

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO.31 OF 2021

*(Originating from Misc. Land Application No.399 of 2021 of the District
Land and Housing Tribunal for Mtwara)*

JOSEPH CHANILANGA.....1ST APPELLANT

SHABANI MASUDI.....2ND APPELLANT

FILIBETI NYAGALI.....3RD APPELLANT

VERSUS

ATHANAS KUNBERT MANGASONGO.....RESPONDENT

JUDGEMENT

11/10/2022 & 25/10/2022

LALTAIKA, J:

The appellants herein are dissatisfied with the decision of the District Land and Housing Tribunal for Mtwara at Mtwara in Land Application No.399 of 2021. I think it is important, at the earliest stage of this judgement, to reproduce the ground of appeal upon which this appeal is premised.

- (i) That the trial tribunal erred in law and in fact by entering a ruling in favour of the respondent without considering the right to be heard of the first and second respondents.*
- (ii) That the trial tribunal erred in law and in fact by entering a ruling in favour of the respondent without analysing well the reasons of delay given by the appellants.*

- (iii) That the trial tribunal erred in law by giving a ruling in favour of the respondent without considering that the land dispute before Mitengo Ward Tribunal in 2017 was held ex parte against the appellants.*
- (iv) That the trial tribunal erred in law by giving a ruling in favour of the respondent without putting into consideration that the respondent admitted in the Counter affidavit at paragraph 2 that the Appellants were not aware about the existence of Land dispute before Mitengo Ward Tribunal in 2017.*
- (v) That the trial tribunal erred in law by giving a ruling in favour of the respondent without considering that the Criminal Case No.23 of 2019 which was associated with criminal trespass was judged in favour of the Appellants.*

One might have noted that the grounds hereinabove refer to a criminal case, denial of the right to be heard and ward tribunal decision. One would say this is like biting too much than one can chew. To untangle this entanglement, a brief narration of the facts is considered imperative.

The appellants were sued by the respondent before Mitengo Ward Tribunal for trespass over his land situated at Kilimahewa within Mikindani Mtwara Municipal Council (herein after the suit land). After the *ex parte* hearing the trial tribunal declared the respondent the rightful owner of the suit land.

In 2019 the appellants were arraigned at the Resident Magistrate's Court of Mtwara charged with two counts. 1. Disobedience of the lawful order contrary to section 124 of the Penal Code [Cap. 16 R.E. 2002]. 2. Criminal Trespass contrary to section 299 (a) of the Penal Code. After a full trial, the court was satisfied that the republic had failed to prove the case against the appellants beyond reasonable doubt, hence it acquitted them on both counts.

On 02/02/2021 the respondent herein lodged Misc. Application No.10 of 2021. The respondent prayed before the District Land and Housing Tribunal for Mtwara to execute the decision of Mitengo Ward Tribunal by evicting the appellants. On 21/05/2021 the District Land and Housing Tribunal for Mtwara granted the application with costs. The Tribunal decreed among other things, that the appellants or their families or wives or children or agents are trespassers and thus, were ordered to leave vacant possession of the suit land within fourteen (14) days effective from the date of the decree.

Reacting to the above, the appellants filed Misc. Land Application No.399 of 2021 before the District Land and Housing Tribunal for Mtwara. In that application they sought enlargement of time within which to file their appeal against the decision of Mitengo Ward Tribunal in Land Case No.4 of 2017. On 31/08/2021 the DLHT for Mtwara dismissed the application for devoid of merit and with costs.

Dissatisfied once again, the appellants have appealed to this court by lodging a Petition of Appeal comprising five (5) grounds as alluded to above.

When the appeal was called on for hearing on 11/10/2022 both the appellants and the respondent appeared in person unrepresented. As expected, the parties started by narrating the background to the conflict and why they thought the appeal had merit or not as the case may be.

The grounds of appeal come down to only one issue namely: whether the decision of the DLHT to decline the appellant's prayer for extension of time to appeal against the decision of the Mitengo Ward Tribunal was justified.

It is an established position of our law that to grant or not to grant an application for extension of time to appeal is a discretion of the court or tribunal concerned upon being convinced that the applicant has advanced good and sufficient cause for the delay. In the instant matter the DLHT has declined the application. Can this court interfere with that decision?

In answering that question, I go no farther than to one of the most recent decisions of the Apex Court of this country, the Court of Appeal of Tanzania: **TCCIA Investment Company Limited vs Dr. Gideon H. Kaunda** (Civil Appeal 310 of 2019) [2022] TZCA 599. Referring to the decision of the erstwhile Court of Appeal for East Africa in the case of **Mbogo and Another v. Shah** [1968] 1 EA 93 it stated: -

"I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that the decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

Taking into consideration the above position of the law, I have taken the trouble to go through the entire record of the DLHT and read through the impugned ruling between the lines. The mission was to find out whether is clearly wrong or the Tribunal had misdirected itself for any of the reasons highlighted above.

