

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB REGISTRY OF MANYARA**

**AT BABATI**

**LAND APPEAL NO. 01 OF 2022**

*(Arising from ruling and order of the District Land and Housing Tribunal for Manyara at Babati, in Misc. Land Application No. 233 of 2022, arising from Land Application 7/2014)*

**CHARLES GIDANYESH.....APPELLANT**

**VERSUS**

**HANOT GIDAMURJANG.....1<sup>ST</sup> RESPONDENT**

**PAULINA CHARLES .....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*27<sup>th</sup> April & 7<sup>th</sup> June, 2023*

***Kahyoza, J.:***

**Charles Gidanyesh** (the appellant) applied for extension of time to file an application for revision against the decision of ward tribunal between **Hanot Gidamurjang** and **Paulina Charles**. **Charles Gidanyesh** instituted the application before the district land and housing tribunal (the DLHT), which found the application without merit and dismissed it.

Aggrieved, **Charles Gidanyesh** preferred the instant appeal with two grounds of appeal, to wit;

- 1) *That, the chairman who presided the trial tribunal (sic) erred in law by his intentional failure to consider the two plausible and sufficient causes of extension of time as sought by the appellant but instead went on prematurely adjudicating merit on ownership of suit land measuring 12 acres. He did not discuss the point of illegality of the decision of trial ward tribunal nor the revision proceedings, as opposed to the counter argument of the 1<sup>st</sup> respondent.*
- 2) *The chairman who presided the trial tribunal (sic) erred in law and fact by failing to analyse the facts of evidence (sic) of the appellant hence thus (sic) reached into unjust decision.*

The Court heard the appeal by way of written submissions. The appellant enjoyed the services of Mr. Raymond Joachim Kim, learned advocate whereas the respondents were unrepresented.

A brief background is that **Paulina Charles**, who is the wife of **Charles Gidanyesh** sued **Hanot Gidamurjang** before the ward tribunal for trespass to her land. **Paulina Charles** claimed that **Hanot Gidamurjang** trespassed to the land she acquired from her later father by way of gift *inter vivos*. She added that her late father was allocated to her father in 1985 when he moved from Orbesh to the disputed area. **Paulina Charles** lost her claim before the ward tribunal on 11.7.2015. **Paulina**

**Charles's** claim was baptized as **Land Application No. 7 of 2014**. She did not appeal.

On 19. 9. 2022, **Charles Gidanyesh**, who was not a part to the proceedings before the ward tribunal applied for extension of time within which to file an application for revision of the decision in ward tribunal. **Charles Gidanyesh** advanced as ground for extension of time that he failed to apply for revision on time as he suffered from cerebral malaria in 2013 and became a mentally disordered (lunatic). He obtained medical attention. **Charles Gidanyesh** deponed that **Paulina Charles** instituted the claim vide **Land Application No. 7 of 2014** against **Hanot Gidamurjang** when he was a mentally disordered person.

**Hanot Gidamurjang** (the first respondent) deponed that **Charles Gidanyesh** lied that he was mentally disordered person when **Paulina Charles** instituted and prosecuted Land application no. 7 of 2014 before the ward tribunal. He contended that had **Charles Gidanyesh** being a mentally disordered person he ought to have attended to Mental health facilities for medical attention.

The DLHT found no merit and dismissed **Charles Gidanyesh's** application with costs. Aggrieved **Charles Gidanyesh** appeal to this Court.

The grounds of appeal raised two issues; **one**, whether **Charles Gidanyesh** advanced sufficient cause for delay; and **two**, whether the DLHT failed to analyze the factual evidence.

**Charles Gidanyesh's** advocate addressed the grounds of appeal jointly, so I will determine them. He submitted that the DLHT instead of considering the merit of the application extension of time it adjudicated the issue of ownership. It failed to consider the grounds of extension of time which the illegality of the decision of the ward tribunal and sickness of the appellant. He submitted that illegality was a sufficient ground for extension of time.

To support the ground that the DLHT did not consider the issue of illegality, he submitted that the judgment of the ward tribunal shows **Paulina Charles** did not identify and describe the farmland. He added that she did not even plead to that effect. He blamed the DLHT for not calling the record of the ward tribunal to satisfy itself. He submitted that was clear illegality to justify the extension of time.

**Hanot Gidamurjang**, the first respondent opposed the appeal contending that did not advance sufficient reason for extension of time.

