

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

LAND APPEAL NO. 23 OF 2021

(Originating from Mpanda District Land and Housing Tribunal in Misc. Application No. 96 of 2021 Original from Mpanda District Land and Housing Tribunal in Land Application No. 11 of 2018)

JOHN S/O MICHAEL MGAWAAPPELLANT

VERSUS

LONGINO S/O TULYAHEBEWA GANISHANGA RESPONDENT

JUDGMENT

Date of last order: 18/08/2022

Date of Judgment: 30/10/2022

NDUNGURU, J.

In this case, the appellant one John Michael Mgawe is appealing against the decision of the District Land and Housing Tribunal of Mpanda in Misc. Land Application No. 96 of 2021 dated 30th August 2021 which originated from Land Application No. 11 of 2018.

The facts as I can gather from the record available to me is that the appellant once had filed the case before District Land and Housing tribunal that is Land Application No. 11 of 2018, that the case was tried was also the respondent thereat. That upon ex-parte judgment the respondent as he was late to file application of setting aside ex-parte judgment filed an application for extension of time within which to file application for setting aside ex-parte decision. That was Application No. 96 of 2021. That the trial tribunal granted the application. The grant of the application seared the applicant herein this appeal.

In his petition of appeal, the appellant has raised two grounds as hereunder reproduced:

- (i) That the decision of the trial tribunal is bad in law by allowing Misc. Application No. 96 of 2021 while Respondent failed to state good and sufficient cause to justify his delay.
- (ii) That, the 2nd Respondent was present during hearing of the Applicant case in Original Trial Though later absence himself.

When the appeal was called upon for hearing, the appellant enjoyed the service of Ms. Sekela Amulike, learned counsel while, respondent appeared in person (Unrepresented).

In her submission for the appeal, Ms. Amulike was of the argument that though it is within the discretion of the tribunal to grant or refuse the application but the respondent had the duty to show sufficient cause for the application to be granted. She went on saying that the respondent did not show sufficient cause.

The counsel went on saying that the respondent had to count for each day of delay. She prayed the appeal be allowed, the ruling of granting extension of time be quashed.

In his submission, the respondent told the court that the reason for delay is that he incurred road/Motor Vehicle accident at Singida when he was travelling to Karagwe to attend his mother who was seriously sick. That the result of the accident he was injured his spinal cord which necessitated him to attend treatment (local) for a long time.

This reason is also found at para 6, 7 and 8 of his affidavit which supported his application before the tribunal. Unfortunately, to the counsel

for the appellant did not deliberate/submit on the reason given by the respondent apart from giving the guideline such as accounting for each day of delay, and that the delay should be inordinate.

If it is trite that right to be heard is a paramount principle of natural justice. The court being custodian of such right should at all the time guarantee to the litigants unless the circumstances provide otherwise.

In the present case the respondent had shown his need to be heard thus applied for extension of time to make application for setting aside ex-parte judgment. The reason given, that is he incurred car accident and damaged the spinal cord. Thus he was getting local treatment. To my opinion that was sufficient for the tribunal to grant extension.

In the premises I dismiss the appeal as it is devoid of merit.

Costs of this appeal be born by the appellant.

It is so ordered.




D. B NDUNGURU

JUDGE

31/10/2022