

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA SUB-REGISTRY

AT MWANZA

LAND APPEAL No. 06 OF 2023

(Arising from the Decision of the District Land and Housing Tribunal in Misc. Land Application No 61 of 2022.)

HASSAN MOHAMED RAMADHAN----- APPELLANT

VERSUS

NAJMA KHALFAN SAID----- RESPONDENT

JUDGMENT

*Last order: 23.05.2023
Judgment date: 31.05.2023*

M. MNYUKWA, J.

In his appeal before this Court, the appellant advanced two grounds of appeal challenging the decision of the District Land and Housing Tribunal for Mwanza at Mwanza (DLHT) which are

- i. That the DLHT erred in law to grant extension of time by considering the reasons that were not raised and argued by the respondent.*
- ii. That the DLHT erred in law for granting the extension of time while the respondent did not give sufficient reason for his delay.*



Briefly, it goes that; the appellant filed the Land Application No 45 of 2021 before the ward tribunal of Busweru claiming ownership over a piece of land described as Plot No 706 Block R, Busweru that was registered in favour of the respondent. Before the ward tribunal at Busweru, the matter proceeded ex parte due to non-appearance of the respondent. In his evidence before the ward tribunal of Busweru the appellant stated that, he bought the piece of land from one Sospeter Ndaro for Tsh 1, 000,000 and that the respondent was his witness on a sale transaction between him and one Sospeter Ndaro. He claimed that, the sale agreement was later on lost after the unknown person to have broke his house and stole different properties including the mobile phone, bank card and sale agreement of the disputed piece of land and that he reported the matter to the police.

He further stated that, he made follow up to the land department so as to register his land and he was informed that the disputed piece of land was already registered in favour of the respondent. After hearing the Application, the ward tribunal in its decision delivered on 14/09/2021 declared the appellant as the lawful owner of the disputed land. The appellant then filed the Execution Application before the DLHT where it

was ordered the respondent to surrender the certificate of title to Mwanza City Council.

Aggrieved, the respondent filed different applications before the DLHT including the Misc. Land Application No 61 of 2022 which is a subject to this Appeal prayed before the DLHT to extend time within which the application for revision out of time against the decision of Buswelu Ward Tribunal to be filed.

In arguing the application above application before the DLHT, the respondent (who was the applicant) raised three grounds for the DLHT to consider to grant the extension of time which are illegality on the part of the ward tribunal as he claimed that summons was not served to her, the illegality on the Application No 649 of 2021 and illegality on the part of the ward tribunal for entertaining the land dispute without having a pre-requisite jurisdiction.

After hearing both parties, the DLHT grants the application after exercising its discretionary power after being satisfied that there was an illegality which stands on the issue of the jurisdiction of the ward tribunal and therefore grants the respondent extension of time to file the intended revision within 14 days from the date of the decision.



Aggrieved, the appellant filed the present appeal by advancing the above mentioned grounds of appeal. By the prayer of the parties and with the leave of the court, the appeal was argued by way of written submissions. During the hearing of the appeal both parties were represented. The appellant enjoyed the legal services of Mussa Nyamwelo, learned counsel while the respondent afforded the services of Baraka Dishon, the learned counsel too.

In arguing to support the appeal, the appellant's counsel made a joint submissions on both grounds as they are intertwined. He submitted that, in his affidavit before the DLHT the respondent raised only one issue of not being served with the summons and therefore denied the right to be heard. However, during the hearing of the application which was done by way of written submissions the respondent introduced the issue of the jurisdiction in which the DLHT grants an extension of time based on illegality which touched the issue of the jurisdiction of the ward tribunal.

He went on that, as the issue of jurisdiction was not pleaded in the affidavit, it was an error for the DLHT to grant application based on the pecuniary jurisdiction of the ward tribunal. He avers that, the DLHT wrongly exercised its discretionary power because he decided based on the submissions which are not evidence as it was stated in the case of



**Canel Concrete (T) Ltd v Tanzania National Roads (TANROADS)
& The Attorney General, Misc. Civil Application No 675 of 2020.**

He further submitted that, taking an assumption that the issue of jurisdiction was pleaded in the respondent's affidavit which is not the case, still there is no evidence before the ward tribunal showing that the value of the disputed land exceeded the pecuniary jurisdiction of the ward tribunal of Tsh 3,000,000 as provided under the Land Disputes Courts Act, Cap 216 of 2019. He referred to the case of **Sospeter Kahindi v Mbeshi Mashini**, Civil Appeal No 56 of 2017 to show that no evidence was tendered that suggests that the value of the disputed land exceeded the pecuniary jurisdiction of the ward tribunal.

He retires his submission by averred that, in exercising its discretionary power in extending the time, the same should be excised judiciously otherwise the superior court may interfere the decision of the lower court which was exercised otherwise. He argued that, in the case of **Swabaha Mohamed Shosi v Saburia Mohamed Shosi**, Civil Appeal No 98 of 2018 the Court of Appeal held that, the superior court may interfere the lower court if the discretionary power was wrongly applied. He therefore prays the appeal to be allowed and this Court



proceeded to quash and set aside the Proceedings and the Ruling of the DLHT issued on 23/09/2022.

Responding, the respondent's counsel submitted that, the issue of jurisdiction was pleaded in the the respondent's affidavit as shown in paragraph 4 in Misc. Land Application No 61 of 2022 and both parties got an opportunity to plead it in their respective affidavits as the appellant's affidavit filed on 28/04/2022 in which paragraph 5 bears testimony.

