

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 299 OF 2021**

BETWEEN

PANTALEO BASHASHAAPPLICANT

AND

JUSTIN WAMBALI.....RESPONDENT

RULING

MRUMA,J.

This is an application for extension of time within which the Applicant can file an appeal to this court against the decision and orders of the District Land and Housing Tribunal for Konondoni District at Mwananyamala in Miscellaneous Civil? Application No.111 of 2019 between Justin Wambali and Pantaleo Bishasha.

In that application the Applicant therein Justin Wambali had applied for extension of time within which he could make an application to set aside the dismissal order in respect of Miscellaneous Application No. 434 of 2017. That application was apparently dismissed for Want of prosecution.

Following the dismissal order, Justin Wambali filed another application which was registered as Miscellaneous civil application No. 110 of 2020. Upon being served with that application the Respondent's counsel filed counter – affidavit to oppose the prayers in the chamber summons. Together with the counter- affidavit, the counsel for the present Applicant filed a notice of preliminary objection to the effect that:

1. That the Applicant's affidavit was defective.
2. That there was non- citation of the applicable law, and
3. That there was wrong citation of the law.
4. The preliminary objections were argued by way of written submissions.

After considering submissions of the parties the learned chairman of the tribunal S.H. Wambali agreed with the counsel for the Respondent therein, who is now representing the Applicant herein that the Application and its supporting affidavit were problematic. He however, invoked the principle of overriding objective which is embodied in section 3A (1) of the Civil Procedure Code and refrained from striking out the application and instead, he ordered the then Applicant to amend the application in

order to rectify the defects as they were pointed out by the counsel for the Respondent. That decision was rendered down on 30.12.2020.

Apparently counsel for the present Applicant was not pleased by that decision. On 31st December, 2020, he wrote a letter with ref No. Misc. AP. 189 AND 202/2017/VOL. II/28 requesting for a certified copy of each of that ruling and order for purposes of ascertaining whether any legal step could be taken.

The learned counsel had deponed that in response to their request, the Applicant was supplied with certified copies of the ruling and orders (see paragraphs 11 of the supporting affidavit) but he did not disclose when the said documents were availed to the Applicant.

Regulation 24 of the Land Courts (The District Land and Housing Tribunal Regulations), 2002 which in among the laws cited as enabling law provides that:

"Any part who is aggrieved by the decision of the Tribunal shall subject to the provisions of the Act have the right to the High Court (Land Division)

Under section 41(2) of the Land Dispute Court Act (cap 216 RE 2019) an appeal under sub – section (1) of section 41 may be lodged section (1) of section 41 May be lodged within forty five days after the date of the decision or order provided that the High may for the good cause extend the time of filing an appeal either before or after the expiration of such period of forty five days.

Submitting in support of the application, counsel for the Applicant submitted that his application raises for legal points of law which need to be determined by this court. The points are:

- 1. Whether the Applicant's chamber summons is a nullity on the ground of being founded upon fatally defective affidavit (the nullity issue). If the answer to this issue is in the positive.*
- 2. Whether Miscellaneous Civil Applications No. 110 and 111 both of 2019 were filed by the Respondent upon payment of fees ("the nonpayment of fees issue")*

3. *Whether ruling has ever been delivered in Application No. 110 and 111 both of 2019 aforesaid (ie the ruling issue) and*

Whether Miscellaneous Application No. 110 and 111 of 2019 were filed by the Respondent upon payment of fees (the 2nd Non – payment of fees issue)

In his further submissions, the learned counsel for the Applicant made reference to Miscellaneous Civil Applications 110 of 111 of 2019 and concluded that on the basis of non- payment of filing fees which constitutes illegality this application should be granted.

Illegality “*in the proceedings*” is not defined by the procedural law, but it must be related to the way the impugned proceedings were conducted. To constitute illegality there must be an act which is either forbidden by the law or a state of not being conducted in accordance with the laid down procedure and which has resulted into miscarriage of justice.

In the present case I have no doubt that non payment of requisite court fees is an illegality in conducting proceedings. However, the remedy of such illegality is to order the defaulting party to pay the fees according

to the law and that is not dismiss or strike out the matter, but what the learned chairman did by ordering the then Applicant to amend the Application and “*rectify all defects*”. That order was in line with the principle of overriding objective embodied under section 3A (1) of Civil Procedure Code [cap 33 RE2019].

Further to the above, section 45 of the Land Dispute Courts ACT Provides clearly that:


“No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or irregularity in the proceedings before or during the hearing or in such decision or order or on account the improper admission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.”

From the above quoted provisions of the law it goes without saying that granting an extension of time in order to enable the Applicant to

lodge an appeal to this court against the decision of the District Land and Housing Tribunal will be a futile exercise because in terms of that law of such decision will not be reversed by this court and more so because the order was interlocutory and it does not conclusively determine the right of the parties.

That said, the application for extension of time is dismissed for want of merits. The Respondent will have his costs.




A. R. Mruma

Judge

20/7/2022

20/7/2022


Coram: Hon. A. R. Mruma,J

For the Applicant: Mr. Paulo Mtou for Respondent

Cc: Delphina

Court: Ruling delivered.




A. R. Mruma

Judge

20/7/2022