

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB REGISTRY
AT ARUSHA**

LAND APPEAL NO. 61 OF 2022

*(C.F Misc. Land Application No. 68 of 2021 and Land Application No. 227 of 2020 in
the District Land and housing Tribunal for Arusha originating from Murieti Ward
Tribunal in Land Application No 2 of 2020)*

HUSNA HASANI APPELLANT

VERSUS

WILSON JOHN MANGIDA RESPONDENT

JUDGMENT

13th March & 22nd May, 2023

KAMUZORA, J

The Appellant herein was the respondent before Murieti Ward Tribunal in Land Application No. 2 of 2020 that was decided in favour of the appellant herein. The appellant proceeded on filing application for execution No. 227 of 2020 before the District Land and Housing Tribunal (DLHT) for Arusha. Before execution could be effected, the appellant instituted before the same Tribunal an application for extension of time to appeal against the decision of the Ward Tribunal, Miscellaneous Land Application No. 68 of 2021. The application was dismissed by the DLHT

in its ruling dated 10th May 2022 for being devoid of merit. Being aggrieved by ruling, the appellant preferred an appeal to this court on the following grounds;

- 1) That, the trial tribunal erred in law and fact for failure to find legal reasons adduced by the Appellant to extend time for the Appellant to file appeal out of time against the decision in Land Complaint No 2 of 2020.*
- 2) That, the Trial Tribunal erred in law and fact for failure to consider points of law adduced by the Appellant herein as the reasons for extension of time.*

The Appellant was represented by Ms. Francisca Lengeju, learned advocate from Legal and Human Rights centre while the Respondent enjoyed the service of Mr. Omary Gyunda, learned advocate. Counsel for the parties opted to argue the appeal by way of written submissions and they both complied submissions schedule save for rejoinder submission.

Arguing in support of ground one, the counsel for the Appellant submitted that the reason for the Appellant's delay to lodge the appeal before the DLHT within time was due to the fact that the Appellant's mother got ill and later passed away. That, the Appellant was the one responsible for taking care of her mother and after her death, the Appellant took time in organizing and supervising family issues hence, was unable to file her appeal on time.

The counsel for the Appellant further submitted that, mourning is a serious matter which consumes one's mental stability and attention. That, it is until the mind is settled that a person can remember to pick other aspects of life. That, the Appellant was going through such situation hence, she was time barred from filing her appeal. That, the DLHT did not consider that reason as cogent and strong despite the fact that the Appellant tendered evidence proving that she travelled to Singida to attend her sick mother and stayed there for a long time.

Arguing in support of ground two, the Appellant's counsel submitted that the reason for delay in filing appeal on time was not the Appellant's faults or negligence rather, it was attributed by reasons out of her control. The counsel added that, there was also issue of illegality of the decision of the Ward Tribunal (the trial Tribunal) which is a reason for extension of time to appeal out of time. In Support of this argument the appellant's counsel referred two cases; **Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT at Arusha (Unreported), **Mbogo and another Vs. Shah** [1968] 1 EA 93. Referring Article 107 A of the Constitution of the United Republic of Tanzania 1977, the Appellant's counsel calls for this court to

dispense justice without being tied up with technicalities. Basing on the above submission, the Appellant prayed for the Appeal to be allowed.

Contesting the appeal, the counsel for the Respondent argued that, extension of time is the discretion of the court but, in granting the application, the court is bound to act judiciously. That, in doing so, the applicant must satisfy the court that she was reasonably prevented to take action by unusual circumstance in a particular time failure of which, the application must be dismissed as it was for the Appellant before the DLHT.

The Respondent's counsel further submitted that, there is no provision of law which defines what amounts to good cause rather judicial decisions have tried to demonstrate what amounts to good cause. Reference was made the case of **Jumanne Hassan Billing Vs. Republic**, Criminal Application No. 23 of 2012 CAT (Unreported). Pointing at the present application he submitted that this court can read the affidavit filed before the DLHT to see whether the Appellant adduced good reasons for the grant of extension of time and whether the DLHT did not consider the said reasons.

Pointing at paragraph 6 to 9 of the affidavit filed in support of the application before the DLHT the counsel for the Respondent explained

that, the reason for sickness and death of appellant's mother was deponed but, no medical report was attached to prove the sickness and no death certificate to prove death. That, although sickness has been regarded as good cause for the extension of time, in the present matter, it is not the Appellant who was sick rather her mother hence, the Appellant could have sent any other person to file her documents within time. To Buttress his submission, the counsel for the respondent referred the case of **Bertha Israel Behile Vs. Zakaria Israel Kidava**, Misc. Civil Application No. 12/2012 HC (Unreported). Citing section 110 of the evidence Act Cap 6, the respondent argued that he who alleges must prove. He was of the view that, the Appellant failed to prove sickness of her mother and her death hence, the DLHT rightly determined the application before it.

On the second reason of illegality, the counsel for the Respondent submitted that there is no any point of illegality pleaded by the appellant in the affidavit filed in support of application hence, the same was an afterthought. For this reference was made to the case of **Pasinettia Driano Vs. Giro Gest Limited and another** [2002] TLR 89. It is the Respondent counsel's prayer that the appeal be dismissed for being devoid of merit.

I have considered the record, grounds of appeal and the submissions for and against the appeal. The major issue calling for the determination by this court is whether the DLHT properly dismissed the Appellant's application for extension of time.

