

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO 32 OF 2022

(Arising from Misc. Application No 129 of 2021 at the District Land and Housing Tribunal Tarime that originates from Land Application No 21 of 2021 at Gorong'a Ward Tribunal)

MARWA CHACHA SOSWA.....1ST APPELLANT

SOSWA CHACHA SOSWA 2ND APPELLANT

VERSUS

MATINDE MANG'ANYU SOSWA RESPONDENT

JUDGMENT

16th & 23rd March 2023

F. H. Mahimbali, J.:

The appellants were respondents in the original land application no 21 of 2020 at Gorong'a Ward Tribunal in which judgment was delivered in their disfavor. As they were out of time, they preferred an application for filing appeal out of time before the DLHT for Tarime which application was denied. Now, the basis of this appeal.

The reasons advanced for failure of filing the appeal timely amongst others were: Delay in being availed copies of judgment by the trial tribunal, bereavement and legal consultations. Without stating as to which efforts were made in obtaining the said copies and reply thereof, there has been no proof of the said transaction that there was actually a delay.

Furthermore, on the fact of bereavement, there has not been proof as who died in between and when was it and how the said deaths affected them from filing the appeal timely.

On these weakness, the appellants' application before the DLHT was dismissed.

Not amused with the said decision, the appellant has preferred this appeal based on two main grounds:

- 1. That the DLHT erred in law and facts for denying the appellant extension of time to file appeal out of time as there is material irregularity in the records of the trial tribunal which need to be cured.*
- 2. That the DLHT erred in law and facts for failure to consider that the appellants failed to file appeal on time because of not being supplied with a copy of judgment of the trial Ward Tribunal in time despite of making several efforts.*

During the hearing of appeal, Mr. Evance Njau learned advocate represented the appellants whereas Mr. Paulo Obwana represented the respondent.

On material illegalities, Mr. Njau argued that when the trial tribunal record is traversed there are obvious legal errors skipped/not observed by the trial tribunal which the same are fundamental one.

It was submitted that the trial tribunal record does not show whether the tribunal members made their decisions as required by law. Relying on section 4(4) of the Ward Tribunal Act, Cap 206 Mr. Njau submitted that the decision of the Ward Tribunal is by majority of votes, As per proceedings and judgment of the trial tribunal, there is no any proof if the said voting was done to get the majority votes. That has not been done, thus vitiated the judgment itself as the irregularity is fatal. On this, he sought refuge to the decision in the case of **The Board of Trustees of FPTC church vs The Board of Trustees of Pentecostal Church**, Miscellaneous Land Appeal No 3 of 2016, High Court Shunyanga, at page 8.

Secondly, Mr. Njau faulted another legal irregularity saying that it is not clear as which members sat for the said proceedings in the midst as there is no quorum established which members sat there in between.

The third legal fault is the issue of secretary of the trial Ward Tribunal taking part in decision making by authoring the judgment. He submitted that as an normally contrary to section 4 (2) of the LDCA. Therefore, the while, decision is a nullity pursuant to section 5 (3) of the Ward Tribunal Act, Cap 206. On this, he cited the case of **Amour Habib Salim vs Hussein Bafagi**, Civil Application No 52 of 2009, CAT at Dar es Salaam at page 6. With these illegalities, Mr. Njau prayed that the court to grant extension of time so as to deliberate on these legal errors.

On the second ground of appeal, Mr. Njau argued that the delay to file appeal was due to delay to be supplied with the copy of judgment. That the said copy of it came to the knowledge of the appellants during the execution application. The delay in supply of the said copy was hindrant to the timely processing of the appeal on time. He elaborated that the trial tribunal's judgment was delivered on 17/3/2021 and could not get the copy of it until when found it in annexure vide execution application no 83 of 2021.

On these submissions, he prayed either this court now on its revisional power to quash the decision of the lower trial tribunal as per illegalities pursuant to section 43 (1) b of the LDCA or allow the appeal for the said grounds to be deliberated at the DLHT.

