

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

MISC. LAND APPLICATION NO. 16 OF 2022

(Arising from Misc. Land Application No. 237/2021 of the District Land and Housing Tribunal for Kigoma, before M. Mwinyi - Chairmanperson. Original Land case no 6/2020 of Kumsenga Ward Tribunal)

KOLONELI FARUSI HIGORO (Administrator of the estate of the late Pharus Hogoko Kinono)APPLICANT

VERSUS

MELANIA BALANDAJE 1ST RESPONDENT

VEDASTO VIYILIKO2ND RESPONDENT

NYONYOMBA ZABULONI3RD RESPONDENT

RULING

9/9/2022 & 20/9/2022

L.M. Mlacha, J

The applicant Koloneli Farusi Higor (Administrator of the estate of the late Pharus Hogoro Kinoko) filed an application seeking extension of time within which to file an appeal against the decision of the District Land and Housing Tribunal for Kigoma (the DLHT) made in Land Application No. 237/2021 originating from Kumsenga Ward Tribunal Land case No. 6/2020. The application is made under section 41 (2) of the Land Disputes courts Act, cap 216 R.E 2019 and section 14 (1) of the Law of Limitation Act, Cap 89

R.E 2019. It is supported by the affidavit of Koloneli Farusi Higor stating the grounds upon which extension is sought.

The respondents Melania Balandaje, Vedasto Viyiliko and Nyonyoba Zabuloni were duly served and filed a joint counter affidavit sworn by Abdulheri Ahmad sadiq opposing the application. Mr. Ignatus Kagashe appeared for the applicant while the respondents had the services of Mr. Abdulheri Ahmad Sadiq. Hearing was done online through our virtual services.

It was the submission of Mr. Kagashe that the applicant sued the respondents at Kumsenga ward tribunal in Land case No. 6/2021. He won the case and filed an application for execution. While the application for execution was pending, the respondent filed application No. 237/2021 at the DLHT seeking extension of time within which to appeal to the DLHT. The application was set for hearing on 17/3/2022 in the presence of both parties. On 1/3/2022 in the absence of the applicant, the tribunal made an order changing the hearing date from 1/3/2022 to 3/3/2022. The summons came to Mr. Kagashe but he could not communicate it to the applicant who live at Nyakitonto village, Kasulu district given the short span of time. He could not appear. Mr. Kagashe could not appear as well due to the short notice and pressure of other issues. The application was heard exparte. The DLHT

granted the application in a ruling which was delivered on 25/6/2022. They applied for a copy of ruling and drawn order. They were supplied with the ruling on 27/4/2022 but could not get the drawn order which was a necessary document for appeal purposes to date. Noting that he was late he decided to lodge the present application seeking extension of time. Counsel concluded that the delay was not deliberate. Counsel proceeded to submit that the ruling of the DLHT has two illegalities; first, the unilateral change of date and secondly, the failure to issue a summons for a date of ruling. He argued the court to grant the application.

submitting in reply, counsel for the respondents, told the court that it is true that there was change of date but that was necessary due to disturbances which were being made to the respondents. Counsel pointed out three areas upon which an application of this nature can be granted namely; the length of delay, reasons for the delay and the degree of prejudice upon which parties to bear. He said that the applicant could not count for the delay of 23 days adding that for lack of drawn order is not a good ground for extending the time. He added that, the applicant did not say the degree of prejudice in which he will suffer if the application is not granted. He argued the court to dismiss the application.

Mr. Kagashe made a rejoinder and reiterated his earlier position.

I had time to examine the pleadings and submissions closely. It is agreed that there was a change of date made in the absence of the applicant. It made the application to be heard in the absence of the applicant. It is not disputed that the application was heard ex-parte and decided ex parte. It is also not disputed that, the applicant could not receive a summons for delivery of the ruling. He could not get a drawn order to date.

I have no problem with principles pointed out by Mr. Abdulheri. My problem is the reason as to why the date was changed unilaterally and way the DLHT did not issue a summons to call the respondent to attend the court on the date of delivery of the ruling. I think that was contrary to the law and established principles which are now settled in our jurisdiction. Any changes to the hearing date have to be done only where there is sound reason to do so and must be well communicated to the other side. And where it is necessary that the case has to proceed ex parte under whatever situations, the defaulting party still has a right to be called to receive the decision. See **Cosmas Construction Co. Ltd. v. Arrow Garments Ltd.** (CAT), [1992] TLR 129 page 128 where it was said thus;

*"A party who fails to enter an appearance disables himself from participating when the proceedings are consequently ex-parte, but that is the farthest extent he suffers. Although the matter is therefore considered without any input by him **he is entitled to know the final outcome**. He has to be told when the judgment is delivered so that he may, if he wishes, attend to take it as certain consequences may follow."*(Emphasis added)

Further, there is also good evidence showing that he delayed while looking for a copy of the drawn order which he could not get to date. A drawn decree or order was a necessary document in lodging the appeal. See **Attorney General v. Ahmad R. Yakuti and 2 others**, Civil Appeal No. 49/2004 (CAT) and **Mount Meru Flowers (T) Ltd v. Box Board (T) Ltd**, Civil Appeal No. 260/2018 (CAT). In Mount Meru Flowers (T) Ltd it was said at page 10 that parties should not be punished for errors committed by the court.

That said, the application is granted. The applicant is given 14 days within which to lodge the appeal. I make no order as to costs. It is ordered so.




L.M. Mlacha

Judge

20/9/2022

Court: Ruling delivered online in the presence of Mr. Kagashe for the applicant at Kigoma and John Nyamoroga at Ubungo Mabibo Dar es salaam.
Right of Appeal Explained.

A handwritten signature in blue ink, appearing to read "L.M. Mlacha", is written over a horizontal line.

L.M. Mlacha

Judge

20/9/2022