

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**SUB – REGISTRY OF MWANZA AT MWANZA**  
**AT MWANZA**

**LAND APPEAL CASE NO. 12 OF 2022**

*(From the Decision of the District Land and Housing Tribunal of Mwanza District at Mwanza in Misc. Land Application No. 362 of 2021)*

**BONIPHACE KAJEMBE.....APPELLANT**

**VERSUS**

**FRANCIS J. LUGAILA.....RESPONDENT**

**JUDGMENT**

*30<sup>th</sup> September & 11<sup>th</sup> October 2022*

**OTARU, J.:**

This is an Appeal against the decision of the District Land and Housing Tribunal (DLHT) for Mwanza at Mwanza which dismissed the Appellants Application for extension of time to Appeal against the decision of the Ward Tribunal in Land Case No. 18 of 2020 which was delivered ex-parte in favor of the Respondent.

The Appellant filed the Application for extension of time in the DLHT when the Appellant was in the process of executing the Judgment of the Ward Tribunal, claiming that he was denied the basic right of natural justice, the right to be heard as he was never served with the Summons to Appear in the Ward Tribunal. The chairman of the DLHT dismissed the Application for want of merits.



The Appellant has filed two grounds of Appeal which basically read as follows;-

1. That the honorable Chairman of the Ward Tribunal erred in law and fact when he held that the Appellant was legally summoned to appear; and
2. That the honorable Chairman of the Ward Tribunal erred in law and fact when he stated in the decision that the Appellant's legal counsel did not address the legal irregularities in the Affidavit.

At the hearing, both parties were legally represented. The Appellant was represented by learned Advocate Marwa Samwel and the Respondent enjoyed the services of learned Advocate Maduhu Ngasa.

The counsel for the Appellant argued the two grounds together. He argued that the Summons that was reported to have been refused by the Appellant was served by the street chairman who is not legally mandated to do so. He went further to state that as a result, service to the Appellant was not properly effected and therefore the Appellant was denied the right to be heard when he heard the matter in the absence of the Appellant. The counsel also stated that the Affidavit contained other reasons such as irregularities, which the Ward Chairman could have used to grant

extension, instead, he ignored them, thus the DLHT Chairman should have considered this aspect of irregularity to grant the Application.

On the part of the Respondent, the learned advocate contended that the DLHT correctly denied the Application because the Appellants did not adduce sufficient reasons for the tribunal to grant the orders sought. Citing the case of **Lyamuya Construction Co. Ltd v. the body of Registered Trustees of YMCA** Civil Appeal No. 2 of 2010 (CA) (unreported) counsel contended that the Court of Appeal has provided guidelines when exercising discretion in applications for extension of time, which the Appellant failed to satisfy.

On the issue of service, counsel for the Respondent contended that the Appellant was properly served twice by the street chairman who is recognized under the **Land Disputes Courts Rules** (GN No. 174 of 2003), but he refused to accept the Summons, on both occasions. Counsel went further to address the consequences of refusing the summons is to dismiss the matter, as per the case of **Emmanuel King'oso Mdee & 29 Others v. Hai District Council & Another**, Civil Appeal No. 306 of 2019. He concluded that since the DLHT acted properly, this Appeal should be dismissed for lack of merits.

In the rejoinder the Appellant's counsel distinguished both cases cited by the Respondent's counsel and stood his ground that his client was not properly served.

I have gone through the parties' submissions as well as the record of proceedings in the Ward Tribunal as well as in the LDHT. I have also reminded myself that before me is the decision that was based on discretionary powers of the DLHT. I can only consider allowing the Appeal if the DLHT's Chairman did not use his discretion judiciously. The issue before me therefore is whether the Chairman of the DLHT used his discretionary powers judiciously when he dismissed the Application for extension of time.

In the Ward Tribunal, the Appellant was summoned twice. The 1<sup>st</sup> of December 2020 Summons was returned with the following Kiswahili words '*amekataa kusaini anasema hatambui mabalaza ya Kata kama ni kesi apeliike Mahakamani kataki usuluhishi wowote*' and the 3<sup>rd</sup> of December 2020 Summons contained the following Kiswahili words;-

*'...Huyu jamaa kakataa kupokea wito na wala hayuko tayari kuhudhuria kwenye Baraza la Kata. Taarifa ndio hiyo vinginevyo labda wito wa Mahakama ndio atahudhuria',*

In both summonses, literally translating, he was denying to recognize Ward Tribunal as a dispute resolution body thus refused to appear on that basis. In his submission counsel for the Appellant does not deny to have been served, his issue is that the person who served him is not mandated to do so. As correctly observed by the counsel for the Respondent, the street chairman is indeed recognized under the **Land Disputes Rules** (supra). Thus, service of the summons by the street chairman was legally correct.

The Appellant had contended in the DLHT that he was not aware of the proceedings in the Ward tribunal because he was never served. That once he became aware of the outcome, he immediately took action by requesting for extension of time. But this to me sounds like an afterthought. The Appellant had known very well about the proceedings in the Ward Tribunal but he simply did not think there would be any serious consequences if he will not appear. Once he realized that he was wrong, he decided to challenge the decision on the ground that he was denied the right to be heard. I am absolutely convinced that the appellant denied himself the right to be heard and he has no one to blame for that.

Having considered the grounds of Appeal and the guidelines provided by the Court of Appeal in the case of **Lyamuya**, I am in agreement with

the counsel for the Respondent that the Appellant failed to exhibit sufficient reasons to warrant the grant of extension of time within which to file the Appeal. As a result, the Chairman of DLHT exercised his discretion judiciously.

Consequently, I find the Appeal to lack merits and I hereby dismiss it with costs.

It is so ordered.

**DATED** at **MWANZA** this 11<sup>th</sup> day of October, 2022.



*M. Otaru*  
M.P. OTARU,  
**JUDGE**

Judgment delivered through teleconference with Marwa Samweli, Adv for the Appellant and hold brief of Maduhu Ngaza,(Adv) for the Respondent.

*M. Otaru*  
M.P. OTARU  
**JUDGE**

**11/10/2022**