

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA DISTRICT REGISTRY)

AT IRINGA

MISC. LAND APPEAL NO. 09 OF 2022

JOSEPH MUHAGAMA..... APPELLANT

VERSUS

SERIKALI YA KIJIKI CHA MAHOLONG'WA..... RESPONDENT

(Being appeal from the decision of the District Housing and Land Tribunal for
Njombe District at Njombe)

(Hon. G.F. Ng'humba (CP))

dated the 05th day of January, 2022

in

Misc. Application No. 79 of 2020

JUDGMENT OF THE COURT

Date of Last Order: 19/08/2022 &
Date of Judgment: 09/09/2022

S.M. KALUNDE, J.:

This is an appeal against the decision of the District Land and Housing Tribunal for Njombe District in Njombe (hereinafter "the DLHT") dated 05.01.2022 in **Misc. Land Application No. 79 of 2020**. In the impugned decision the DLHT declined an application for extension of time to lodge an appeal out of time against the decision of the Ludende Ward Tribunal (hereinafter "the ward tribunal") in **Case No. 05 of 2020**. Aggrieved by the decision of the DLHT the appellant preferred the present appeal.

The brief facts leading to the present application may be briefly started as follows: On 10.04.2020 the appellant lodged, before the ward tribunal, Case No. 05 of 2020 against the respondent (through the village Chairman). The suit related to a piece of land located at Akasi, Maholong'wa village, Ludende Ward, Mlangali in Ludewa District in the Region of Njombe (hereinafter "the suit land"). The appellant contended that the suit land is the property of his family and that he was surprised when the Village Chairman announced that the land was the property of the village. The respondent, on the other hand, contended that the suit land was their property of the village having been allocated by the village as grazing land.

Having heard evidence and testimony from both parties the ward tribunal was convinced that the suit land was the lawful property of the respondent. Judgment was entered accordingly. The decision of the ward tribunal was delivered on 27.05.2020. In its decision the ward tribunal informed parties of their rights to appeal within 40 days. The legal timeline is however, 45 days. The appellant did not act on time to challenge the said decision.

Being out of time and intending to challenge the decision of the ward tribunal, the appellant lodged Misc. Land Application No. 79 of 2020 at the DLHT seeking to obtain an order extending time to lodge an appeal out of time. The application at the DLHT was preferred under Section 20(2) of **the Land Deputies Courts Act, [Cap 216 R.E 2019]** (hereinafter "the LDCA").

In the application before the DLHT, the appellant main ground or reason for extension of time was that, after the decision of ward tribunal was delivered, he got an accident and was admitted to **ST. Luke's Hospital Milo, Njombe** on 26.07.2020. The appellant contended that he was discharged around November, 2020 and managed to lodge the application on 23.11.2020. He thus attributed the delay in logging the appeal to sickness. On their part, the respondent contended that by the time the appellant was admitted to hospital the 45 days under section 20(2) of the LDCA had expired. In their view the applicant has no genuine grounds to support the present application. They prayed the application be dismissed with costs.

Upon consideration of the viral arguments the DLHT was convinced that the Appellant (applicant then) had failed to demonstrate "good and sufficient cause" within the meaning of section 20(2) of the LDCA. The application was dismissed with costs. In dismissing the application, the LDCA reasoned as follows:

"Baraza hili baada ya kusikiliza mawasilisho ya pande zote mbili linaona kuwa, sababu aliyoitoa mwombaji kwamba alipata ajali mwezi wa saba tarehe 26 mwaka 2020, na ameambatanisha stakabadhi toka hospitali ya Mtakatifu Lukes, Milo. Kielelezo alichotoa mwombaji ni kweli kinatoka hospitali na kinaeleza tarehe alizotaja mwombaji, lakini hukumu ya baraza la kata inaonyesha ilitolewa tarehe 07/02/2020 na maombi haya yameletwa tarehe 23/11/2020, na mwombaji anadai kupata ajali mwezi wa 07 tarehe 26 mwaka 2020, hivyo kutoka hukumu kutolewa mwezi wa pili mpaka tarehe ya ajali ni miezi mitano ilipita, mwombaji alikuwa na

*muda mwingi wa kuleta rufaa yake kwa kuwa siku 45 za rufaa zilikuwa zinaisha tarehe 23/03/2020 lakini hakukata rufaa. Sababu aliyotoa mwombaji ni ya msingi lakini ajali alipata baada ya miezi mitano kitu ambacho hapo mwanzo alikuwa na nafasi ya kuleta rufaa yake. Mwombaji ameshindwa kuthibitisha alikuwa wapi tangu mwezi wa pili mpaka mwezi wa saba alipopata ajali. Kwa kuwa ni matakwa ya sheria mwombaji kuthibitisha alikuwa wapi kwa kila siku aliyochelewa, hii imeamriwa katika shauri la **Bushiri Hassan vs. Larifa Lukio Mashayo**, Civil Application No. 04 of 2017, Court of Appeal of Tanzania. (unreported) nukuu:*

"Delay of even a single day had to be accounted for otherwise there would be no pint of having rules prescribing period within which certain steps have to be taken".

It is the above decision which infuriated the appellant forcing him to seek an appeal against the decision of the DLHT on the ground that the DLHT failed to consider his evidence and thereby arriving at an erroneous conclusion.

Before this Court the appellant appeared in person to defend his appeal while the respondent was represented by **Mr. Nathan Chalamila**, learned State Attorney.

