

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO 109 OF 2021

(Arising from the Misc. Application no 90 of 2021 before the District Land and Housing Tribunal, for Tarime District, at Tarime, Originating from Land Application No 01 of 2020, In the Ward Tribunal for Baraki)

JULIUS KINYAMAHO 1ST APPELLANT

WAMBURA KINYAMAHO 2ND APPELLANT

VERSUS

IRANGA KINYAMAHO RESPONDENT

JUDGMENT

2nd & 18th March 2022

F.H. MAHIMBALI, J.:

The appellants in this case were respondents in land application no. 1 of 2020 filed at Baraki Ward Tribunal in a claim of land for the application filed by the respondent. The said suit was decided exparte in favour of the respondent. Aggrieved by that decision as they were out of time, they decided to file an application before the DLHT of Tarime to file an appeal out of time. The DLHT dismissed the application and directed the applicants if they are aggrieved by the exparte decision by the Ward Tribunal, the appropriate cause is to file an application at the

same Ward Tribunal for it to set aside its ex parte decision so that they can be heard interparties.

It is this decision that has aggrieved the appellants thus the basis of this appeal grounded on three grounds of appeal namely: -

- 1. That, the District Land and Housing Tribunal for Tarime erred both in law and fact for abandoning the appellants' application for extension of time and dealt with issues of setting aside an ex-parte judgment of which was not called for.*
- 2. That, the District Land and Housing Tribunal for Tarime erred both in law and fact upon finding that the Ward Tribunal has powers to set aside its ex parte judgment.*
- 3. That, the District Land and Housing Tribunal for Tarime erred both in law and fact for not considering the fact that the appellants had sufficient and good for extension of time.*

During the hearing of the appeal, the appellants were represented by Ms Pilly Otaigo learned advocate whereas the respondent fended for himself.

Arguing the appeal, Ms Pilly Otaigo submitted for the first ground of appeal that the DLHT abandoned the appellants' application for extension of time and dealt with the issue of setting aside an ex parte judgment of which was not called for. What was presented before the DLHT is not what was decided by it. An aggrieved party by the decision

of the Ward Tribunal has a right of appeal to DLHT pursuant to section 19 of the LDCA. Failure of the DLHT not to decide on the prayers sought, was unlawful.

In the second ground of appeal, she submitted that the DLHT erred when it ruled that trial Ward Tribunal has powers to set aside *exparte* judgment. According to section 13 (1) of the LDCA, the Ward Tribunal has mediatory powers. Therefore, with *exparte* orders it issued, the Ward Tribunal has no powers to set aside. What is provided by the law (Section 19) of the LDCA is appeal. No other reliefs are provided. That is the basis why the said application was referred before DLHT. In the case of **Petrol Bira Chato vs Hima Hudu Ubaya**, Misc. Land case Appeal No. 47 of 2020 (HC- Dododma) faced a similar situation and it ruled that Ward Tribunal has no powers of setting aside *exparte* orders. She invited this court to be persuaded by that decision.

In the third ground of appeal, she submitted that the DLHT erred by not considering their application as they had good reasons for doing so. As per DLHT's pleadings, the appellants had established good reasons but it was surprising that the DLHT turned them down unreasonably. Buttressing her argument, she submitted that the 1st appellant was sick and reported so to the chairperson. It was surprising

that he was not considered and the matter proceeded ex parte. With 2nd appellant, she submitted that he was completely not aware until when the respondent started execution process. With these, she prayed that this appeal be allowed with costs.

The respondent on the other side, first prayed that his written reply to the grounds of appeal be adopted to form part and parcel of his submission. In addition, he submitted that it is true that the appellants had filed an application of extending time to file an appeal stating their reasons for so doing. However, he argued that what appears to be valid grounds for the said application, are frivolous. The name of the patient referred being sick is **Julius Mwita Kinyamaho**, but this case involves **Julius Kinyamaho**. Thus, these are two different persons.

As to why the 2nd Appellant did not attend the said case, the reasons are also not clear to him. This is because the evidence on record is clear that the appellants refused service. He thus prayed that these grounds of appeal be dismissed with costs.

In winding up his submission the respondent concurred with the DLHT's findings that the appellants ought to have set aside the said decision of Ward Tribunal and not appeal to DLHT. In his view, the

DLHT was right with that decision. It was his prayer that this appeal as well be dismissed with costs.

I have dispassionately digested the grounds of appeal, and the submissions thereof. The central question to tackle is one, what is the legal remedy for an aggrieved party against the Ward Tribunal's *ex parte* award? Is it an appeal to DLHT or not?

Whereas the appellants are saying the right cause was an appeal to the DLHT, the respondent is saying no, but the right legal cause was to file an application to set it aside as rightly held by the DLHT. To support her position, Ms Pilly Otaigo learned advocate referred this Court to the persuasive decision of this Court (Mansoor, J) in the case of **Petro Bira Chato Vs. Hima Hudu Ubaya**, Misc Land Appeal No. 47 of 2020 where it was held that an aggrieved party against *ex parte* decision of the Ward Tribunal pursuant to section 19 of the LDCA has the right to appeal or revision at the DLHT.

In my perusal to the LDCA, there is no specific provision providing what to do with the *ex parte* orders/decisions of Ward Tribunals to an aggrieved party. The available remedy in my considered view is provided under section 19 of the LDCA, which provides:

"A person aggrieved by an order or decision of the Ward Tribunal may appeal to the District Land and Housing Tribunal".

Considering the fact that *exparte* judgment/order is also one of the orders given by the Ward Tribunal, obviously it is subject to appeal before the DLHT as rightly preferred by the appellants in their opted application. That said, appellants were legally justified to knock the doors of the DLHT of Tarime to extend time for them to appeal before it. This means that the District Land and Housing Tribunal for Tarime erred in law for abandoning the appellants' application for extension of time to file an appeal and instead introduced its own issue of setting aside an *ex-parte* judgment of which was not called for. It was expected by the said DLHT to consider whether what was sought for by the applicants prejudiced the law or not. Substituting it with other remedies not sought in the eyes of the law was not justified in the circumstances of such an application.

I am equally inspired by the right cause taken by my Sister Madame Justice Mansoor in the case of **Petro Bira Chato Vs. Hima Hudu Ubaya**, Misc Land Appeal No. 47 of 2020 (HC-Dodoma) where she held that an aggrieved party against *exparte* decision of the Ward

Tribunal pursuant to section 19 of the LDCA has the right to appeal or revision before the DLHT.

That said, the appeal is allowed with no order as to costs. This is because of the consanguinity factor of the parties. On the revisionary powers vested to this Court under section 43(1) of the LDCA, the orders of the DLHT are hereby quashed and set aside for arriving at a wrong decision. In its place, I direct the DLHT to determine the application on its merits as prayed.

It is so ordered.

DATED at MUSOMA this 18th day of March, 2022.




F. H. Mahimbali

Judge

Court: Judgment delivered this 18th day of March, 2022 in the presence of the both parties and Mr. Gidion Mugo –RMA.

Right to appeal is explained.



F. H. Mahimbali

Judge

18/03/2022