

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUB - REGISTRY)

AT MOROGORO

LAND APPEAL NO. 17 OF 2022

[Originating from Misc. Application No. 464 of 2021 DLHT - Morogoro]

LUKA FRANCIS 1ST APPELLANT
PASCHAL LUKA 2ND APPELLANT
BOI 3ND APPELLANT

VERSUS

RAJABU GOMBANILA.....RESPONDENT

JUDGMENT

Last Court Order on 05th of October, 2022

Judgement on 7th of October, 2022

HASSAN, J.

The appellants herein have lodged this appeal No. 17 of 2022 on 25th February, 2022 praying for an order for extension of time to file an application for revision against the decision and order of the District Land and Housing Tribunal (DLHT) for Morogoro in the Miscellaneous Application No. 464 of 2022 by Hon. M. Kasim, the chairperson delivered on 27th day of January, 2022.

The material background facts leading to the present appeal is unpretentious to comprehend. On 9th April, 2020, one Rajabu Gombanila,

the respondent herein opened the claim at Mkundi Ward Tribunal against Luka Francis, Paschal Luka and Boi, the appellants herein for invading his farm land for dwelling purpose without his permission. Having been notified to attend the charge filed against them, the appellants were resistive to adhere the call. In a number of times, as per record of the Ward Tribunal in page two para 2.0 of the typed proceeding and decision, the appellants herein were reluctant to appear for hearing. The schedule for hearing has been adjourned for five different dates in order to secure attendance of the appellants. say it on 16/04/2020; 20/04/2020; 23/04/2020; 07/05/2020 and finally on 14/05/2020 the matter was heard ex parte and decided in favour of the respondent herein.

The decision of the Ward Tribunal was delivered on 27th December, 2020 and the first applicant herein took his copy of proceeding and judgment of 06th July, 2021. Dissatisfied by the decision of the Ward Tribunal, the appellants under chamber summons accompanied with an affidavit sworn by 1st appellant, lodged an application to DLHT on 26th July, 2021 praying for an enlargement of time, within which the appellants could file an application for revision challenging the decision of Ward Tribunal. It follows, in the DLHT the application was dismissed with cost after the appellants fails to impress the Tribunal with sufficient reason to extend time.

Still seeking to assail the decision of the Ward Tribunal by way of revision, the appellants lodged this instant appeal in the hunt for extension of time to file an application for revision out of time. To accomplishing their mission, the appellants marched two grounds of appeal in search of court determination as hereunder:

- 1. That, trial tribunal erred in law and in facts by holding that the appellant herein had no sufficient reason for grant of an order of extension of time within which to file an application for revision and hence dismissed the application with cost.*
- 2. That the trial tribunal erred in law and in fact by not considering the illegality as a sufficient ground for extension of time which was apparent on the face of the Ward Tribunal's proceeding as to improper coram and proceeding ex-parte.*

When appeal was called up for hearing before me on 28th September, 2022, the appellants hired the service of Jovith Byarugaba the learned counsel who had the following to submit.

Arguing in support of the appeal, advocate Jovith submitted that this appeal originated from Miscellaneous application No. 464 of 2021 at the DLHT, where the appellants were seeking for an extension of time within

which to file an appeal against the decision of the Ward Tribunal of Mkundi which was delivered on 9th April, 2020. In the DLHT this application was dismissed on account that the appellant herein fails to weight the sufficient reasons for the grant of the extension of time. Submitting on his points, the learned advocate preferred to argue the two grounds together.

To begin with, the counsel has navigated that they are in settled mind that for an order to be granted, there must be a sufficient reason advanced to warrant the court to confer the application. He submitted further that as it is known that sufficient reason depending on the circumstance of each case. For the extension of time, illegality in the decision intended to be challenged is a sufficient reason to grant an order for extension of time regardless of being able to account for each day of delay. This point of law has been stressed by the court in various decisions and the counsel invited the court to refer the case of **CONSTANTINE VICTOR JOHN V. MUHIMBILI NATIONAL HOSPITAL**, civil application No. 214 of 2020(Unreported) where at page 8 the court of appeal insisted that:

"Where the point in issue is the illegality of the impugned decision, that is of sufficient importance. It constitutes good course for extending time."

The learned counsel reiterated further that, the appellants herein has alleged the illegality of the Ward Tribunal decision. First for it being passed ex parte and second it was passed with improper quorum which is bad in law. He submitted further that the two points above were sufficient reason for the DLHT to grant an extension of time.

