

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 50 OF 2022

***(C/f Application No.86 of 2020 in the District Land and Housing Tribunal
for Mbulu at Dongobesh)***

PASKALI MEKABA APPELLANT

Vs

SIGHIS QAMUNGA..... RESPONDENT

JUDGMENT

Date of last Order: 6-3-2023

Date of Judgment: 27-3-2023

The appellant herein lodged this appeal challenging the judgment of the District Land and Housing Tribunal for Mbulu at Dongobesh (Henceforth "The Land Tribunal"). The grounds of appeal are reproduced verbatim hereunder;

- (i) That, the trial Chairman grossly misdirected himself in refusing to grant the application for extension of time when even after leaving the hospital on 10/9/2020 he was too weak to travel to Dongobesh Tribunal to defend his case on the 15/9/2020 a distance of a hundred and fifty kilometer (150km)
- (ii) That, the trial Chairman grossly erred in disregarding the letter from Haydom hospital dated 12th September 2020 informing the tribunal that the appellant was admitted there

from 28th August 2020 to 10th September 2020 receiving medical treatment.

A brief background to this appeal is as follow; that the appellant herein was the applicant at the Land Tribunal. His application was dismissed for want of prosecution on 15th September 2020. He delayed to file the application to set aside the dismissal order, thus he had to file an application for extension of time for setting aside the dismissal order vide Misc. Application No.86 of 2020. The same was heard on merit and the Chairman of the Land Tribunal (Hereinafter to be referred to as "the Chairman") dismissed it for lack of merit on the ground that no good reasons were adduced for the delay. He was doubtful on the genuineness of the letter from Haydom Hospital which was relied upon by the appellant to prove that he was admitted at Haydom Hospital since it was written two days after the discharge of the appellant from the Hospital. He was of the view that the letter was prepared specifically to cater for the delay in filing the application for extension of time. Moreover, the Chairman pointed out that even if it is assumed that the letter from Haydom Hospital is genuine the appellant failed to account for the days of delay from 11th September 2020 when he was discharged from Haydom Hospital to 2nd October 2020 when he filed the application for extension of time, the subject of this appeal.

This appeal was heard ex-parte against the respondent since he did not enter appearance in court despite being served with summons to appear in court. The appellant was represented by Mr. Patrick J. Ami, learned advocate.

With regard to the 1st ground of appeal Mr. Ami argued that the appellant was not able to file his application for setting aside the dismissal order timely because he was admitted at Haydom hospital and after being discharged from the hospital he was still weak. The appellant stays 150 kilometers from Dongobesh Land Tribunal, so it was not possible for him to lodge the application for extension of time earlier than the time he did.

On the 2nd ground of appeal, Mr. Ami argued that the Chairman erred to disregard the letter from Haydom Hospital which is in the Hospital's letter head and dully stamped to show that it is a genuine document. Further, he contended that the Land Tribunal had no justification to disregard the letter from Haydom hospital.

Having carefully analysed the submission made by Mr. Ami, I am of the view that my task in this application is to determine whether or not the dismissal of the appellant's application for extension of time was erroneous.

It is trite law that in an application for extension of time the applicant has to account for each day delay. Delay of even a single day has to be accounted for.[See the case of **Bushiri Hassan Vs Latifa Lukio Mashayo, Civil Application No. 03 of 2007** (unreported)]. In the instant case, the reason adduced by the applicant for the delay is sickness. He alleged that he was admitted at Haydom Hospital. He annexed a letter from Haydom Hospital to the affidavit in support of his application. Upon perusing the court's records, I am inclined to agree with Mr. Ami that the Chairman erred to disregard the letter from Haydom Hospital as I shall elaborate soon hereunder.

The letter from Haydom Hospital is dully signed by the Doctor whose name is indicated therein and stamped. The fact that it was written two days after the appellant was discharged from hospital does not mean that is not authentic. After all, the respondent did not file any counter affidavit to challenge what was deponed by the appellant. However, as correctly pointed out by the Chairman in his Ruling, the letter from Haydom Hospital indicates that the appellant was discharged from Hospital on 10th September 2020. The application for extension of time to set aside the dismissal order was filed on 2nd November 2020, that is after the expiry of more than forty (40) days. In his application before the Land Tribunal the applicant did not account for those days completely. The arguments made by Mr. Ami before this court on the distance between the applicant's home and Dongobesh where the Land Tribunal is located are new arguments which were not raised at the Land Tribunal and are not reflected in the affidavit that was sworn by the appellant in support of his application. It is noteworthy that submissions made by the advocate or parties are not evidence. In the case of **Tanzania Union of Industrial and Commercial Workers ('Tuico') at Mbeya Cement Company Ltd Vs Mbeya Cement Company Limited and National Insurance Corporation (T) Limited, Civil case No.315/2020** (unreported), the court held as follows;

" it is now settled law that a submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence.."

In addition, the position of the law is that submission made by a party or an advocate has to be in consonance with the pleadings and parties are bound by their pleadings. [See the case of **Yara Tanzania Limited Vs**

Charles Aloyce Msemwa t/a Msemwa Junior Agrovat and others, Commercial case No.5 of 2013, (unreported)]. Likewise, Mr. Ami's contention that after being discharged from Haydom Hospital the appellant was weak is not reflected in the appellant's affidavit filed at the Land Tribunal in support of his application.

From the foregoing, it is the finding of this court that the appellant failed to account for each day of delay as required by the law, thus the Chairman cannot be faulted for dismissing the appellant's application for extension of time. In fine, this appeal is dismissed for lack of merit.

Dated this 27th day of March 2023




B.K.PHILLIP

JUDGE