Opposing the appeal, Mr. Paulo Obwana learned advocate for the respondent submitted first that the primary objective of an appeal is to rectify the legal errors omitted/committed by the subordinate court/tribunal and not otherwise. This being the fact, Mr. Obwana challenged the submission of Mr. Njau missing points arguing as to why these grounds on illegalities were not raised at the DLHT for its deliberation.

As these legal issues were not raised and discussed at the DLHT, it is improper to raise them now. Nevertheless, he responded to the said submissions by saying that the said errors have not been vividly displayed/established as featuring on what pages at the trial tribunal's records. All this said were just submissions from the bar but not backed up by any relevant page of the trial tribunal's proceedings or judgment.

On the issue of the secretary of the Ward Tribunal authoring judgment he admitted it but only to the extent of signing and not giving opinions.

Regarding the principle envisaged in the case of **Amour Habibu Salim** (supra), he nodded with it, but however covers a different scenario from the case at hand. Whereas in the former case, the issue of illegality was raised at the court of first instance, in the current case, the issue of illegality has been raised in the second instance.

With the second ground of appeal, the appellant's joint affidavit (at the DLHT) bears no explicit facts. Assuming that all that deponed is true, the appellant copy of it on 25/5/2021 however, this application was filed in July, 2021 is not the parties' submission but advocates submission. In essence, there has been no proof of the alleged allegations. Since affidavit is in place of oral testimony, the stated facts must be clear and self-proof/proved. In essence, there has not been any accounting of days on each day of delay. In the case of **Yazid Kassim Mbakilaki vs CRDB 1996 Ltd and Jacken Auction Mart**, Civil Application no 4/2012/04 of 2018, the court of Appeal insisted on the manner of accounting each day of

delay. In the circumstances of this case, the appeal is misplaced the same be dismissed with costs.

In his rejoinder submission, Mr. Njau reiterated his submission in chief and insisted that where there is an illegality, it is sufficient ground to allow application.

In the consideration of the submissions done by each respective counsel, the vital question to determine is one, whether the appeal is meritorious.

In a deep digest to the submissions by the learned counsel for the appellants, it is a clear diversion from what was argued at the DLHT as the main reasons advanced at the DLHT for the grant of the application as it was centered mainly on two grounds:

- *Delay in supply of the copy of judgment.*
- *Bereavement of the applicants.*

These two facts missed proof at the DLHT. It was not clearly stated as to when the said copy was requested and the efforts subsequent made in obtaining the same.

As to the fact of bereavement, the same was not established as to when the appellants were bereaved and how the bereavement prevented them from filing the said appeal timely. There were no proof of the said facts. On this, I agree with Mr. Paulo Obwana learned advocate that there ought to have been clear accounting of each day of delay (see **Yazid Kassim Mbakilaki vs CRDB 1996 Ltd and Jacken Auction Mart**, Civil application no 4/201/04 of 2018 CAT).

On the issue of illegality, I agree that it is a good ground for extension of time once raised. However, in the circumstances of the current case, the said illegalities were not raised and argued at the DLHT. They have been raised at the second level/bite. It is a mere after thought. They were supposed to be raised at the DLHT as amongst the grounds for extension of time. Upon refusal of the first grounds for extension of time, the appellants are precluded to raise new issues at the appellate level. That is equivalent to betting which is prohibited and I can't allow it. After all, there has not been specific reference to the appropriate page of the copy of proceedings (of the trial tribunal) bearing the said legal errors. A mere mention without making a clear reference to the impugned proceedings

and judgment, the ground remains un-established and sounds more to be a mere submission from the bar and not from the tribunal records.

That said, the appeal is dismissed with costs for want of merits.

DATED at MUSOMA this 23rd day of March, 2023.



F. H. Mahimbali

JUDGE

Court: Judgment delivered this 23rd day of March, 2023 in the presence of

Right of appeal is explained.

F. H. Mahimbali

JUDGE