**Paulina Charles** did not oppose the appeal filed by her husband.

I concur with the appellant's advocate submission that where there is illegality in the impugned decision, time must be extended regardless of the length of delay to rectify the illegality. However, the alleged illegality *must be that of sufficient importance and must be apparent on the face of the record*. Thus, the alleged illegality must be something, which can be proved from the face of record. This stance was alluded in **Ngao Godwin Losero v Julius Mwarabu** Civil Application No. 10/2015 CAT at Arusha (unreported), where the Court of Appeal reiterated its decision in **The Principal Secretary Ministry of Defence and Notional Service Vs. Devram Valambia** [1991] TLR 387 and **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application 2/2010 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 principle that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted*

*extension of time if 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 be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process.** The Court in the case Certainly, it will take a long drawn process to decipher from the impugned decision the alleged misdirection or non-directions on the points of law.” (emphasis is added)*

The appellant's advocate submitted that the DLHT did not realize that **Paulina Charles** did identify and describe the farmland or plea to that effect in the suit before the ward tribunal. He also criticized the DLHT for not calling the record of the ward tribunal to find out if the alleged illegality existed. I find that the alleged illegality did not pass the test laid down in **Ngao Godwin Losero v Julius Mwarabu** (supra) as it is not apparent of the face of record as it **would be discovered by a long-drawn argument or process** and proved by examination of the record of the ward tribunal. In addition, the alleged illegality has no any legal importance. The tribunal had justification not to give any weight to the alleged illegality.

The appellant advocate submitted that the DLHT did not analyze and consider the fact that **Charles Gidanyesh** was mentally sick. He submitted that **Charles Gidanyesh** tendered a record of his treatment in the Government hospital. He added the DLHT ignored that evidence as it did not discuss them. He stated that **Charles Gidanyesh's** mental sickness was the disability described under section 15 of the Law of Limitation act, [Cap. 89 R.E. 2019]. He submitted that **Charles Gidanyesh** was legally disable from 2013 until 2022 as depicted by medial record. He added that the fact that **Charles Gidanyesh** was mentally sick was well known to the villagers.

**Hanot Gidamurjang** vehemently opposed the allegation that **Charles Gidanyesh** was mentally sick.

Indeed, the DLHT did not consider the allegation that **Charles Gidanyesh** delayed because he was sick. It is an error which may be rectified as this is the first appellate court. It is settled that the first appellate has a duty to re-evaluate the entire evidence in an objective manner and arrive at its own findings of fact, if necessary. See the decisions of the Court of Appeal in **Future Century Ltd v. TANESCO**, Civil Appeal No. 5 of 2009, **Leopold Mutembei v. Principal Assistant**

**Registrar of Titles; Ministry of Lands, Housing and Urban Development and the Attorney General**, Civil Appeal No. 57 of 2017, **Makubi Dogani v. Ngodongo Maganga**, Civil Appeal No. 78 of 2019 (all unreported) and **Abel Mathias @ Gunza @ Bahati Mayani vs Republic** (Criminal Appeal 267 of 2020) published in [www.tanzlii.org](http://www.tanzlii.org) as [2023] TZCA 25 cited in approval in **Oscar Lwela v. Republic**, Criminal Appeal No. 49 of 2013 (unreported). The Court of Appeal held in **Future Century Ltd v. TANESCO**, (supra) that-

*"It is part of our jurisprudence that a first appellate court is entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision."*

I reviewed the allegation that **Charles Gidanyesh** delayed to apply for revision because he was sick for period of nine years (from 2013 to 2022). To substantiate his allegation, **Charles Gidanyesh** annexed a photocopy of an Out-Patient Record card to his affidavit. He did not tender the original card when the matter came for hearing.

**Hanot Gidamurjang** opposed the allegation **Charles Gidanyesh** was mentally sick. He also contended that **Charles Gidanyesh** lied in the affidavit that **Paulina Charles**, the second respondent, was his relative

while she is his wife. He added that never attended any Mental facility for attention.

It is on record that **Charles Gidanyesh** suffered from cerebral malaria, which culminated to mental illness from 2013 to 2022. To support that he annexed a photocopy of the outpatient record card. I was unable to find that **Charles Gidanyesh** proved that he fell sick for a period of nine years and that such a serious person for nine years not admitted even once. He was treated as an outpatient. The outpatient record card bears the same handwriting. I am not a handwriting expert but it does not deed one to tell that handwriting is the same from 2013 from 2022. Not only that but also, **Charles Gidanyesh** was attended at Simbaye Health Centre by two different Doctors who had similar handwriting. The signature of a particular doctor looks different every time he signed the card. I was suspicious whether **Charles Gidanyesh** was sick and attended as alleged.

