

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

APPELLATE JURISDICTION

MISC. LAND APPLICATION NO. 52 OF 2021

(Arising from Kigoma District Land and Housing Tribunal Appeal No. 78 of 2020, and originating from Buhigwe Ward Tribunal Land Dispute No. 10 of 2020).

FESTO MBOMBE MHEHE..... APPLICANT

VERSUS

EDWARD NTIKULE.....RESPONDENT

EX PARTE RULING

17th & 28th February 2022

F. K. MANYANDA, J

The applicant herein Festo Mbombe Mhehe is seeking extension of time within which to appeal to this Court out of the prescribed time. The application is made under section 38(1) of the Land Disputes Courts Act, [Cap 216 R. E. 2019] hereafter referred to as "the LDCA".

Hearing of this application was ordered to proceed in absence of the Respondent because it was proved that the Respondent signed on the



summons signifying that he was duly served. However, he neither appeared in court on the hearing date nor file any counter affidavit.

The Applicant was present in person represented by Mr. Kagashe, learned Advocate.

Before dealing with this application, let me summarily narrate the brief back ground of the case.

Edward Ntikule (Respondent in this application) sued Festo Mbombe Mhehe (Applicant in the instant application) over ownership of a piece of land measuring ¼ acres located at Mfufugwe valley in Buhigwe District in Land Application No. 10 of 2020 of Buhigwe Ward Tribunal which decided in favour of the Respondent on 20/04/2020. Been upset by the decision, on 05/06/2020 the Applicant appealed to the Kigoma District Land and Housing Tribunal (DLHT) vide Land Appeal No. 78/2020. The DLHT dismissed the appeal after sustaining a preliminary objection that the appeal was time barred.

The Applicant thereafter applied for extension of time to appeal out of time in the DLHT via Misc. Land Application No. 06/2021 which was dismissed on reason that since the appeal was dismissed, an application



for extension of time in order to file an appeal was misconceived because the dismissal order of the appeal finally determined it.

Undaunted, the applicant sought to appeal to this Court, but again he was out of time, hence is now before this court applying for extension of time within which to appeal to this Court against the decision of the DLHT in Land Appeal No. 78/2020.

Mr. Kagashe, learned advocate submitted in support of the application by adopting the affidavit of the Applicant. He argued that the Applicant is applying for extension of time so that he can file an appeal against a decision of the District Land and Housing Tribunal for Kigoma in Land Appeal No. 78 of 2021.

Mr. Kagashe argued that, the Applicant's after been dissatisfied by a decision of Buhigwe Ward Tribunal decided to appeal to Kasulu District Land and Housing Tribunal in time. However, he was misled by officers of the Buhigwe Ward Tribunal that the time to appeal was out. The Counsel went on submitting that later on the Applicant realised that he was still in time, therefore he filed the same, but registration process took about three days thereby causing him to be late. As a result, his appeal was dismissed by the DLHT for been time barred.



Then, the Applicant filed Misc. Land Application No. 06/2021 for extension of time which was dismissed also on reasons that the Applicant ought to have appealed against the dismissed order in Land Appeal No. 78 of 2020 instead of applying for extension of time.

That, due to this situation the applicant has filed the instant application so that time may be extended in order to enable him appeal to this Court as advised by the DLHT.

Mr. Kagashe further submitted that the delay was out of control of the Applicant. He referred this Court to the case of **Tanzania Sewing Machines vs Njake Enterprises Ltd**, Civil Application No. 56 of 2007 (unreported) where it was held at Page 7 that a delay which is partly occasioned by a judicial officer constitutes good cause for extension of time. The learned Advocate thus prayed for the application to be granted.

From the evidential facts averred in the affidavit, it is not in dispute that Land Appeal No. 78 of 2020 was not determined on merit, it was dismissed upon sustaining a preliminary objection on ground that the appeal was incompetent for been time barred. The Applicant applied for extension of time via Misc. Land Application No. 06/2021, however, the same was dismissed again on reasons that the dismissal order of the DLHT was

unassailable because it rendered the DLHT functus officio as far as the appeal is concerned.

Bemused, the Applicant came to this Court seeking for extension of time within which to appeal against the decision of the DLHT which dismissed the application of extension of time. The next question is whether this application is tenable.

My understanding concerning the decision in Land Appeal No. 78 of 2020, the Chairperson misdirected herself by deciding to dismiss the appeal instead of striking it out.

There is plethora of decisions to that effect. The Court of Appeal of Tanzania in the case of **Attorney General Zanzibar vs. Jaku Hashim Ayoub and Another**, Civil Appeal No. 241 of 2020 (unreported) referred to the case of **Ngoni Matengo Cooperative Marketing Union Ltd vs. Ali Mohamed Osman** [1959] EA 577, where the defunct Court of Appeal for Eastern Africa pronounced as follows: -

"This Court, accordingly, had no jurisdiction to entertain it, what was before the Court being abortive and not a properly constituted appeal at all. What this Court ought strictly to have done in each case was to "strike out" the appeal as being incompetent, rather than to have "dismissed" it, for the latter phrase implies that a

competent appeal had been disposed of, while the former phrase implies that there was no proper appeal capable of being disposed of”.

The Court of Appeal also followed this position in its decisions in a number of its cases including: - **National Insurance Corporation and Another vs. Shengena Limited**, Civil Application No. 20 of 2007; **Hashim Madongo and Two Others vs. The Minister for Industry and Trade and Two Others**, Civil Appeal No. 27 of 2003; **Abdallah Hassan vs. Vodacom (T) Ltd**, Civil Appeal No. 18 of 2008 and **Mabibo Beer Wines & Spirits Limited vs. Fair competition Commission and Three Others**, Civil Application No. 132 of 2015 (all unreported) to mention a few.

Guided by the principles of law in those cases, I'm persuaded that the decision of Hon. F. Chinuku, Chairperson of dismissing Land Appeal No. 78 of 2020 was not correct in law.

Equally, the decision by Hon. Mbarouk Waziri Mwinyi, in Misc. Land Application No. 06 of 2021 of rejecting the application for extension of time is not correct in law. The two rulings constitute illegalities on the face of the record. Illegality on the face of the record constitutes good ground for extension of time in order to provide opportunity for rectification of the same.



I am not alone on this position of the law. In the case of **VIP Engineering & Marketing Limited and 2 Others v. Citibank Tanzania Limited**, Consolidated References No. 6, 7 And 8 of 2006 (unreported) where the Court of Appeal of Tanzania stated as follows: -

It is therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the Applicant under the rule to account for the delay. [Emphasis supplied]

In **Veronica Fubile v. National Insurance Corporation & 2 Others**, Civil Application No. 168 of 2008, the Court of Appeal of Tanzania again said that, the existence of special circumstances warrants grant of extension of time to lodge an appeal out of time. Among the listed special circumstances, include the claim of illegality.

See also the cases of Citibank (Tanzania) Ltd vs. TTCL & Others, Civil Application No. 97 of 2003; **William Malaba Butabutemi vs. Republic**, Criminal Application No. 5 of 2005 and **Property & Revisionary Investment Corporation vs. Temper & Another** [1978] All E.R. 433; and **Ministry of Defence, National Service vs. Devram Vallambhia** [1992] T.L.R. 185.

Consequently, for the reasons stated above, I do hereby allow the application, the Applicant is given 60 days from the date of this ruling to



file his appeal in this Court, if he still so wishes. Each party shall bear its own costs. It is so ordered.




F.K. MANYANDA

JUDGE

28/02/2022