

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA**

MISC. LAND APPEAL NO. 02 OF 2022

(Arising from the Land Case Application No. 10 of 2020 of the District Land and Housing Tribunal at Bukoba & Civil Case No. 20 of 2011 in Kyabitembe Ward Tribunal)

SAIMON LWAMAMIA ----- APPELLANT
VERSUS
JACOBO KISHOTA----- RESPONDENT

JUDGMENT

Date of the last Order: 21/03/2022

Date of Ruling: 08/04/2022

A.E. Mwipopo, J.

Saimon Lwamamia, the appellant herein was sued by the respondent herein namely Jacobo Kishota in Civil Case No. 20 of 2011 at the Kyabitembe Ward Tribunal over the ownership of the land in dispute. The case proceeded in *ex parte* following appellant failure to appear during defence case and the trial Ward Tribunal delivered its *ex parte* decision in favour of the respondent. When the appellant became aware of the said *ex parte* decision of the trial Ward Tribunal filed Application No. 171 of 2013 in the Bukoba District Land and Housing Tribunal for extension of time to appeal out of time. The said application was granted on 29th January, 2016. The appellant filed Appeal No. 167 of 2016 on 7th November,

2016 and the said appeal was struck out for incompetence. The appellant appealed to the High Court against the decision of the District Land and Housing Tribunal. The said appeal was transferred to be heard by Resident Magistrate with Extended Jurisdiction who dismissed it for want of merits on 04th November, 2019. The appellant went back to the District Land and Housing Tribunal where he filed Misc. Application No. 10 of 2020 at the Bukoba District Land and Housing Tribunal praying for extension of time to file appeal out of time once again. The said application was dismissed for want of merits. Aggrieved, the appellant filed the present appeal against the decision of the District Land and Housing Tribunal.

The petition of appeal filed by the appellant contains two ground of appeal as follows hereunder:-

- 1. That, the trial Tribunal erred in law and facts to dismiss the appellant's application which indeed has shown good cause for delay to file an appeal on time.*
- 2. That, the trial Tribunal erred in law and fact for failure to extend time to appellant to file an appeal out of time while the intended judgment to be impugned of the trial Ward Tribunal is tainted with illegality.*

On the hearing date, the appellant appeared in person and the respondent was absent. The summons shows that the respondent rejected to sign the summons. The said summons was endorsed by Ward Executive Officer for

Kyabitembe Ward on 17th February, 2022. The Court ordered for the hearing of the appeal to proceed in absence of the respondent after the appellant prayed for hearing to proceed.

The appellant being a lay person said that the delay to file the appeal in the District Land and Housing Tribunal was caused by the act of the Ward Tribunal to determine the matter without giving him notice to appear. The Chairman of the Ward Tribunal delayed to send the file to the District Land and Housing Tribunal as result he was out of time to file the appeal in the District Land and Housing Tribunal.

The appellant said that another reason for the delay is that he was sick in the time before he filed his appeal and that the District Land and Housing Tribunal did not consider the letter from Kyabitembe Dispensary where he was treated. The letter prove that he was sick and the tribunal erred to hold that appellant was not sick. He said that the reason for delay advanced by him show a good and sufficient cause to be granted extension of time.

From the submission, the only issue for determination is whether the appellant provided sufficient reason for the Bukoba District and Land Tribunal to grant his application for Extension of time.

The application for extension of time to file appeal in the District Land and Housing Tribunal is provided under section 20 of the Land Disputes Courts Act, CAP. 216 R.E. 2019. The said section provides as follows hereunder:-

20.-(1) Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty five days after the date of the decision or order against which the appeal is brought.

(2) 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.

(3) Where an appeal is made to the District Land and Housing Tribunal within the said period of forty five days, or any extension of time granted, the District Land and Housing Tribunal shall hear and determine the appeal.

From the above cited provision, the District Land and Housing Tribunal may for good and sufficient cause extend the time for filing an appeal either before or after such period of forty five days has expired. The word "sufficient or good cause" has been interpreted in several decisions of the Court to be a relative one dependent upon party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion [see. **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania]. The good cause must be determined by reference to all

the circumstances of each particular case. In the case of **Tanga Cement Company v. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, at Tanga, (Unreported), it held that:

".....an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judicially, and overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the appellant."

In the application at hand, the appellant has two grounds of appeal against the decision of District Land and Housing Tribunal. In the first ground of appeal the appellant said that he provided sufficient cause for the District Land and Housing Tribunal to grant him his application and in the second ground of appeal he said that there is illegality in the impugned trial Ward Tribunal decision which need to be corrected.

I have perused the record of the District Land and Housing Tribunal and the record shows that the reason for the delay to file application for extension of time is that he was sick soon after his application for extension of time was granted on 29th January 2016 and when he recovered he filed Appeal No. 167 of 2016 on 07th November, 2016. The appeal was struck out for being out of time on 20th February, 2018. Thereafter he spent the time litigating his appeal before this Court. The

District Land and Housing Tribunal dismissed the application for the reason that there is no evidence provided to prove that he was treated to native doctor as the name and the domicile of the said native Doctor was not provided. Also the Tribunal held that the said letter from Kyabitembe Dispensary written on 19th December, 2019 is not a medical report. The letter shows that the appellant was complaining of hand and leg pain but paragraph 6 of the appellant's affidavit before the trial Tribunal contradicts the letter as it states that the appellant was paralysed from 15th March, 2016 to 5th November, 2016.