In addition, although **Charles Gidanyesh** produced an outpatient card, it is indicated that he was on 20.6.2020 admitted but there is no indication as to when he was discharged. I get the impression that the card was manufactured to fabricate evidence that **Charles Gidanyesh** was sick for nine years.

**Charles Gidanyesh** did not produce payment receipt. It is a fact commonly that a patient pay for services offered by government hospital health centres. Had **Charles Gidanyesh** attended hospital for medical attention, he would have tendered receipts of payment. I am in total agreement with **Hanot Gidamurjang** that **Charles Gidanyesh** was not mentally sick or else he would have attended mental facilities for medical attention. Being a mentally disordered person for period of nine years is not something to deal with lightly.

**Hanot Gidamurjang** deponed that **Charles Gidanyesh** lied that **Paulina Charles** was her relative. I wish to quote **Charles Gidanyesh's** averment as follows-

*"5 Kwamba mjibu maombi wa 2 ambaye kwa mahusiano ya kindugu ni mtoto wangu kwa maana kwamba baba yake ni kaka aliyezaliwa na baba yangu mkubwa kwenye ukoo wa babu yetu, alipoona nimekuwa kichaa akaamua kuja kuvamia eneo langu akijua mke wangu hawezi kupambana naye, lakini mke wangu pamoja na harakati za kuniuguza na majukumu ya familia aliweza kufungua kesi baraza la kata ya Simbay ambapo alishindwa kesi hiyo"*

It is true **Charles Gidanyesh** lied in the affidavit. **Charles Gidanyesh** did not counter by affidavit **Hanot Gidamurjang's** allegation

that **Paulina Charles** was his wife. In addition **Paulina Charles** deponed in her affidavit that **Charles Gidanyesh** was her husband. She averred that-

*"Kwamba mme wangu alipata matatizo ya kiafya toka mwaka 2013 hadi hivi karibuni alipo pata kupona na pia kwa kipindi hiki ugonjwa mjibu maombi wa kwanza alingia kwenye shamba ndipo nikasimama kutetea shamba lakini nikashindwa."*

It is clear as daylight that **Charles Gidanyesh** lied in his affidavit. The law is settled that an affidavit containing false information cannot be relied upon by the Court to decide a matter. The Court of Appeal pronounced itself in **Damas Assey and Another vs Raymond Mgonda Paula and 8 Others**, Civil Application No. 32/17 of 2018 and **Kidodi Sugar Estate and 5 Others V Tanga Petroleum Co. Ltd**, Civil Application No. 110 of 2009, (both unreported), where it cited with approval its decision in **Ignazio Messina vs Willow Investments SPRL**, Civil Application No. 21 of 2001 that:

*"An affidavit which is tainted with untruths is no affidavit at all and cannot be relied upon to support an application. False evidence cannot be acted upon to resolve any issue."*

False evidence of contained in **Charles Gidanyesh**'s affidavit rendered the whole affidavit a nullity. It cannot be acted upon to resolve any issue. Thus, **Charles Gidanyesh**'s application is incompetent for want of affidavit and meritless for failure to prove that he was sick for nine years for that reason unable to litigate in the ward tribunal.

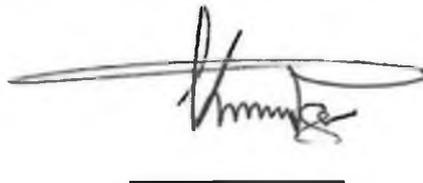
In the end, I find that, appeal without any merit and dismiss it. I uphold the DLHT's findings that **Charles Gidanyesh** did not adduce sufficient reasons for delay. **Charles Gidanyesh** is condemned to pay costs.

**Dated at Babati** this 7<sup>th</sup> day of June, 2023.



**John R. Kahyoza, J.**

**Court:** The Judgment delivered in the presence of the appellant's advocate Mr. Kim and 1<sup>st</sup> respondent and the second respondent. The appellant was absent in person. B/C Ms. Fatima present. Right to appeal explained.



**John R. Kahyoza, J.**