

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI REGISTRY

AT MOSHI

LAND APPEAL NO. 12 OF 2022

(Arising from the Ruling of District and Housing Tribunal for Moshi at Moshi dated 11th October 2022 in Misc. Land Application No. 141 of 2022 and originating from decision of Old Moshi Magharibi Ward Tribunal in Shauri NA. 2/2021)

RICKSON P. KISANGAAPPELLANT

VERSUS

WILINGTON NGOWIRESPONDENT

RULING

15th May & 10th July, 2023

A.P.KILIMI, J.:

The appellant Rickson P. Kisanga on 28th day of October 2021 lost the case at Old Moshi Magharibi Ward Tribunal in case no. 2/2021, being dissatisfied with the whole decision of the said ward tribunal, he opted to appeal to the next level of land dispute settlement, but, before doing so, he revealed that the time was not in his part. Subsequently, the appellant filed an application at Moshi District Land and Housing Tribunal praying for

extension of time to file appeal against the said Ward Tribunal decision. He effected this mission vide Miscellaneous Land Application No. 141 of 2022, whereas on 11th day of October, 2022 Moshi District Land and Housing Tribunal after heard on merit dismissed his application on the reason, he has failed to establish sufficient grounds for extension of time to be granted.

Still dissatisfied, the appellant has knocked the door of this court basing on the following grounds;

1. *That the Trial Chairman erred in law and fact when refusing to grant extension of time within which to file an appeal out of time against the decision of Shauri Na. 2 of 2021 of Old Moshi Magharibi Ward Tribunal without taking notice that the decision tainted with illegalities as the Ward Tribunal lack jurisdiction to determine the matter pursuant to **Written Laws (Miscellaneous Amendment Act) No.3 of 2021) No.3 of 2021**, he should note that illegalities itself suffice extension of time.*
2. *That the Trial Tribunal erred in law and fact when refusing to grant extension of time within which to file an appeal out of time against the decision of shauri Na.2/2021 of Old Moshi Magharibi Ward Tribunal while the Appellant advanced sufficient reasons.*
3. *That the Trial Chairman erred in law and fact when refusing to grant extension of time within which to file an appeal out of time against the decision of Shauri Na.2 of 2021 of Old Moshi Magharibi Ward Tribunal without rule out on tainted*

illegalities on the decision of Ward Tribunal, if could not so erred could have held that illegalities itself suffice a good reason for extension.

4. *That, the Trial Tribunal erred in law and fact when refusing to grant extension of time within which to file an appeal out of time against the decision of shauri Na.2 of 2021 of Old Moshi Magharibi Ward Tribunal without properly evaluate the evidence annexed in the Applicant's affidavit in support of the application for extension of time.*

When this appeal was placed before me for hearing, appellant enjoyed the services of of Charles Mwangani learned counsel holding brief of Mr. Ceaser Shayo also learned advocate whereas the respondent was represented by Mr. Mussa Mziray learned Counsel. Both prayed this appeal be argued by way of written submissions, I acceded and schedule for filing the same was ordered, I acknowledge their prompt compliance.

In supporting of the application, the counsel for appellant opted to argue No.1 and 3 together as one cluster, and submitted that, the proceeding before Old Moshi Magharibi Ward Tribunal were tainted with illegalities as the tribunal had no jurisdiction to determine and decided the matter on merits, this is because, The written Laws (Miscellaneous Amendment Act) No. 3 of 2021 amended section 13 of the Land Disputes

Court Act, Cap 216 R.E 2019 to the extent that the Ward Tribunal can only mediate the parties and if failed parties may institute the matter before District Land and Housing Tribunal. The counsel insisted that, the written Laws (Miscellaneous Amendment Act) No.3 of 2021 was signed and started to be used on 28th day of September, 2021 while the decision of Old Moshi Magharibi Ward Tribunal was delivered on 28th day of October, 2021. He further stated if the trial chairman could have noted that, itself suffice a good reason for extension. To buttress his contentions, the learned counsel for the appellant referred to me the case of **Edward Kubingwa v. Matrida A. Pima** Civil Appeal No. 107 Of 2018 CAT at Tabora (tanzilii).