In the first point that the decision was passed ex parte, he once again engaged the court to the case of **PETRO BIRA CHATO V. HIMA HUDU UBAYA**, Misc. Land Appeal No. 47 of 2020 (unreported) in page 6 where it was held that:

"If respondent does not appear before the Ward Tribunal when the case is set for hearing, the Ward Tribunal is not vested with jurisdiction to hear and determine case in the absence of the respondent".

Piloted by the principle above, the learned counsel argued that this case is similar to the present appeal, it should be considered.

On the second point of illegality that, the decision was passed with improper quorum which is bad in law. The learned counsel maintained that the listed members at the last page of the decision of the Ward Tribunal were not properly composed contrary to section 11 of the Land Dispute Court Act, Cap 216 [R. E2019]. Here, he argued that only two women were listed

which fall short to the requirement of law. Again, the last member in the list did not sign the decision, and the decision was endorsed by the Tribunal Secretary. He contested that the illegality alleged by the appellants herein demonstrated a sufficient reason for grant of an application, hence it was wrong for DLHT to dismiss the application. In conclusion the learned counsel prays for appeal to be allowed and order to enlarge a time within which to file an application for revision be granted with cost.

On the other side, arguing in dissent to the appellant's submission, the respondent herein engaged the service of the learned counsel Christopher Mgala. In his part, he prays to reply the arguments advanced by the appellant together. He kicks start with the issue of an extension of time by submitting that, as it was acknowledged by the appellants that, in order extension of time to be granted, the appellants should advance a sufficient reason for such purpose. The learned counsel contended further that, at DLHT the appellants failed to provide a sufficient reason as it was testified by the 1st appellant that they were sick, however they fail to provide the proof.

On the issue of illegality, he submitted that the chairman went through the proceedings and decision of the Ward Tribunal and he was satisfied that there were no errors in the proceedings and decision.

In respect to the issue of ex parte hearing, he maintained that the appellants had a notice of case and they claimed to have lost the memory of the trial dates, hence they failed to appear.

About the quorum, the learned counsel submitted that the quorum at Ward Tribunal was correct as it appears in the proceedings. He argued further that at DLHT the argument was the issue of quorum, that it was incomplete. These other issues like improper composition of members and signing were not tabled and they should not be considered in this court.

In conclusion, the learned counsel unveiled that, in the DLHT there were two cases of which, first is the application No. 443 of 2021 which deals with the execution of decree and second application No. 464 of 2021 was for extension of time, and which is the subject of this appeal. The two applications comprise of similar parties to the instant appeal. He submitted that, after dismissal of application No. 464 of 2021 which was for extension of time, the respondents proceeded with execution and completed. In the

context, he argued that this appeal was filed prematurely and it should be dismissed with cost.

In a very brief rejoinder, Mr. Jovith contested on the issue of execution of the decision meted in the Ward Tribunal. In that, he contended that the point is baseless since land is not a perishable goods and the law was not followed, that cannot affect the appeal in hand.

Now, having examined and considered the arguments from either side, I think the burning issue is whether or not good course has been shown by the appellant's to warrant the extension of time. In the appeal at hand, parties have taken a stiff contracting position in this matter. While the appellants submits that there is good course to grant the sought extension of time, the respondent is contending that no good course has been brought to the court, and thus, appeal should be dismissed.

Therefore, going through the base of the matter in dispute, the law is settled on application for extension of time; section 14(1), (2) of the law of limitation provides:

(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for

the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

(2) For the purposes of this section "the court" means the court having jurisdiction to entertain the appeal or, as the case may be, the application.

In terms of the provision above, an application of this nature will only be allowed, if an applicant or appellant has advanced good cause to warrant the court to activate its discretion to extend time. The position has been constant in a number of decisions including: **Shanti v. Hindocha & Others** [1973] E.A. 207 and **Tanzania Coffee Board V. Rombo Millers Ltd**, Civil Application No. 13 of 2015; **Yazid Kassim Mbakileki V. CRDB (1996) Ltd Bukoba Branch & Oanother**, Civil Application No. 412/04 of 2018; and **Tanzania Bureau of Standard V. Anitha Kaveva Mero**, Civil Application No. 60/18 of 2017 (all unreported) to mention a few.

