

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
LAND APPEAL NO.88 OF 2021**

(Arising from the ruling of Shinyanga District Land and Housing Tribunal in Misc. Land Application No.5 of 2021 dated 17th September, 2021 and the Judgment of Land Case No.17 of 2020 of Bukene Ward Tribunal)

ROZALIA SHABAN..... APPELLANT

VERSUS

NDAMA MSAFIRI..... RESPONDENT

JUDGMENT

23rd September 2022 &
6th October 2022

L.HEMED, J

ROZALIA SHABANI, the Appellant in the matter at hand, is challenging the ruling of the District Land and Housing Tribunal for Shinyanga (DLHT) in Misc. Land Application No.5/2021, delivered on 17th September, refusing her application for extension of time to appeal against the decision of Bukene Ward Tribunal in Land Case No.17 of 2020.



The background of the matter is such that, the Respondent herein, **NDAMA MSAFIRI** instituted a case at the Ward Tribunal for Bukene against the present Appellant, claiming for a refund of Tshs 1,800,000/= *in lieu* of the piece of land which the Appellant had refused to handover to the Respondent. The Chairman of the DLHT, **Hon. Chripin Hatson** after his scrutiny of the Application before him found no good reasons advanced to warrant him exercise his discretion under section 20 (2) of the Land Disputes Courts Act, [Cap 216, RE 2019] to extend time for an appeal to be lodged. He thus proceeded to dismiss the application with costs. Aggrieved by the said dismissal order, the Appellant opted to challenge it by way of appeal before this Court on the following grounds quoted in verbatim:

"1. That the learned chairman erred in law and facts when he failed to extend the time for filing an appeal against the decision of Bukene ward Tribunal by disregarding improper Coram and fabrication of the proceedings which are the illegalities which existed in the decision of Bukene Ward Tribunal.



2. *That the learned chairman erred in law and facts when he failed to consider that, according to the proceedings of Bukene Ward Tribunal, the parent cannot be ordered to pay the debt of her son who is adult and married with two children which is an illegality as well.*
3. *That the learned chairman erred in law and facts when he failed to realize that, according to the proceedings of Bukene Ward Tribunal, the suit before Bukene Ward Tribunal was against a wrong part and therefore another illegality.*
4. *That the learned chairman erred in law and facts when he failed to consider the affidavit of the applicant in court file, and more specifically the supplementary affidavit, which in law affidavit is a replace of evidence in other civil cases.*
5. *That the learned chairman erred in law and facts when he failed to realize the fact that time spent in prosecuting other cases in other court is a good ground for extension of time."*



The Appellant is thus praying that the ruling and the orders of the DLHT in Misc. Land Application No.5 of 2021 dated 17 September 2021 be quashed and the time for filing an appeal against the judgment of Bukene Ward Tribunal be extended. The matter was argued orally where the Appellant enjoyed the service of Mr. Frank Samwel, learned advocate while the Respondent appeared in person.

Arguing in support of the 1st ground of Appeal, Mr. Samwel submitted that the Chairman of the DLHT failed to consider the question of illegality as to the Coram of the trial Tribunal when determining the application for extension of time. He was of the view that the Ward Tribunal for Bukene was not properly constituted when determining the matter between the present parties as there was only one female member during the trial contrary to section 11 of the Land Disputes Court Act, [Cap 216 R.E 2019] which requires a minimum of three female members.

As to the 2nd and 3rd grounds, Mr. Samwel stated that the Chairman of the DLHT failed to take into account that it was illegal for the Ward Tribunal to order the appellant to pay Tshs.1,800,000/=to the



Respondent instead of the son of the appellant who is the one ought to be sued.

Submitting on the 4th and 5th grounds of Appeal, the learned advocate for the appellant stated that the Chairman of the DLHT failed to consider the affidavit which pointed out all the illegalities in the proceedings of the trial tribunal. He also asserted that the DLHT failed to consider that the criminal case which was between the appellant and the respondent also delayed the appellant to lodge her appeal in time.

Mr. Samwel invited this Court when determining the question of illegality to consider the case of **Hezron Magesa Maryogo vs Kassim Mohamed Said & Another**, Civil Application No.227 of 2015 (unreported), where the Court of Appeal of Tanzania insisted that illegality is a good ground for extension of time.

In reply thereto, the Respondent asserted that he sued the Appellant at the Ward Tribunal because she agreed in writing before the village Chairman to refund the money instead of the piece of land. According to the respondent, he decided to report the matter to the Ward Tribunal because the appellant had refused to refund the agreed amount. He



stated that before the Ward Tribunal the Appellant admitted the claim and promised to pay.

He stated further that the Ward Tribunal considered the agreement which was made before the village Chairman where the appellant was supposed to refund Tshs.1,800,000/= instead of the suit piece of land and when the appellant was found to be unable of paying, the Ward Tribunal decided to give the land to the respondent. When the respondent was in attempt to take possession of the land, the appellant instituted a criminal case instead of appealing.