In the second ground, the counsel for appellant argued that, the appellant substantiates his delay at the tribunal by advancing reason for him being sick hence failed to appeal within time. To prove the same, he attached his medical report to his affidavit which was a letter dated 25th day of May, 2022 from St. Joseph Hospital, which stipulates that he was attended at that Hospital on 28th day of September, 2021 with complain of fracture of the femur. The reports went further and states that patient was diagnosed with fracture which kept in the Ward for 60 days and thereafter

he was kept on bed rest for 60 days. But the chairman misconceived in his verdict with regard to the sickness of the Appellant.

Submitting to the 4th ground, the counsel for appellant seems to reiterate the second ground by arguing that if the Chairman could have scrutinized the evidence and evaluate it could have noticed that each and everything was clearly stipulated in the medical report, he would extend time to the appellant to file an appeal out of time.

On the adverse side, the learned advocate for respondent opposed vigorously the appeal. In regard to issue of illegalities raised on first and third ground, the counsel contended that, the appellant having found that he had no any sufficient reasons, he has now came up with the issue of jurisdiction by citing the provisions of the Written Laws (Miscellaneous Amendment Act) No.3 of 2021. He further contended that; the enactment of the cited law above came into operation on the 11th day of October, 2021 after the same being published in the Government Gazette of the United Republic of Tanzania No. 41 Vol. 102 of 11th day of October, 2021. The allegation that the said law came into operation on 28/9/2021 is an afterthought and misleading.

The respondent's counsel submitted further that, the ward Tribunal of Old Moshi Magharibi was correct to hear and determine the matter presented before it, as the said shauri No. 2/2021 was filed thereat on 7th day of May, 2022 within which the tribunal had requisite jurisdiction, hence the allegation by the appellant has nothing to affect the decision of the ward tribunal and that position cannot be used as a blanket for the court to allow the appellant appeal. The counsel established that, at the time the law cited above came into operation the case before ward tribunal had already commenced before and the decision was made thereof after hearing the respondent. The counsel insisted that the decision of the Moshi District Land and Housing Tribunal was correct after discovering that the trial tribunal had jurisdiction to entertain the matter.

Responding in respect to the case of **Edward Kubingwa** (supra) cited by the appellant. The counsel for respondent argued that it is distinguishable on the reasons that in that case, the Court of Appeal proceeded to quash and set aside the proceedings and judgment of all subordinates' court and the court directed the suit to be heard de novo. However, the counsel continued to state that, in the advert of the recent

amendment made to the Act, it is not practicable to order the suit to be heard de novo.

Arguing on the issue of accounting each day of delay, the counsel for respondent submitted that, despite for the appellant rightly cited the case to that effect, he failed to connect with this matter. This because, the appellant have failed to account each day of delay from 21/5/2021 when he became aware of the matter before the ward tribunal in which he refused to attend after that date and without any justified reasons he rushed to the tribunal and filed application No. 66/2021 which he also abandoned the same and waited until served with the copy of application for execution when he started to seek for extension of time to challenge the decision of the ward tribunal delivered 2021 almost 8 months. Therefore, the appellant has failed to account each day of delay, hence failed totally to advance any single reasons for delay to file his application before the Tribunal. To fortify this the respondent counsel cited the case of **Elias Mwakalinga vs. Domina Kagaruki & Others** (civil Application No. 120 of 2018 (2019) TZCA 231 and **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No.3 of 2007.

Responding to the second ground, the counsel for respondent contended that, on the issue of sickness, the tribunal clearly scrutinized it and found out that the same does not qualify to be sufficient reasons as the purported medical report dated 25/5/2022 was just a letter with no dates of being in hospital, admitted date and or discharge date hence the tribunal found that the appellant was not sick at the time and has failed to advance sufficient reasons to convince the tribunal and this court as well to grant his prayers.

In the fourth ground, the counsel for respondent argued that the tribunal chairman was correct in its finding after carefully scrutinize the evidence in records specifically the purported medical report which was tainted with a lot of doubt to be believed to any reasonable person as clearly stated above. Therefore, pray this appeal be dismissed for want of sufficient reason to challenge the decision of the tribunal.