He further averred that, the extension of time was granted based on ileegality in which two points of illegality was featured that is denial of the right to be heard as the summons was not served to respondent and jurisdictional issue and that both parties got an opportunity to argue on both points of illegality. He cited the case of **Mobrama Gold Coopration Ltd v Mineral and Others** (1998) TLR 425 that the Court can exercise its discretionary power to grant extension of time.

He added that, if the point challenged is illegality, then the Court is empowered to extend time as it was stated in the case of **Principial Secretary Ministry of Defence and National Service v Devram Valambhia**, 1992 TLR 185.

He retires praying the appeal to be dismissed with costs,



In a rejoinder, the appellant mainly reiterates what he had submitted in chief.

After the submissions of both parties and after going through the available record, the main issue for consideration and determination before me is whether the appeal is merited.

To start with, it is worthy to state that the appeal centred on one issue only which is the exercise of the discretionary power of the Chairman of the DLHT to grant the extension of time in Misc. Land Application No 61 of 2022.

It is settled that, in the application for an extension of time the court or tribunal has the discretion to grant it. However, the discretion has to be exercised judiciously. It is upon the applicant to show good cause that the delay was with a sufficient cause. (See the cases of **Tanzania Coffee Board v Rombo Millers Ltd**, Civil Application No 13 of 2015 and **Yazid Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & Another**, Civil Application No 12/04 of 2018.). Depending on the circumstances of each case, the applicant also is required to account for each day of delay or else must have shown that, there was a point of illegality that impedes justice as the illegality cannot be left to stand.



As it stands in the records, In Misc. Land Application No 61 of 2022, the respondent on paragraph 4 averred that, she purchased the disputed land on 11th June 2014 from one Sospeter Ndarro for Tsh 1,000,000 and in paragraph 5 she deposed that, in the year 2015, she developed the same by constructing a house and spent about Tsh 40,000,000 and that in May 2021 he started to do follow up to get the certificate of title and she managed to get the same on 30th June 2021.

The above fact in the respondent's affidavit before the DLHT was strongly denied by the appellant who deposed his counter affidavit filed on 28th April 2022 as paragraph 5 states that, he was not consulted by the respondent to build any construction in the disputed land and that the alleged certificate of title was forged and wrongly granted to respondent. He further deposed on paragraph 6 of his affidavit that he owned and possessed the disputed land from 2014.

Again, I perused the submissions of the parties and only to find that both parties argued the point of illegality on the issue of jurisdiction in their respective written submissions filed before the DLHT along with other point of illegality on the service of summons.

Having in mind that one of the ground advanced by the respondent before the DKHT for extension of time was illegality, which when proved,



is a sufficient ground for it to extend the time and does not require to account for each day of delay as illegality cannot be left to stand. In **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No 10 of 2015. The Court of Appeal observed that:

" In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record straight."

However, for the illegality to stand as a ground for extension of time, the applicant must successfully demonstrate the existence of the said illegality on the face of the record and the same should not be discovered through a long drawn process. In **Lyamuya Construction Company Limited v Board of Trustee of Young Womens Christian Association of Tanzania**, Civil Application No 2 of 2010, it was held that:

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts it cannot in my view be said that in Valambia's case, the Court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should, as of right be granted extension of time he applies for one. The Court there emphasized that

such point of law must be that of sufficient importance and I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that will be discovered by a long drawn argument or process.”

Going to the records, it is clear that the affidavit of the respondent deposed the jurisdictional issue as she averred that in the disputed land there was a house that was constructed in the year 2015 before the appellant filed the suit before the ward tribunal and that fact was responded by the appellant in his counter affidavit who pleaded that he was not consulted in the construction of the house in the disputed land.

The records of the ward tribunal also matched with what deposed by the respondent that the land in dispute was bought in 2014 and in the year 2021 before the institution of the suit before the ward tribunal the suit land was already registered in favour of the respondent. For that reason, the issue of pecuniary jurisdiction claimed by the respondent cannot be easily ignored.

The argument of the appellant that the issue of jurisdiction was not pleaded in the respondent's affidavit and raised during the submissions before the DLHT is misplaced because apart from the fact that the affidavit is not supposed to contain legal argument, paragraph 4 the

respondent's affidavit shows that there is the house built in the disputed land and the amount of money spent in construction was stated. Also, it has to be remembered that, it is a trite position of the law that, a point of jurisdiction can be raised at any stage of the case including during the hearing stage.

Whether the point of jurisdictional is proved or not is not the task of this Court at this stage to decide, since the duty of this Court is to state if there was an apparent illegality which justified the Chairman of the DLHT to extend time, and if so whether such illegality met the threshold as stated in **Lyamuya Construction Company Limited v Boeard of Trustee of Young Womens Christian Association of Tanzania**, (supra).

In my considered view,. it is my conviction that the DLHT was justified to exercise its discretionary power to extend time in which based on the circumstances of the case, I don't see any reason to interfere with the decision. Since the point of illegality on the jurisdictional issue dispose of the appeal, I will not entertain the other ground of illegality which based on the issue of service of summons to respondent.

Consequently, the appeal is hereby dismissed with no order as to costs.

It is so ordered.




M.MNYUKWA

JUDGE

31/05/2023

The right of appeal explained to the parties.


M.MNYUKWA

JUDGE

31/05/2023

Court: Judgment delivered on 31st May 2023 in the presence of counsels for both parties.


M.MNYUKWA

JUDGE

31/05/2023