

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF TABORA
AT TABORA**

LAND CASE APPEAL NO. 24 OF 2020

*(Arising from the District Land and Housing Tribunal for Tabora, in Misc. Land
Application Case No. 222 of 2016)*

MAYAYA MHOJAAPPELLANT

VERSUS

RASI CHARLES RESPONDENT

JUDGEMENT

Date of Submissions: 10/08/2022

Date of Delivery: 16/08/2022

AMOUR S. KHAMIS, J:-

Mayaya Mhoja has attempted to challenge a decision of the Sikonge Ward Tribunal for almost six (6) years to no avail.

The impugned decision was delivered by the trial Sikonge Ward Tribunal on 4/03/2016.

Records show that immediately upon delivery of the decision, he wrote a letter to the Ward Tribunal asking for copies of proceedings and decision.

However, the same was not given to him despite of repeated follow ups.

Noting that he was out of time, Mayaya Mhoja filed an application for extension of time to the District Land and Housing Tribunal for Tabora.

In its decision of 20/4/2018 the District Land and Housing Tribunal rejected the application.

On appeal to the High Court vide Land Appeal No. 16 of 2018, on 28/02/2020 this Court ordered fresh hearing of the application.

Upon that order of this Court, Misc. Land Application No. 222 of 2016 was heard afresh and a ruling thereof delivered on 4/09/2020.

In the said ruling the learned chairman of the District Land and Housing Tribunal (Waziri, MH) dismissed the application for lack of good and tangible cause.

Aggrieved, Mayaya Mhoja preferred the present appeal on two grounds:

1. That the trial tribunal erred in law and fact to dismiss the application on the view that it lacks good and tangible cause while the appellant adduced a good cause for the application to be entended.
2. That the tribunal erred in law and fact to dismiss the application without taking into consideration that the appellant adduced vivid evidence as to why he did not appeal on time.

When efforts to physically serve Rasi Charles, the respondent herein aborted, he was served by publication in Mwananchi Newspaper of 25 November 2021 at page 37.

Despite of substituted service, Rasi Charles did not show up hence an order for exparte proof.

At the time of hearing, the appellant, Mayaya Mhoja, appeared in person and adopted the two grounds of appeal to form his submissions.

I have carefully considered the two grounds of appeal and examined the records of the District Land and Housing Tribunal.

In **MARY KIMARO V KHALFAN MOHAMED, MISC. CIVIL CASE NO. 83 OF 1992** (Unreported) this Court (Mwaikesu, J – as he then was) held that:-

“No doubt, a copy of proceedings along side with a copy of Judgement are necessary for the purpose of framing a sound memorandum of appeal. It is from the time of the supply of both such documents that the limitation of time for appeal runs”

Section 20(1) of the **LAND DISPUTES COURTS ACT, CAP 216, R.E. 2019** provides that an appeal to the District Land and Housing Tribunal from the decision of a Ward Tribunal should be filed within 45 days from date of the decision or order appealed against.

Section 20 (2) of the same law empowers the District Land and Housing Tribunal to extend time for filing an appeal either before or after the expiration of the said period of 45 days.

Section 20(1) of the **LAND DISPUTES COURTS** ACT did not state that an intended appellant should pocket copies of the impugned decision and or proceedings in order to initiate an appeal.

That notwithstanding, I concur with Mwaikisu J in **MARY KIMARO V KHALFAN MOHAMED** (supra) that no meaningful memorandum or petition of appeal can be prepared in absence of copies of the proceedings and decision.

Practically, a party to a case or any other interested litigant can only fault the trial tribunal or Court based on what was recorded in the proceedings or determined in the decision.

In the present case, the trial ward tribunal did not supply both copies of the proceedings and impugned decision to the appellant.

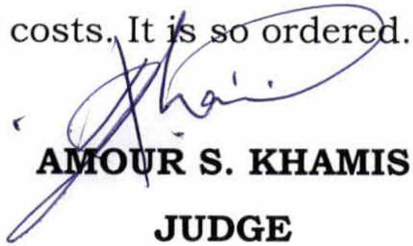
However, this issue was casually touched by the learned chairman who stated that such copies were not mandatory.

This part of holding in my view, was a misdirection for there is no way that the appellant could lodge a petition of appeal in absence of the impugned proceedings and decision.

For the aforesaid reasons, this appeal succeeds. Time is hereby extended to Mayaya Mhoja, the appellant herein, to file an appeal to the District Land and Housing Tribunal for Tabora within forty five (45) days from date of supply delivery of this ruling.

Based on the history of these proceedings, the intended appeal showed be heard by chairman of the District Land and Housing Tribunal other than the one who determined Misc. Land Application No. 222 of 2016.

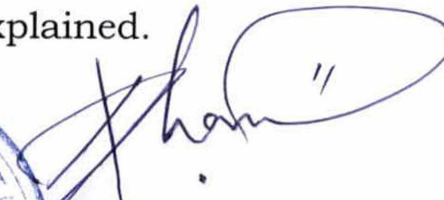

I make no order for costs. It is so ordered.


AMOUR S. KHAMIS
JUDGE
16/8/2022

ORDER

Judgement delivered in chamber in present of the appellant in person and absence of the respondent.

Right of Appeal Explained.



AMOUR S. KHAMIS
JUDGE
16/8/2022