In his brief rejoinder, the counsel for appellant first, insisted on ground of illegalities, and argued that nowhere the chairman has rule out the issue of illegalities despite of it being stipulate in the appellant affidavit in support of the application. And secondly, the Advocate for the

Respondent conceded the written Laws (Miscellaneous Amendment Act) No. 3 of 2021 which amended section 13 of the Land Disputes Court Act, Cap 216 R.E 2019 to the extent that the Ward Tribunal only can mediate the parties and if failed parties may institute the matter before District Land and Housing Tribunal. He further added said amendment was signed and started to be used on 28th day of September, 2021 while the decision of Old Moshi Magharibi Ward Tribunal was delivered on 28th day of October, 2021 after one month from the date of enactment hence if the Trial chairman could have noted that, itself suffice a good reason for extension or make necessary order to the ward tribunal to mediate. The counsel further argued that this amendment being the procedural laws acts retrospectively. To buttress his stance referred the case of **DPP vs. Iddi Hassani Chumu and another** Criminal Appeal No. 430 of 2019 CAT At Arusha (Tanzlii).

Rejoining to the ground of sickness the counsel contended that the proof lies to the medical report he appended in affidavit in support of application which is the letter dated 25th day of May, 2022 from St. Joseph Hospital To Whom It May Concern. The said letter title as Medical Report of

Richson Kisanga. The counsel contended further that report stipulated that he was attended at their hospital on 28th day of September, 2021 with complain of fracture of the femur. The reports went further to state that patient was diagnosed with fracture which kept in the Ward for 60 days and thereafter he was kept on bed rest for 60 days. Therefore, this clearly shows that the Honorable chairman misconceived in his verdict with regard to the sickness of the Appellant.

Having summarized the rival arguments of learned counsels, I will also take into account Section 20 (2) of the Land Dispute Court Act (Cap 216 R.E. 2019) which provides that,

“Notwithstanding the provision of subsection (1), the District Land and Housing Tribunal may for good and sufficient cause extend the time for filling an appeal either before or after the expiration of forty-five days”.

It's clearly stipulated that the extension of time can only be granted upon good cause being shown and where the delay has not been caused or contributed by the dilatory conduct on the part of the applicant. See **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002

(CAT, unreported) and **Jaluma General Supplies Limited vs. Stanbic Bank Limited**. Civil Application No.48 of 2014 (CAT, unreported)

With the above position, any party who seek before any court or tribunal the order of extension of time should establish the good cause for his/her delay taking into consideration such factors as the length of delay, the reason for delay and the chance of success of the intended appeal.

In this matter, the issue for determination is whether appellant advanced good cause to be granted extension of time. In this appeal, the appellant's counsel advanced main two reasons for delay, I will discuss both reasons taking into account the rival submissions of both counsels.

Starting with the 1st and 3rd grounds as contended by appellant counsel, that the proceeding before Old Moshi Magharibi Ward Tribunal were tainted with illegalities as the tribunal had no jurisdiction to determine and decided the matter on merits because The written Laws (Miscellaneous Amendment Act) No. 3 of 2021 amended section 13 of the Land Disputes Court Act, Cap 216 R.E 2019 to the extent that the Ward Tribunal can only mediate the parties and if failed parties may institute the matter before District Land and Housing Tribunal. The counsel insisted that, the written

Laws (Miscellaneous Amendment Act) No.3 of 2021 was signed and started to be used on 28th day of September, 2021 while the decision of Old Moshi Magharibi Ward Tribunal was delivered on 28th day of October, 2021 hence if the Trial chairman could have noted that, itself suffice a good reason for extension.

On the adverse party, Mr Mussa Mziray in respect of the above grounds, he strongly objected the reasons of illegalities by arguing that the enactment of the above cited law came into operation on the 11th day of October, 2021 after the same being published in the Government Gazette of the United Republic of Tanzania o. 41 Vol. 102 of 11th day of October, 2021. The allegation that the said law came into operation on 28/9/2021 is an afterthought and the appellant is trying to misleading this honorable court.