The first ground is that, the trial tribunal erred in law and fact for failure to find legal reasons adduced by the Appellant to extend time for the Appellant to file appeal out of time against the decision in Land Complaint No 2 of 2020. This demands evaluation of the reasons deponed by the appellant in support of application for extension of time. The reasons for the delay were stated under paragraphs 4 to 9 of the affidavit in support of application and were captured by the DLHT at page 3 of the ruling. From the appellant's affidavit three points were deponed as reasons for delay; **delay in supply of copies of ruling, sickness and the death of appellant's mother, ignorance of law and reference of the dispute to the District Commissioner's office.** All the above reasons were well tacked by the DLHT which explained the basis for disregarding the appellant's reasons for delay.

Starting with the first reason, the appellant alleged that she applied for copies of decision of the Ward Tribunal and the same were supplied to her on 8th August 2020. Under section 20 of the Land

Disputes Courts Act, an Appeal from the Ward Tribunal to the DLHT must be filed within 45 days after the date of decision of the Ward Tribunal. As observed by the DLHT, the decision of the Ward Tribunal was delivered on 2nd July 2020 thus, by 8th August 2020 when the appellant was supplied with copy of ruling, she was still in time and could have filed the appeal. Thus, this could not have stood as a good reason for the DLHT to grant extension of time.

On the second and third reasons the appellant claimed that she was barred by her mother's sickness and death from filing the appeal on time. She also claimed that due to ignorance of law, after she returned to Arusha, she reported the dispute to the office of the District Commissioner where they agreed with the respondent to settle hence, did not appeal. The respondent denied the idea of settlement and challenged Appellant's action of referring the dispute to the District Commissioner's Office.

I agree that sickness especially for a party to the case may be a good reason for extension of time if well proved. See the cases of **Pimak Profesyonel Mutfak Limited Sirket Vs. Pimak Tanzania Limited & another**, Misc. Application No. 55/2018 HC of TZ at Dar es Salaam (Unreported) and **John David Kashekya Vs. The Attorney**

General, Civil Application No.1 of 2012 (Unreported), CAT. However, where sickness is alleged for another person not a party to the case, more evidence is needed to demonstrate how that sickness became hindrance to a party to the case from acting on time.

In this appeal the appellant alleged that she travelled to Singida to attend her sick mother on 10th August, 2020. She stayed there until her mother passed away on 18th September 2020. After burial ceremony, she had to attend family issues until 04th November 2020 when she came back to Arusha. On 05th November, she decided to take administration measures by reporting the dispute to the District Commissioner's office. It seems that the appellant took almost one and half month attending family issues and when she came back did not find a reason to pursue her right in a proper channel by filing an application and instead decided to take administration action. In the eyes of any reasonable person, the above are not sound reasons for grant of extension of time. I say so because, no hospital record on sickness of appellant's mother or death certificate. Again, there is no reasonability of the time spent in handling family matters. Even if I agree that the appellant was barred by her mother's sickness and death from filing the appeal on time, still she did not account for other days of delay. If the

appellant returned to Arusha 04th November 2020 as she alleged, there is no good reason for her not to lodge the application by that time. The claim by the appellant that she was blind of legal requirement and was pursuing the matter through administrative ways is unmaintainable. In addition to what was argued by the Tribunal Chairman, it is a long-settled principle that ignorance of law has no excuse and administration or political measures in anyway does not stand to be a good reason for extension of time. See the case of **the Registered Trustees of the Archdiocese of Dar es salaam Vs. Bunju Village Government and others**, Civil Appeal No. 147 of 6006 CAT at DSM (unreported), that was also cited by the Tribunal Chairman.

Assuming that administration measures are acceptable reasons, still the DLHT noted and it is undisputed that no evidence was attached proving that the dispute was undergoing settlement at the office of the District Commissioner. As per paragraph 9 of the affidavit in support of application, the appellant's decision to take action of filing application for extension of time came after she was served with execution order issued on 12th February 2021. This proves that she never intended to pursue an appeal and she had no good reason for not filing the same on time. The DLHT was correct in concluding that reference of dispute to District

Commissioner's office was not a good reason for extension of time. In short, the appellant failed to account each day of delay as it was propounded in the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 CAT at Arusha (Unreported).

The second ground of appeal is that the Trial Tribunal erred in law and fact for failure to consider point of law raised by the Appellant herein as reason for extension of time. I do not agree with the argument by the counsel for the appellant that the DLHT failed to consider point of law/illegality as reason for extension of time. Point of illegality was well captured by the DLHT at page 8 to 9 of the ruling. It is clear that such reason was not pleaded in the affidavit in support of application for extension of time but raised during submission. In the case of **the Registered Trustees of the Archdiocese of Dar es Salaam Vs. The Chairman of Bunju Village Government & others**, (supra) it was held that,


"An affidavit is evidence, we think it was expected that the reasons for the delay would be reflected in the affidavit, in absence of reasons it occurs to us that there was no material evidence upon which the judge would determine on merit the application before him..."

Subscribing the above reasoning and in considering that illegality was not deponed under the affidavit filed in support of the application, I find that the DLHT was correct to disregard it. I therefore agree with the DLHT's conclusion that the Appellant failed to advance good and sufficient reasons warranting the grant of Application for the extension of time.

In the final analysis and considering all what has been stated above, the appeal is devoid of merit and the same stands dismissed. I find no valid reason to temper with the decision of the DLHT and the same is hereby upheld. The Appellant shall bear costs of this appeal.

DATED at **ARUSHA** this 22nd day of May, 2023.




D.C. KAMUZORA
JUDGE