The journey started with examining the provision of the law that empowers the tribunal to exercise its discretion as it did. Turns out, this discretionary power vested to the DLHT is provided under section 20(2) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** which reads:

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

My next question then is, did the appellants advance sufficient or good cause for the DLHT to grant them extension of time to appeal out of time? Although our laws do not define the phrase good and sufficient reason, a decision of the Erstwhile Court of Appeal for East Africa in **Shanti v. Hindoche and Another [1973] E.A. 207** sheds some light that such causes must be convincingly beyond the applicant's control.

In the case of **Lyamuya Construction Co. Ltd vs Board of Registered Trustees of the Young Women Christian Association of Tanzania** (Civil Application No 2 of 2020) [2011] TZCA4 factors to be considered by the court to find out whether a good and sufficient cause has been established are: (i) the applicant must account for the whole period of delay; (ii) the delay should not be inordinate; (iii) the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and (iv) if the Court feels that there are other reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

Did the appellants advance sufficient cause for their delay to appeal against Land Case No.4 of 2017 of Mitingo Ward Tribunal? To find out, I had a keen look on the records of the DLHT. I weighed the decision in the light of the factors articulated by the Court of Appeal of Tanzania in **Lyamuya Construction (supra)**

As can be discerned from the DLHT records, reasons advanced by the applicants for their delay are: **one**, lack of money to lodge the application. **Two**, lack of information about the presence of Land Case No.4 of 2017 before Mitengo Ward Tribunal. The appellants also added that they had a criminal case with the respondent. (See, page 2 of the Impugned Ruling of the DLHT).

It is recorded that the respondent reacted to those reasons to the affect that the delay was too long since 25/04/2017 to the date the appellant filed their application. (See page 2)

Apparently, the DLHT analyzed the arguments by both sides before it came up with the decision. The DLTH was of the considered view that the appellants had failed to account for each day of their delay to lodge their appeal out of time. (Delay of four (4) years). The DLHT was also convinced that the assertion that the appellants were not aware of the presence of Land Case No.4 of 2017 at Mitengo Ward Tribunal was not true because Criminal Case No.23/2019 was connected to the said land case. In addition, the appellants were served with summons to appear before the ward tribunal to hear the claim by the respondent.

Furthermore, the DLHT was convinced that lack of money to pay an advocate who could prepare their documents for the application was also found unmerited because the said lawyer (Mr. Prosper Kisinini) stated that he had drafted the documents of the appellants free of charge (i.e., pro bono). Clearly, I see no fault in the Ruling of the DHTL. Nevertheless, to minimize chances of unending litigation, I am inclined to consider the first and third grounds of appeal because they touch on rules of natural justice and due process of law respectively.

The first ground of appeal raised is that the DLHT failed to consider that the first and second respondent were not heard. As a matter of facts, the first and second appellants did not submit orally because they were represented by the third appellant. The record of the DLHT shows that they swore or affirmed in the affidavit. Therefore, with this observation, I find that the DLHT did not infringe the right to be heard of the first and second appellants, but it had considered what they had agreed and averred in their affidavits. The first ground of appeal fails and is dismissed.

On the third ground of appeal, the appellants have asserted that the DLHT did not consider that the matter at the trial tribunal was heard and determined *exparte*. In fact, this was not one of the reasons for the delay submitted by the appellants during the hearing and determination of Misc. Land Application No.399 of 2021. However, the law is settled on what to do in case a matter has been determined *expar-te*. The law and procedure is that, the same may be set aside by the same authority within the stipulated time if the aggrieved party lodged an application to that effect. The act of the appellants complaining at this stage that the dispute was heard *expar-te* is misplaced. The same was supposed to be acted upon within time and not at this stage.

Before I finalize this judgement, I am inclined to opine, albeit in passing on land acquisition in our country. The appellant had told me during hearing of the appeal that they were advised to clear the suit land so that should the government need it they would be compensated. That is not the way to go.

In Tanzania there are several ways to acquire land. Invading into some, supposedly vacant land, with anticipation that somehow it will become yours is not one of them. It is a sort of vandalism that should not be condoned. **Section 22** of the **Village Land Act Cap 114 R.E. 2002** provides for application of customary right of occupancy in village land. I also wish to emphasize that acquittal of applicants in a criminal case does not make them owners of the suit land.

In the upshot, I find no merit in this appeal. The appeal is hereby dismissed. I make no orders as to costs.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika", is written over the printed name.

**JUDGE
25.10.2022**

COURT

This ruling is delivered under my hand and the seal of this Court on this 25th day of October 2022 in the presence of both parties who have appeared in person unrepresented.



E. I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika", is written over the printed name.

**JUDGE
25.10.2022**

COURT

The right to appeal to the Court of Appeal of Tanzania is dully explained.



E. I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E. I. Laltaika", is written over the printed name.

**JUDGE
25.10.2022**