

**IN THE HIGH COURT OF TANZANIA  
(MTWARA DISTRICT REGISTRY)  
AT MTWARA**

**LAND APPEAL NO. 2 OF 2021**

*(Originating from Misc. Application No. 286 of 2020 In the District Land  
and Housing Tribunal for Mtwara at Mtwara)*

**RAJABU AUGUSTINO.....APPELLANT**

**VERSUS**

**SELEMANI SALUMU NAMKOLI .....RESPONDENT**

Date of Hearing: 03/03/2022

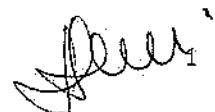
Date of Judgment: 30/03/2022

**JUDGMENT**

**Muruke, J.**

Appellant filed appeal No. 2 of 2021, on the 21<sup>st</sup> day of January, 2021 against the decision of the District Land and Housing Tribunal of Mtwara on Misc. Application No. 286 of 2020 delivered on 23<sup>rd</sup> day of December, 2020 by Honourable, H.I LUKEHA. Before the said Tribunal the appellant filed an application for extension of time to file an appeal against the decision of Makong'onda ward tribunal which was refused, hence, this appeal.

The dispute originated from Makong'onda Ward Tribunal in which parties MARIDADI AUGUSTINO (the administrator of the estate of SELINA AGUSTINO NETO) sued SELEMANI NAMKOLI (The Respondent). The dispute was then decided in the Respondent's favour. Applicant appealed to the District Land and Housing Tribunal of Mtwara, in which a trial de novo was ordered, thus reverted the case back to the



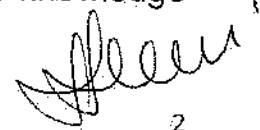
Makong'onda ward Tribunal. It was at this point when Mr. MARIDADI who was the then Administrator of the said land moved to Iringa due to family problems which led to the change in administrator. On 15/04/2020, the appellant was appointed an administrator of the late SELINA AUGUSTINO NETO.

Upon being granted the letters of Administrator, appellant filed a fresh suit in the district Land and Housing Tribunal of Mtwara, Application No. 15/2020 where it was found to be RES JUDICATA. This was when the appellant became aware of the exparte judgment of Makong'onda ward tribunal.

Immediately after the above realization, the appellant filed an Application for extension of time to appeal against the exparte judgment in Miscellaneous Application No. 286/2020, where application was dismissed, thus being aggrieved by the said decision the appellant preferred this appeal on one ground namely.

1. That the honourable trial chairman of the tribunal erred in law and facts by deciding service of summons to the Appellant.

After the conclusion of pleadings, hearing was ordered to be by way of written submission. Appellant submitted that, neither appellant nor his predecessor was served with the summons to appear at Makong'onda ward tribunal to state their case and therefore none of them had knowledge of the ongoing suit. Appellant filed a fresh application to the district land and housing tribunal for Mtwara at Mtwara, application No. 15/2020 where it was held to be res judicata. The appellant found himself out of time to file his appeal because he was prosecuting his Application No 15/2020 at the district land and housing tribunal for Mtwara at Mtwara from 9/3/2020 to 23/12/2020 as he had no knowledge over the matter instituted at the ward tribunal.

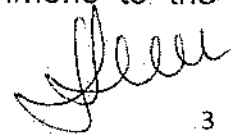


It was submitted further that, at the hearing of Miscellaneous Application No. 286 of 2020 the trial chairman failed to consider the appellant's affidavit and submission that, he was not served with the summons to appear for the hearing of the dispute in Makong'onda Ward. The Respondent on the other hand did not present any proof of service or existence of the alleged summons in their counter affidavit or oral arguments.

Appellant insisted that he has raised a good and sufficient cause for extension of time to lodge an appeal in that, he was not served with the summons of the case instituted at Makong'onda ward tribunal. Since it is the requirement of the law that where a case has been instituted the complaining party has to notify the other party through summons. Legally there should be the proof of service in terms of section 12 of THE WARD TRIBUNALS ACT OF 1985 stating that:-

*"Subject to the procedure made in that behalf by the appropriate authority, the secretary shall issue summons to the parties involved in the complaint requiring them to attend before the tribunal on the date specified in the summons for the complaint to be investigated and determined"*

Respondent on the other hand submitted that he instituted new fresh land case against MALIDADI AUGUSTINO NETO [Administrator of the estate of the late SELINA AUGUSTINI NETO]. He appeared before the Makong'onda ward Tribunal on first time, when ward tribunal adjourn the case for hearing. Appellant did not appeared again, when case was fixed for hearing. The appellant has no reasonable ground to state that the trial chairman of the District and land Housing Tribunal at Mtwara erred in law and facts by deciding that the appellant failed to demonstrate good cause whilst there was no proper service of summons to the Appellant.