In support of the appeal the appellant contended that the decisions sought to be challenged was delivered on 17.07.2020 and therefore it was wrong for the DLHT to hold that the impugned decision was delivered on 07.02.2020. The appellant view is that, if the DLHT

had considered that the impugned decision was delivered on 17.07.2020 it would have granted the application thereby allowing the Appellant to lodge an appeal out of time.

Responding to the above argument, Mr. Chalamila submitted that the appellant was apparently confusing the Court on the subject in Misc. Land Application No. 79 of 2020 at the DLHT. In elaborating his point, the learned State Attorney submitted that before the DLHT the appellant sought to extend time to challenge the decision of the Ludende Ward Tribunal in Case No. 05 of 2020 which was delivered on 27.05.2020. The counsel added that Civil Case No. 08 of 2020, between the respondent and appellant was different case altogether as it was instituted at the Mlangali Primary Court. In accordance with the learned State Attorney, it is this case which the appellant stated in his submissions that it was concluded on 17.07.2020. The learned State Attorney added that even assuming that it was true case No. 05 of 2020 was concluded on 17.07.2020, the applicant failed to explain why he could not file the appeal between 17.07.2020 to 26.07.2020 before he was admitted to hospital. The Counsel argued that, the DLHT was justified in concluding that the appellant had failed to provide sufficient cause. He prayed the appeal be dismissed with costs.

On my part, I have considered the records before me as well as the submissions made by the parties. My main task is to consider whether the present appeal is meritorious.

To start with, I wish to point out at the outset that having considered the records in **Misc. Application No. 79 of 202**, I have no

flicker of doubt that the matter before the District Land and Housing concerned **Case No. 05 of 2020** which was decided by the Ludende Ward Tribunal. By that finding, I am also content that the matter at the District Land and Housing Tribunal in Misc. Application No. 79 of 2020 was not about **Civil Case No. 08 of 2020** which was decided by the Mlangali Primary Court on 17.07.2020. I therefore I agree with Mr. Chalamila that the Appellant is in a bit of a mix up of these two matters. I shall deal with the mix up later, but for now I will consider the merit of the present appeal.

Having resolved that the subject in Misc. Application No. 79 of 2020 was Case No. 05 of 220 which was decided by the Ward Tribunal for Ludende, the next question for consideration is whether the applicant had good cause in delaying to appeal against the said decision. To resolve this dispute, the proceedings before the Ludende Ward Tribunal are very useful. The same supplied to this Court in terms of the requirement of Section 38(3) of LDCA. I have gleaned through the said records and noted that the decision of the Ward Tribunal was rendered on 27.05.2020 and not on 07.02.2020 as indicated by the DLHT.

That notwithstanding, I do not think, before the DLHT, the appellant accounted for each day of the delay sufficient to demonstrate existence of a "good and sufficient cause within the meaning of Section 20(2) of LDCA. I say so because the limitation period under the respective section is 45 days from the date of the decisions. As pointed out above the impugned decision was delivered on 27.05.2020. In terms of section 20(2) the clock started to winddown against the appellant

from 28.05.2020. By simple arithmetic the 45 days expired on 11.07.2020. The appellants argument at the DLHT was that on 26.07.2020 felt sick and he was admitted to hospital. He was eventually discharged in November 2020 and thereafter proceeded to file the application before the DLHT. He thus attributed the delay in filing the appeal to sickness. The DLHT decided that sickness was a good ground for extension of time. However, the DLHT was convinced that the appellant had failed to account for delay for the delay from the date decision was rendered to the date when he was admitted to hospital. That was a gap of almost 60 days which were not accounted for by the appellant.

The position of the law is well settled that for the applicant to succeed in an application for extension of time he or she had to account for each day of the delay. If he or she fails to account even for a single day, the application will be refused. In the instant case the applicant failed to account for almost sixty (60) days. In my considered view, the DLHT was justified in refusing the application. It was within its discretion to make such a finding. Since the only ground advanced by the applicant was sickness which, as stated above, was not sufficient, I see no reason to fault the decision of the DLHT.

Before winding up on this matter I think it may be appropriate to bring out the perceived confusion brought about by the appellant in referring to the decision of the Mlangali Primary Court in Civil Case No. 08 of 2020 dated 17.07.2020. It seems that after the conclusion of proceedings before the Ludende Ward Tribunal in Case No. 05 of 2020

the respondent instituted a civil suit at the Mlangali Primary Court to recover the costs of the case. In the case the respondent sought to recover **TZS. 982,500.00** being costs of the case before the Village Land Council and at the Ward Tribunal. The suit was apparently entertained by the Mlangali Primary Court, and it went on to award the said costs. Whilst that procedure appears to be odd, this application is not the proper forum to challenge the decision of the Mlangali Primary Court. In my considered view, if the appellant was not happy with the decision of the Primary Court for Mlangali he should have preferred an appeal against that decision. If by any chance he feels that time is not in his favour, the appropriate course of action is to file an application for extension of time under the framework established by **the Magistrate Courts Act, [Cap 11 R.E. 2019]**.

Having said that, the present appeal which is devoid of merits is hereby dismissed. In the circumstance, each party shall cover for their costs.

Order accordingly.

DATED at IRINGA this 09th day of SEPTEMBER, 2022.




S.M. KALUNDE
JUDGE