In addressing the above ground, the law is trite to the effect that a claim of illegality can only be entertained if it meets certain criteria. That is the one which is apparent on face of record, is of sufficient importance and the determination of it shall not involve a long-drawn process of argument These criteria were settled by Court of Appeal in the case of **Lyamuya**

**Construction Company Ltd vs. Board of Registered Trustees of
Young Women's Christian Association of Tanzania Civil
Application No.2 of 2020.**

I have carefully scanned the record of trial Tribunal where an applicant made application for extension of time by chamber summons supported by the affidavit. In appellant's affidavit at paragraph 6 raised the issue of sickness where at paragraph 8 and 10 raised the issue of illegalities to the extent that the applicant was condemned unheard. The trial Tribunal, decided on the issue of sickness, thus the right to be heard as advanced by applicant is not tenable.

Moreover, illegalities based on the written Laws (Miscellaneous Amendment Act) No. 3 of 2021 that amended section 13 of the Land Disputes Court Act, Cap 216 R.E 2019 as contended by an applicant's counsel were never raised on the Trial tribunal that is why the decision of trial tribunal did not rule on that issue. I agree with the respondent's counsel that the trial tribunal could not determine the said illegality as was not raised by appellant.

However, notwithstanding with the above, that the appellant raised the issue of illegalities based on jurisdiction of Old Moshi Ward Tribunal in this appeal, I understand that the illegality may in itself suffice to move the court to grant extension of time and thus as an appellate court. As long as the issue of jurisdiction is the point of law, I am of the settled mind that illegality need to be addressed and discussed even on appeal.

Since illegality advance by applicant in trial tribunal for him to be granted extension of time was the right to be heard upon which he condemned to be unheard before Old Moshi Ward. The decision of the tribunal at page 5 and 6 has persuaded me to reproduce the part of its ruling as follows;

Nianze kwa kusema kwamba hoja ya mwombaji kuwa alikuwa hajui kama kuna uwepo wa shauri Na.02/2021 katika baraza la kata siyo ya kweli hata kidogo. Kwa mujibu wa kumbukumbu za baraza ka kata mnamo tarehe 21/05/2021 mwombaji ambaye alikuwa mdaiwa alikuwepo. Mwombaji (mlalamikiwa) alisomewa lalamiko dhidi yake na katibu wa baraza ambapo hakusema chochote na kusema shauri lipo mahakama ya wilaya. Ninanukuu sehemu hiyo ya mwenendo wa baraza la kata katika ukurasa wa tatu.

"Mlalamikaji amekataa kueleza chochote mbele ya ya Baraza hili kwa madai ya kuwa yeye hana chochote cha kuzungumza, kwani

amefika kwa ajili ya kutoa barua kwamba, shauri lake lipo mahakama ya wilaya na baraza na kudai baraza hili halina uwezo wa kusikiliza lalamiko la mdai”

Lakini pia katika ukurasa wa 4 wa mwenendo wa baraza la kata mwombaji aliulizwa swali na wajumbe wa baraza la kata kisha kujibu swali hilo. Hivyo baraza hili linaamini kwamba mwombaji alifahamu uwepo wa shauri hilo katika baraza la kata lakini kwasababu anazozifahamu yeye mwenyewe alikataa kuhudhuria na hivyo shauri kuendelea upande mmoja. Hivyo hoja ya mwombaji ina nia ya kupotosha baraza hili kuhusu ukweli.

From the above findings and observations made by the tribunal, I am of considered opinion that the trial tribunal decided the matter on merits. The right to be heard raised by an applicant that was the point of law sufficient to constitute illegality hence the sufficient reasons to challenge the decision of Old Moshi Ward Tribunal, under the above transpired from the record, the said right to be heard was rightly given to him but he condoned it. Since, this is the record of the court, I am presumed to believe that it shows what transpired. (See the case of **Halfani Sudi vs. Abieza Chichili** [1998] TLR 527). In the premises this ground of right to be heard must fail.

In respect to the point raised by the applicant that, the Ward Tribunal can only mediate the parties and upon failure then the matter should be forwarded to the District Land and Housing Tribunal, pursuant to the written Laws (Miscellaneous Amendment Act) No.3 of 2021 was signed and started to be used on 28th day of September, 2021 while the decision of Old Moshi Magharibi Ward Tribunal was delivered on 28th day of October, 2021. With respect, the counsel for the applicant in my view has misguided himself in applying the said law in this matter.

