time to appeal against the decision of Mwangoye Ward Tribunal in Land Dispute No. 01 of 2017. Upon full hearing the District Land and Housing Tribunal Chairman denied the application hence this appeal.

The appellant filed a memorandum of appeal listing three grounds of appeal which runs as follows: -

- i) *That, the District Land and Housing Tribunal erred in law and in fact for not according weight to the reasons adduced by the appellant for delay to file appeal on time though the same was genuine and held water.*

- ii) *That, the District Land and Housing Tribunal erred in law and fact to disregard the evidence adduced by the appellant on the reason that he was sick and he was treated traditionally as the result for delay, and to disregard the ground of sickness as not good ground for extension of time.*
- iii) *That, the District Land and Housing Tribunal erred in law and in fact to conclude that the Appellant has to account for each day of delay while it is from our precedent that sickness has been a good ground for extension of time which does not require to account for each day of delay.*

A brief history leading to this appeal is that, the appellant filed a case against the respondent at Mwangoye Ward Tribunal claiming trespass by respondent over his piece of land. On 22/12/2017 the Ward tribunal passed a judgment which was in favour of the respondent.

From that time, the appellant did not show grievance against the decision of Mwangoye Ward Tribunal until 10/12/2018 about a year later when he filed an application for extension of time to file an appeal before the District Land and Housing Tribunal for Nzega.

Upon hearing of the application, the Tribunal Chairman was of the view that, the appellant had failed to account for each day of delay since no any tangible and legal reasons were adduced for the delay on filing the appeal. Moreover, as to reason of delay in getting a copy of judgment, the tribunal chairman observed that there was no any proof to support the allegation.

On top of that, the Tribunal Chairman ruled that, the appellant failed to account for each day of delay as he neither named the traditional doctor nor produced a copy of certificate of registration to prove that he attended him when he was sick as claimed.

When the appeal was set for hearing, the respondent was absent for a couple of adjournments and upon an affidavit sworn in by the Court process server stating that the respondent disappeared from his residence in Mwagugali Mwangoye Village in Nzega since December 2019 this Court made an order for substituted service through publication in Mwanchi Newspaper.

The same was done through Mwananchi NewsPaper dated 02/12/2020 ISSN No. 0856-7573 at page 29 which gave a satisfaction to this court that the respondent was properly served by a publication and defaulted appearance, consequently the appeal proceeded exparte as prayed by the appellant.

When the appeal was called up for hearing, the appellant was present in person, he prayed to adopt the elements of his memorandum of appeal to be part of his submission as he had nothing to add, he also prayed for the Court to be pleased to accept his appeal.

After the appellant's submission, he rested his case for the court to decide whether the appeal has merit or not.

Having gone through the record of the case at hand, I find it apposite to consolidate all three grounds of appeal due to the fact that all the grounds have focussed on the fact that the District Land and Housing Tribunal was wrong to deny the appellant

extension of time while he had provided sufficient reasons for grant of the application.

It is trite law that, a person applying for extension of time must account for each day of delay, this was stated in the landmark case of ***Lyamuya Construction Limited v Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Appeal No. 2 of 2010 CAT (unreported)*** in which the Court of Appeal set the requirements to be considered while granting extension of time that: -

- i) *The applicant must account for all the period of delay.*
- ii) *The delay should be inordinate*
- iii) *The applicant must show diligence, and not apathy, negligence or sloppiness in prosecution that he intends to take*
- iv) *If the court feels that there are sufficient reasons, such as existence of point of law of sufficient importance, such as illegality of the decision sought to be challenged.*

The law is settled that extension of time is not an absolute right but is based on the Court's discretion. In the case at hand the appellant claimed that he was sick and attended local treatment at Ushetu within Kahama District; yes, sickness is a sufficient cause and it is beyond human control as claimed by the appellant in the 3rd ground of appeal but a person alleging the same is duty bound to prove it. One can only prove sickness by providing medical evidence and also show how such sickness barred him from appealing in time.

In the case of **Pastory J. Bunonga vs Pius Tofiri, Misc. Land Application No. 12 of 2019 [2020] TANZLII (06 February, 2020)** my learned brother Rumanyika, J. held that: -

"Where it was on the balance of probabilities proved, sickness has been good and sufficient ground for extension of time yes, but with all fairness the fact cannot be founded on mere allegations. There always must be proof by the applicant that he fell sick and for the reason of sickness he was reasonably prevented from taking the necessary step within the prescribed time."

At the DLHT, the appellant presented two reasons for the delay that, the trial Mwangoye Ward Tribunal delivered its decision on 22/12/2017 but despite of timely request a copy thereof was supplied to him on October 2018 which is beyond the time which the appeal was to be filed.

Secondly, the appellant asserted that at a time of receiving such copy of the trial tribunal's decision, he was seriously sick and he received treatment from a traditional healer (Herbalist) in Ushetu area, Kahama District. The record further shows that, the appellant started to pursue an appeal upon recovery and return from the herbalists based in Ushetu.

These allegations were expressly stated in Paragraphs 3, 4 and 5 of the applicant's affidavit in support of the Chamber summons filed in the District Land and Housing Tribunal for Nzega relating to extension of time to file an appeal. The allegations were

disputed by Mabela Mduba through a counter affidavit dated 25/03/2019.

In a decision rendered on 29/08/2019, the District Land and Housing Tribunal Chairman ruled that the appellant failed to adduce evidence proving that the impugned trial Court's decision was supplied in October 2018.

Further, the learned Chairman observed that the appellant did not adduce proof that he had requested for such copy of the decision from the tribunal. It was further noted that despite of receiving copy of decision in October 2018, the appellant lodged the application for extension of time in 10/12/2018 about two months later. These reasons advanced by the learned Chairman of the District Land and Housing Tribunal were not controverted by the appellant in this appeal.

In the second ground of appeal, the appellant contended that the learned chairman disregarded the evidence on record relating to his sickness and treatment by herbalist whose names were not disclosed. However, my perusal of the tribunal's records did not land on any piece of evidence proving that the appellant was sick or received treatment from herbalists.

Further records shows that the learned Chairman considered all reasons of delay presented by the appellant and gave reasons for not accepting them.

Having considered this background, I find no reason to fault the learned Chairman of the District Land and Housing Tribunal for his decision which is legally sound and should remain undisturbed.

In the upshot, this appeal is dismissed with no order for costs. It is so ordered.



AMOUR S. KHAMIS

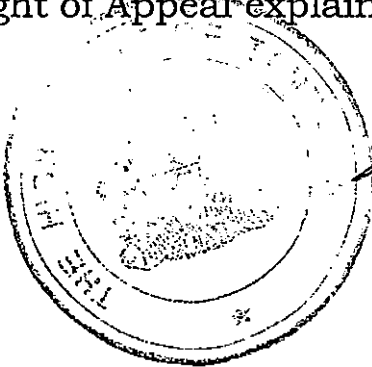
JUDGE

11/11/2021

ORDER:

Judgment delivered in chambers in the presence of the appellant in person and in absence of the respondent.

Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

11/11/2021