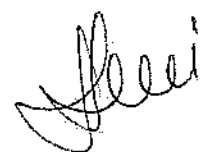
The ward Tribunal used all efforts to summon the respondent. He refused to appear before the ward Tribunal. The ward Tribunal issued three summons and respondent insisting refusing to appear before the tribunal without giving sufficient reasons.

Having heard gone through submission by both parties It is settled principle of law of the land that, in application for extension of time the applicant must show that there is sufficient reason/good cause for the delay. This was held in the case of **The International Airline of the United Arab Emirates V. Nassor Nassor, Civil Application No. 569/01 of 2019 CAT** (unreported) that;

*"It is trite law that in an application for extension of time to do a certain act, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time."*

However, despite that constitutional right, yet to extend time is purely vested to the discretion of the court, which discretion always has to be exercised judiciously, upon sufficient cause. Indeed, what amount to good cause/sufficient cause is not define but it is the duty of the court to treat each case depending on its circumstances as stated in various cases including in the case of **Emmanuel Bilinge Vs. Praxedas Ogwever & Another, Misc. Application No. 168 of 2012** (unreported) stated that;

*"What constitutes reasonable or sufficient cause has not been defined under the section because that being a matter for the court's discretion cannot be laid down by any hard and fast rules but to be determined by reference to all the circumstances of each case."*



Similar principle was stated in the case of **Regional Manager Tanroads Kagera Vs. Ruaha Concrete Co Ltd**, Civil Application No. 96 of 2007, where the court observed the following:

*"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**" (emphasis supplied).*

The same was repeated in **Tanga Cement and Another**, Civil Application No. 6 of 2021, clearly held that:

*"What amounts to sufficient cause has not been define. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly, the absence of any or valid explanation for delay; lack of diligence on the part of the applicant."*

Court of Appeal in the case of **Mobrama Gold Corportion Ltd Vs. Minister for Energy and Mineral, and East African Goldmines Ltd as Intervor** [1998] TLR 245, observed that;

*"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents' delay does not constitute a case of procedural abuse or contemptuous default and because the respondent will not suffer any prejudice, if extension sought is granted."*

What applicant is requesting before this court, is extension of time for him be heard at the Ward Tribunal. The right to be heard is safeguarded in the constitution. Article 13(6) (a) of the constitution provides in the Kiswahili version thus;

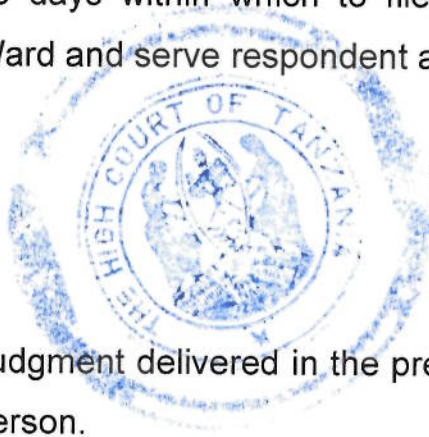


***“(6) Kwa madhumini ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa au zinazo zingatia misingi kwamba;”***

***“(a) Wakati wa haki na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa mahakama au chombo kingine kinacho husika, basi mtu huyo atakuwa na haki ya kukata rufaa au kupata nafuu nyingine ya sheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika.”***

Appellant has explained that, he was not summoned for hearing when the dispute was remitted back to Makong’onda Ward Tribunal as a result case proceeded exparte. There is nothing from respondent to prove that appellant was served. Before this court his appeal is on right to be heard at Makong’onda Ward Tribunal, which is fundamental rights.

Appellant right to be heard on disputed land is necessary for him to mount defence if any. Failure to hear is against principal of natural justice. Thus his appeal is allowed. Appellate Tribunal erred in refusing application for extension of time. Same is granted. Appellant is granted 45 days within which to file defence at trial tribunal of Makong’onda. Ward and serve respondent accordingly.



  
**Z. G. Muruke**

**Judge**

**30/03/2022**

Judgment delivered in the presence for the applicant, and respondent in person.



  
**Z. G. Muruke**

**Judge**

**30/03/2022**