In his rejoinder submissions, Mr. Samwel stated that the submissions made by the respondent clearly show that there were a lot of illegalities in the proceedings of the Ward Tribunal which the Chairman of the DLHT would have considered in determining the application for extension of time.

Having heard the submissions either in support or to counter the appeal, it is now incumbent upon me to determine the Appeal. The vexing issue for determination is whether the application for extension of time before the DLHT demonstrated good cause to deserve an extension

of time within which to lodge an Appeal. I am holding so because it is a well-established principle of law that, extension of time will only be granted upon showing good cause.

In determining whether to allow the appeal at hand, I have to examine whether or not good and sufficient cause was established before the DLHT pursuant to section 20 (2) of the Land Disputes Courts Act, [Cap.216 R.E 2019], which provides thus:

(2) Notwithstanding the provisions of subsection(1), the District Land and Housing Tribunal may for good and sufficient cause extend time for filing an appeal either before or after the expiration of forty five days"

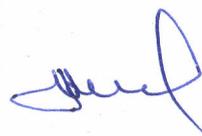
In the present case it is very clear that the Judgment of the Ward Tribunal was delivered on the 06/11/2020 and by 8th February, 2021, about 94 days had passed, the Appellant had lodged nothing in the DLHT to challenge the decision of the Ward Tribunal for Bukene. The Appellant lodged her application for extension of time in the DLHT on 9th February, 2021, a lapse of 49 days after the expiry of the forty five days required by section 20 (1) of the Land Disputes Courts Act, [Cap 216 R.E



2019], within which to lodged an appeal in the DLHT against the decision of the ward tribunal.

I have perused the records of the DLHT to find out the reasons for the delay advanced before Hon. Chairman of the DLHT and found that in the submissions and the affidavit deponed by one **ROZALINA SHABANI**, the main reason was the delay to obtain copies of judgment of the trial tribunal, which according to the affidavit which supported the application, the copy was supplied to the appellant on 23rd January, 2021.

I have noted that the respondent countered the said assertion by stating that the appellant did not apply for copies of judgment in time instead she proceeded to institute a Criminal Case No.1/2021 at Kizumbi Primary Court against the respondent. I had to go through the records of the tribunals below to find out if I could find evidence showing that the appellant applied for copies of judgment of the Ward Tribunal in time, I could not find any. In the absence of evidence substantiating that she immediately, after the delivery of judgment, applied for copies of the same, adverse inference must be drawn against the Appellant that she



did not apply for copies of judgment earlier than 23rd January, 2021. The Court of Appeal of Tanzania sitting at Arusha in the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, set the standard guideline in granting leave for extension of time at page6, thus:-

"The following guidelines may be formulated: (a) The Applicant must account for all the period of delay; (b) the delay should not be inordinate; (c) the applicant must show diligence, and not apathy negligence or sloppiness in the prosecution of the action that he intends to take."

In the case at hand, the appellant failed to account for the 49 days delay; the delay for 49 days was inordinate; and the appellant acted negligently in pursuit of challenging the decision of the trial tribunal. It is thus my firm view that, in the reasons aforesaid, the Chairman of the DLHT was right to refuse extension of time for failure to account on the delay.



The appellant's advocate further raised and argued that the DLHT did not consider the supplementary affidavit. I have examined the said supplementary affidavit deponed by **FRANK SAMWEL**, the advocate of the Appellant. He deponed to the effect that the proceedings of the Ward Tribunal for Bukene in Shauri la Ardhi Na.17 of 2020 had been tempered by adding some words, which were not stated by the appellant during hearing. In the said supplementary affidavit, the deponent who is an advocate has verified that the contents in the said affidavit is true to the best of his own personal knowledge.

I am quite sure that since the advocates have no audience in ward tribunals, **Mr. Frank Samwel**, was not present when the matter was heard at the Ward Tribunal and that he was not present when the appellant was invited to speak before the ward tribunal. It is thus a fact that, Mr. Samwel has no personal knowledge of what was said by the Appellant before the trial Tribunal. Besides, in **Selemani Juma Masala vs Sylvester Paul Masha & Another**, Civil Reference No.13 of 2018 and in **Haldan Saudi vs Abieza Chichi** [1998] TLR 527, the Court of Appeal of Tanzania held that,



"...the Court record cannot be impeached easily as it is taken to be authentic until the contrary is proved."

In the case at hand, the appellant did not prove to the contrary by producing an alternative record that could defeat the Ward Tribunal's records. In that regard, I consider what is in the records of the Ward Tribunal is authentic.