It is true that the said law was assented on 28th day of September, 2021, but it came into force on 11th October, 2021 upon being published in the Government Gazette No. 41. Vol.102. By then this law comes into the operation, the case at the ward tribunal started hearing inter parties as shown above since on 21/5/2021 and thereafter proceeded ex-parte and judgment delivered 28th day of October, 2021. Therefore, it is my considered opinion when the above law came into operation the case was already started to be heard by the Ward Tribunal, and since hearing was already on substantive issues, the said law cannot act retrospectively as procedural law. I wish to reproduce section 14 and 32 (1) of the

Interpretation of Laws Act Chapter 1 R.E. 2019 for purpose of showing when the law comes in operation and its consequences for a case already started with hearing;

"S.14. Every Act shall come into operation on the date of its publication in the Gazette or, if it is provided either in that Act or in any other written law, that it shall come into operation on some other date, on that date.

S.32 (1) Where a written law repeals an enactment, the repeal does not, unless the contrary intention appears—

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;

(c) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;

(d) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;

(e) affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against that enactment;

*(f) affect any investigation, **legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture, and any such***

investigation, legal proceeding or remedy may be instituted, continued, or enforced, and any such penalty or forfeiture may be imposed and enforced as if the repealing written law had not been passed or made."

[Emphasis supplied]

Having adumbrated the above law, I am of the considered opinion the applicant can not seek a refuge of this law as ground for extension of time to this application, I thus hold this point has no merit, consequently it also fails.

Concerning the ground of sickness, the learned counsel for appellant as stated above argued strongly, that the delay to lodge an appeal within time was never contributed by his inaction but attributed to what he called sickness. His proof lies to the medical report he appended in affidavit in support of application. That the Honorable chairman in rejecting that ground he state the following;

"Niseme tu kwamba kinachosemwa kwamba ni taarifa ya utabibu (medical report) ya tarehe 25/5/2022 hakina sifa ya kuwa taarifa ya utabibu. Ni barua tu ambayo imeandikwa. Baraza lilitarajia kuona taarifa inayoonesha

tarehe alizokuwa hospitalini, tarehe ya kulazwa pamoja na tarehe ya kuruhusiwa (discharged), Kutoka Hospitalini.”

In this juncture, I wish to observe that when sickness is sought to be a ground for delay it must be established, not only that the said person was sick but also that the said sickness was an impairment from attempting the pursuit.

The said letter title as Medical Report of Rickson Kisanga. It stipulates that he was attended at their hospital on 28th day of September, 2021 with complain of fracture of the femur. The reports went further and state that patient was diagnosed with fracture which kept him in the Ward for 60 days and thereafter he was kept on bed rest for 60 days. According to the report it means the applicant felt sick for 120 days which are almost four months. The records shows that the decision of Old Moshi Ward Tribunal was delivered on 28th day of October 2021 from there an applicant made application for extension of time on 31st day of May 2022 almost seven months later. Developing from the above, even if you exclude four months stated above that he was on bed, three months remained unexplained, thus remained unaccounted for. In view thereof, I'm of the strong view

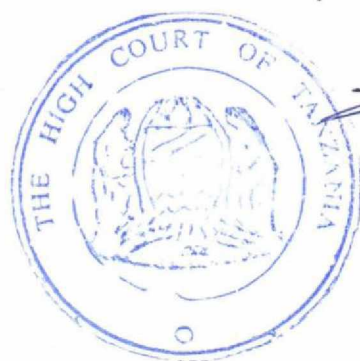
that the applicant has not proved that he felt sick for the whole of seven months and furthermore he did not show thereafter how the said sickness actually barred him to appeal in time.

The reasoning above is nothing new in our jurisprudence. In **Shembilu Shefaya vs. Omary Ally (1992) TLR 245** the applicant sought extension of time on the ground of sickness without giving any elaborate explanation on how the illness restrained him from pursuing the intended cause. I therefore concede with the ruling of trial tribunal that the appellant failed to properly account for each day so delayed.

On the premises and from what I have endeavored to discuss above, the application is devoid of merits, since the Applicant has failed to furnish sufficient reasons for extension of time. The Application is accordingly dismissed with costs.

It is so ordered.

DATED at **MOSHI** this 10th day of July, 2023.



A. P. KILIMI

JUDGE

10/7/2023