It is also settled law that, if the point of law at issue is the illegality of the impugned decision, it creates a good cause for extending time. Trooped in support of this paradigm, decision in **The Principal Secretary, the Ministry of Defence and National Service V. D P Valambhia** (1992)

T.L.R. 185 and that of **VIP Engineering and Marketing Ltd and Three Others V. Citibank Tanzania Limited**, (consolidated) Civil reference No. 6, 8 and 8 of 2006 (unreported), the court held that, where a point of law at issue is illegality of the impugned decision that is of sufficient importance, it constitutes a good cause for extending time. Also in the almost similar dictum, in the case of **Abubakar Ali Himid V. Edward Nyelusye**, Civil Application No. 13 of 2015, the court had this to say:

"Where a point of law at issue is the question of illegality of the impugned decision, time will always be extended and leave to appeal to the court must be granted even where there is an inordinate delay."

More so, to avoid a mere assumption for extending time under illegality concept, it's worthy to refer the decision in **Ngao Godwin Losero V. Julius Mwarabu**, Civil Application No. 13 of 2015, where it was held that:

"An alleged illegality of the decision desired to be impugned must be clearly apparent on the face the impugned decision".

Going back to the appeal at hand, the appellants has lodged an appeal to this court seeking for an order to extend time in order to file an application for revision in the DLHT following the decision meted in the Ward tribunal which is not meritorious to them. As I have narrated in the background that,

the appellants had initially marched the application seeking for extension of time in the DLHT and the same failed. In the instant appeal, the appellants raised point of law allied to the illegality of the impugned decision. Touching the issue of ex parte decision and illegality in the quorum of the ward Tribunal.

To start with the issue that, the Ward Tribunal had decided the matter ex parte. The appellant contended that the Ward Tribunal had erred in law by commencing the hearing of the matter ex parte. He referred the court to the case of **PETRO BIRA CHATO** (supra) which glued that:

"When the case is set for hearing, the Ward Tribunal is not vested with jurisdiction to hear and determine case in the absence of the respondent."

The learned counsel argued that this case is similar to the present appeal and it should have been treated similar to the DLHT that it advanced sufficient reason for DLHT to grant an extension of time.

In response to this argument, the learned counsel for respondent contested in a very brief note, that the appellants had notice of the case and they claimed to have lost the memory of the trial date, hance they failed to appear.

On the other issue of illegality, the appellant argued that the listed members of the Ward Tribunal were not properly composed, the last member in the list did not sign the decision and the decision was endorsed by the secretary. The appellant appealed that, those irregularity demonstrate a sufficient reason for the time to be enlarged.

In dissenting this argument, the respondent's counsel submits that the quorum was correct as it appeared in the proceeding. On the issue that, the last member in the list did not sign the decision and that the decision was endorsed by the secretary. Here the learned counsel contended that, those issues were not tabled in the DLHT hence, they should not be considered in this court. Furthermore, the learned counsel also mentions the issue of having other two applications (Application No. 443 of 2021 and application No. 464 of 2021) which in his opinion will affect this appeal. With respect to the learned counsel, I will not dwell in that issue, hence in my view, it is not harmful to the determination of this appeal.

In the present appeal, the appellants have averred that, the decision passed by the Ward Tribunal was against their interest without them being heard (ex parte hearing). they also alleged that, the listed members of the

Ward Tribunal were not properly composed, the last member in the list did not sign the decision and the decision was endorsed by the secretary.

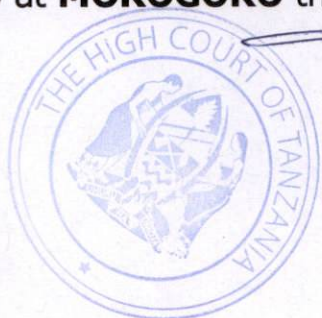
I am certain that these are very serious allegations of illegality in the impugned decision. It needs to be investigated by the upper Tribunal. Since the appellants were not a party in the Ward Tribunal's proceedings, they could only approach the DLHT in the way of revision.

Having digested the parties' submission on this matter as well as perusing the record of proceedings from the Ward Tribunal, I am satisfied that the appellants has demonstrated a good cause to warrant an order for extension of time.

Guided by the principle underpinned in the case of **Abubakar Ali Himid** (supra), I allowed the appeal and order for extension of time granted accordingly. The application for revision has to be lodged within 14 days from the date of this judgment. Cost shall be in the cause.

It is ordered.

DATED at **MOROGORO** this 7th day of October, 2022.




S. H. HASSAN
JUDGE
03/10/2022.