During hearing of the appeal, it was also raised that the learned Chairman of the DLHT erred in law and fact for failure to consider the time wasted by the Appellant in prosecuting a criminal case at Kizumbi Primary Court. When perusing the records of the courts below, I noted that the Respondent while countering the application before the DLHT, he stated in his Counter Affidavit at paragraph 3 that; *"...due to negligence which caused her to fail to lodge an appeal out of time because instead of lodging an appeal the applicant has(sic) filed a criminal case No.01/2021 at Kizumbi Primary Court."*

I am aware that sometimes failure to lodge in time an appeal or application may result out of technical delay resulting from prosecuting another case which has direct connection with the delayed case. For



instance, a delay caused by the matter being struck out for being incompetent, then, if refiled out of time, the time wasted to prosecute the matter which was struck out, may be considered as a technical delay. In the present case, the criminal case, which the appellant had rolled at Kizumbi Primary Court, cannot be said to have direct link with the decided Land Case No.17/2020 of Bukene Ward Tribunal. I am holding so because criminal proceedings are always distinct from civil proceedings, they always have different routes. Thus, the decision of the Appellant to institute criminal proceedings against the respondent instead of taking the proper channel to challenge the decision of the Ward Tribunal, was a deliberate action and the consequences thereof were desired.

Regarding the ground that the chairman of the DLHT failed to consider the question of illegalities as ground for extension of time, I decided to go through the records of the DLHT and found that paragraph 6 of the affidavit of one **ROLAZALIA SHABANI** deponed to support the application, contained the following as illegalities of the judgment of the Ward Tribunal:-



- "a. *The judgment for Land Case No.17 of 2020 of Bukene Ward Tribunal was delivered without availing the appellant the right to be heard.*
- b. *The judgment for Land Case No.17 of 2020 of Bukene Ward Tribunal was delivered without availing the parties to call the witnesses*
- c. *The judgment for Land Case No.17 of 2020 of Bukene Ward Tribunal based on the illegal document which was made by the respondent secretly to implicate the appellant to have agreed to pay the respondent money which was not known to her.*
- d. *The judgment for Land Case No. 17 of 2020 of Bukene Ward Tribunal was delivered against the rules of natural justice.*

Before this Court and the DLHT while submitting in support of the Application, Mr. Samwel raised new points which were not in the affidavit, including the point that, the Ward Tribunal was improperly constituted by having only one female member in the proceedings

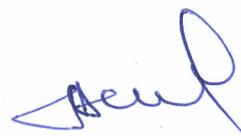


contrary to section 11 of the Land Disputes Courts Act, Cap.216. He also submitted that the order for payment of Tshs. 1,800,000/= was directed to a wrong party. Mr. Samwel cited the decision of the Court of Appeal of Tanzania in the case of **Azrom Magesa Maryogo vs Kassim Mohamed Said & Another**, Civil Application No.227 of 2015, for consideration in determining the ground of illegality of the judgment of the trial tribunal.

I am aware that the Court of Appeal of Tanzania in the case of **Henry Muyaga vs TTCL**, Application No.8 of 2011 (unreported) had laid down grounds for extension of time, illegality being one of those grounds. It was stated thus:-

"...whether there is an arguable case such as whether there is a point of law on the illegality or otherwise of the decision sought to be challenged..."

The questions that arises is whether, in the present case the point of illegality was properly raised before the DLHT and before this Court to warrant extension of time.



Let me start with section 11 of the Land Disputes Court Act, Cap. 216, the section provides for the composition of the Ward Tribunal and not the Coram for sitting to determine a matter. The Coram for mediation is provided under section 14 (1) of the Land Disputes Courts Act, (*supra*), that requires three members to be appointed by the chairman at least one member must be female. The Land Disputes Courts Act is silent on the Coram of the ward tribunal when adjudicating land matters, thus we resort to section 4 of the Ward Tribunals Act, Cap.206. According to section 4 of the Ward Tribunals Act, the Ward Tribunal is said to be properly constituted to adjudicate or inquire on the matter when it is attended by at least half of the members of the tribunal without regard to gender. Besides, I have perused the proceedings of the ward tribunal for Bukene and realized that one cannot recognize the gender of members by mere looking at the names. I am holding so because; names cannot always be indicators of gender.

As to the question of the judgment of the trial tribunal being delivered without availing the appellant the right to be heard, failure to avail the parties to call the witnesses, the judgment being against the rules of natural justice and the judgment being directed to a wrong party; I



decided to go through the judgment and the proceedings of the Ward Tribunal and realized that the nature of the said judgment of Bukene Ward Tribunal is a judgment on admission. The proceedings of the Ward Tribunal for Bukene in Land Case No.17 of 2020 show that when the Appellant was called before it, she admitted the claim, thus there was no need of calling witnesses. Besides, there is nowhere in the proceedings showing that the appellant had requested to the tribunal to call her witnesses. The case of **Azrom Magesa Maryogo vs Kassim Mohamed Said & Another** (*supra*) cited by the Appellant is distinguishable from the case at hand because the said case emanated from the proceedings where the court had revised its own decision.

From the foregoing analysis, I find the entire appeal short of merits thus deserving dismissal. I dismiss the entire appeal with costs. It is so ordered.

DATED at **SHINYANGA** this 3rd day of October, 2022.


L.Hemed
JUDGE

COURT:

Judgment delivered this 6th day of October 2022 in the presence of the Appellant and the Respondent appearing in person. Right of appeal fully explained.




L. Hemed
JUDGE
6/10/2022