I concur with the decision of the District Land and Housing Tribunal that the reason of sickness advanced by the appellant has no merits. The reason is that there is no sufficient evidence to prove that he was sick and he attended medical treatment at the native Doctor or to the hospital. The said name and domicile of the said doctor was not given by the appellant. The appellant was supposed to explain the delay for each day he delayed after expiration of 45 days granted to file his appeal. The said 45 days ended on 14th March, 2016. Thus, the appellant has to give explanation for delay to file appeal from 15th March to 1st January, 2020 when he filed the present application.

The letter from Kyabitembe Dispensary dated 19th December, 2019 filed by the appellant as a proof of being sick during the period of delay is not medical document sufficient to prove that the appellant was attending treatment at the Dispensary. I have read the said letter which was written on 19th December, 2019.

The date which the letter was written suggest that it was obtained for the purpose of filing the Application No. 10 Of 2020 which was filed in the Tribunal on 01st January, 2020. The said letter shows that the appellant was complaining for leg and hand pain. The said letter states that the appellant was referred to "big hospital" for further investigation and management till he became clinical stable on 5th November, 2016. The letter does not show as to when the appellant was referred to the said "big Hospital" and what or which "big hospital" the appellant was referred to. Weirdly, the said letter gives information of what transpired in the said "big hospital" where the appellant was referred by stating that he continued with management until he became stable on 5th November, 2016. The question is how the Kyabitembe Dispensary knew of what was going on in the management of the appellant sickness by the "big hospital". The answer is not known. The appellant did not attach any document from the said "big hospital" to prove that he was referred there for further treatment and that he was treated up to 05th November, 2016 when he became stable.

Sickness is good cause for extension of time. See. **Fredrick Mdimu V. Cultural Heritage Ltd**, Revision No. 19 of 2011, High Court Labour, Division at Dar Es Salaam, (Unreported); and **Frank Mngoma V. Everina Yakobo**, Misc. Land Application No. 35 of 2019, High Court of Tanzania, at Tanga, (Unreported). However, the said sickness has to be explained and must be actual reason which stalled the appellant from appearing in Court on the hearing date. In the case of

Shembilu Shefaya v. Omari Ally [1992] TLR 245, an application for extension of time on basis of sickness was rejected because the appellant failed to provide thorough explanation regarding the sickness. The Court of Appeal was of the view that the application does not provide the elaboration of the sickness. As it was discussed above, the explanation by the appellant on the sickness is not sufficient as he failed to explain if the sickness stalled him from instituting his appeal within time.

It is a settled law that in the application for extension of time the appellant is supposed to account for each and every day of the delay [see. **Tanzania Ports Authority vs. Pembe Flour Mills Ltd, Civil Application No. 49 of 2009**, the Court of Appeal of Tanzania, at Dar es Salaam, (Unreported); and **Azizi Mohamed v. Republic, Criminal Application No. 84/07 of 2019**, Court of Appeal of Tanzania, at Mtwara, (Unreported)]. In the case of **Said Nassor Zahor and Others v. Nassor Zahor Abdallah El Nabahany and Another**, Civil Application No. 278/15 of 2016, the Court of Appeal of Tanzania, (unreported), it was held that, I quote;

"...any appellant seeking extension of time is required to account for each day of delay."

From above cited cases, the appellant was supposed to account for each day he delayed to file his appeal in the District Land and Housing Tribunal. There is no explanation for each day he delayed to file his application from 15th March,

2016 when 45 days ended after he was granted leave to file his appeal out of time to 07th November, 2016, when he filed the appeal in the District Land and Housing Tribunal which was struck out for being filed out of time. Thus, there is no sufficient cause for delay between this period.

The appellant said another ground for his appeal is the presence of illegality in the face of record of the *ex parte* decision of Kyabitembe Ward Tribunal. Illegality is sufficient reason for extension of time as it was held in **Principle Secretary Ministry of Defence and National Service V. Devlam Valambhi** [1992] **TLR.185** at page 189. The issue of illegality is not a reason constituting delay in filing an appeal, but rather a legal mistake which ought to be corrected by an appellate court for purposes of putting right and rectify the position of the law as it was held in the case of **Stade Mwaseba V. Edward Mwakatundu**, Misc. Land Application No. 19 of 2019, High Court, at Mbeya, (Unreported). The illegality which is sufficient cause is the one which is apparent on the face of record that need not to be discovered by long drawn argument as it was held in **Efrasia Mfugile V. Andrew J. Ndimbo and Another, Civil Application No. 38/10 of 2017, Court of Appeal of Tanzania, at Iringa**, (unreported).

In the application for extension of time and his written submission in support for application before the District Land and Housing Tribunal the appellant said the illegality presence in the record of trial Ward Tribunal is that he was not afforded right to be heard. But, the said illegality does not appear to be apparent on the

face of the record. The judgment of the trial Ward Tribunal in page 4 provided for the reason to proceed in *ex parte* without affording the appellant right to defend himself after he attended trial and heard respondent witnesses testifying. The record shows that he was called more than 5 times without appearing before the trial Ward Tribunal which decided to proceed in *ex parte*. The reason of the trial Ward Tribunal to proceed with hearing in *ex parte* are justified. Thus, there is no point of illegality on the face of record to warrant the interference of the appellate Court.

Therefore, I find the appeal has no merits and I hereby dismiss it. No order as to the cost of the suit. It is so ordered.



A.E. Mwipopo

Judge

08.04.2022

The Judgment was delivered today, this 08.04.02022 in chamber under the seal of this court in the presence of the appellant and in the absence of the respondent.



A. E. Mwipopo

Judge

08.04.2022