

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

MISC. LAND CASE APPLICATION NO 42 OF 2020

*(Arising from the order of District Land and Housing Tribunal for Korogwe in Execution
No.170 of 2019 dated 28th November 2019)*

MWANAHAWA S/O CHALAZAAPPLICANT

VERSUS

SOPHIA D/O SOWARESPONDENT

RULING

MRUMA,J.

This is an application for extension of time within which the Applicant Mwanahawa Chalaza could lodge an appeal against the order of the District Land and Housing Tribunal of Korogwe in Land Execution No.170 of 2019 delivered on 28th November 2019.

The application is brought under section 38(1) of the Land (Disputed (courts) Act [cap 216 RE 2019] and as is the practice it is supported by the affidavit stating reason upon which the application is taken.

The Applicant's main contention is that she was not aware of the proceedings in Land Dispute No.6 of 2019 which was instituted and proceeded before Kabulu Ndani Ward Tribunal and which resulted into a decree the execution of which she is contesting.

In these proceedings the Applicant was represented by Mr. Rutengwe learned advocate while the Respondent enjoyed the service of Mr. Yoha Lucas, learned advocates.

I have carefully gone through and considered oral submissions of the parties counsel. I agree with the Respondent's counsel that the properties way and remedy available to the Applicant was to challenge the proceedings which resulted into the impugned decree and not the decree itself. As she is alleging that the case heard ex- parte, she ought to have filed application to set aside the exparte order and hearing. Trying to challenge execution of a decree obtained ex- parte without setting a seal the decree itself, is tantamount to cutting a tree from the branches while living the trunk intact.

Secondly it is trite law that for a party applying for extension of time to succeed he/she must adduce sufficient cause for the delay, As stated hereinabove the Applicant's main reason for delay is that she was not aware of the proceedings in execution application No. 170 of 2019 and

the proceedings from which it arose. However records of Land dispute No.6 of 2019 before Kabudu Ndani Ward Tribunal shows that the Applicant was summoned and she actually appeared before the Ward Tribunal but she refused to testify. It is stated in the judgment of the Ward tribunal thus;

"Baraza liliamua kumuita mllamikiwa ili kupata ukweli na lalamiko hili kwa kumtumia samansi za wito na baada ya kufika kwenye baraza alikataa haki yake ya kusikilizwa na kutamka kuwa hatahudhuria wala kutoa maelezo yeyoe kwenye Baraza hili na kuondoka barazani huku alikashifu baraza huju familia yake ilikutoa kauli chafu za kilikejeli baraza kuwa halina mamlaka ya kumwita mamayao."

The Applicant did not say anything about this finding of the tribunal. This means that it is not contested, and there is no application for setting aside the judgment of the Ward Tribunal which gave rise to the impugned execution. Thus, she cannot be heard saying that she was not aware of the proceedings which gave rise to the execution.

That said, I find that the Applicant has failed to adduce sufficient cause for delay even if we assume that the proper forum was to apply for extension (which is not).

In summary therefore the application is dismissed with costs.



A.R. Mruma
Judge
4/3/2022

4/3/2022

Coram : Hon. A.R. Mruma,J.

For the Appellant : Mr. Warehema Kibaha for Rutengwe for Applicant.

For the Respondent : Mr Yoha Lucas for Respondent (in Tanga)

Cc : Delphina

Court: Ruling delivered

A.R. Mruma

Judge

4/3/2022