

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. LAND APPLICATION NO.33 OF 2023

***(Originating from Misc. Land Application No.24 of 2022, before
High Court of Tanzania at Shinyanga)***

NDINGW'A MWANDU APPLICANT

VERSUS

NZUGALU GWANCHELE RESPONDENT

RULING

18th July and 4th August 2023

F.H. MAHIMBALI, J:

The applicant herein is seeking leave of this court to appeal to the Court of Appeal of Tanzania against the ruling of this court in Misc. Land Application No.24 of 2022 between her and the respondent in which his application to appeal out time against the decision of the District Land and Housing Tribunal for Kahama in Land Appeal No. 24 of 2022 which was determined exparte.

The grounds for leave as set in the applicants' affidavit are to the effect that:

- (i) The matter proceeded *experte* at Kahama District Land and Housing Tribunal without notifying the applicant nor his Attorneys.
- (ii) That the applicant applied to the Kahama District Land and Housing Tribunal for copies of judgement and Decree on 26th March 2022 but the same were supplied to him on 25th April 2022 when he was already time barred.
- (iii) That the Applicant and his Attorney were not notified on the day of delivering of an *experte* judgement in appeal by the Kahama District Land and Housing Tribunal.

At the hearing of this application Mr. Sutayi Ntambi Kazungu, (holder of power of attorney for the Applicant) appeared for the Applicant while Mr. Juma Chelehani (holder of power of attorney for the respondent) appeared for the respondent.

Mr. Mr. Sutayi Ntambi Kazungu, submitting on the grounds adopted set forth in the applicant affidavit prayed that the application be granted since right to be heard is a fundamental right of a party to the case as the applicant was not accorded the same by the trial tribunal.

Mr Chelehani for the respondent, responding on the grounds of the applicant, prayed for the counter affidavit of the respondent be adopted and thus the applicant's application be dismissed with cost.

Having heard both parties, I have now to determine this application and the issue is whether the application discloses sufficient cause.

The applicant's complaints are based on the decision in Misc. Land Application No.24 of 2022 dated on 31st May 2023 before Hon. Kulita, J, where by the applicant prayed for extension of time to lodge her appeal out of time.

The main reason being one that, she was not heard by Kahama District Land and Housing Tribunal in Land Appeal No. 24 of 2022.

I have looked for the decision of this court in Misc. Land Application No.24 of 2022, the same was dismissed for having no sufficient reasons for grant. However, similar reasons advanced in the latter application, are the same with the reasons advanced in this application.

In the latter decision, reveals that the applicant was served to attend the hearing before the Kahama District Land and Housing Tribunal. However, without any due notice, he never attended before the tribunal where then the matter was for several times adjourned save some sessions in which he attended where then prompted the trial tribunal to order the matter to proceed exparte.

This court in its decision in the latter case held that;

"however, upon going through the records and submission of the parties, I have noticed that the applicant herein was served twice

with summons to attend the execution proceedings in Misc. Application No.07 of 2022 at the DLHT which emanates from Land Appeal No.24 of 2020. The first time was on 3rd February,2022, while the second time was 9th March 2022. As stated, the applicant herein never turned up to show cause before the said executing tribunal. The records further transpire that before the said execution case being opened and determined, the applicant used to appear in person and sometimes through representative on his behalf for the said Land case appeal No.24 of 2022 Kahama DLHT. That had been done on various dates when the matter was called before the chairman. The proceedings in the Land case appeal No.24 of 2020 Kahama DLHT transpire that on 3rd August 2020 and 17th September 2020 the applicant herein was present in person. On 28th August 2020 ,5th October 2020 and 27th October 2020 the Applicant was absent with notice, the DLHT record is also vivid that after that 27th October 2020 the applicant never turned up to the Court and not sent any person to notify the appellate tribunal about his non attendance to the said tribunal”

I have decided to reproduce the above extract, to fortify that the reasons advanced by the applicant to warrant the grant of his application are devoid of any merit.

The hearing of the matter before the DLHT was occasioned by the applicant's default to attend before the tribunal without justifiable reasons.

In other words, there is no point of law to be determined by the Court of Appeal as afore mentioned.

The grounds for application in my considered view are misplaced. The applicant being reluctant to pursue her rights, slept with it. As she had that opportunity, I agree with my learned brother Kulita, J when he dismissed her application for extension of time to appeal out of time without sufficient cause. It is the general interest of the public that there must be an end to every litigation and that there exists right of the individual to be protected from vexatious multiplication of suits and prosecutions at the instance of an opponent whose superior wealth, resources and power may, unless curbed down by judicially declared right and innocence. Thus, the right to be heard as raised was not denied by the trial tribunal but foregone by the applicant herself unexplainably.

In the case of ***Kilimanjaro Blanket Corporation Ltd versus Flamingo Auction Mart Co.Ltd and 2 others, [2015] TLR 453,*** the court held that;

"In granting leave to appeal to the Court of Appeal, one of the important factors to be considered is if in the intended appeal there is appointment of law or points of law worth to be considered by the Court of Appeal"

Furthermore, a deep digest to the second and third grounds of the application, I find them as misplaced. If the party willfully neglects court's attendance, he has equally waived his rights of defense. Thus, it is not unlawful if the matter is decided *ex parte* against him as that is the law. Court's decision is not unlawful merely because an aggrieved party who was fully aware of the pendency of her case opts not to attend.

With the above guided principles, I find out that the applicant had failed to dispense the reasonable grounds for grant of his application.

A careful digest to the facts of the case, since the application of extension of time to file appeal to this court was an original mandate of this case, its decision if aggrieved by any party, the appeal to Court of Appeal I don't think if it needed leave of the High Court. I say so basing on the position of the law after the amendment. Indeed, the law as it stands now, the High Court sitting as a land court in original jurisdiction, does not need leave to appeal to the Court under section 47 (2) of the Land Disputes Courts Act but appeal to it directly.

This is by virtue of the amendment to section 47 of the Land Disputes Courts Act brought by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 - Act No. 8 of 2018. To appreciate the decision we are going to make herein, I take the liberty to reproduce the provisions of section 47 of the Land Disputes Courts Act before and after the amendments. Before the amendments section 47 read:

*"(1) Any person who is aggrieved by the decision of the High Court in the exercise of its original, revisional or appellate jurisdiction, **may with the leave from the High Court** appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act."*

[Emphasis mine].

After the amendments the section now reads:

"(1) A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act.

(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or

appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.3."

[Emphasis mine].

My understanding of the law on this provision, an application for extension of time to file appeal to High Court is the original mandate of the High Court for a party wishing to appeal against the decision of the DLHT. Thus, if that person is denied the extension of time, the available remedy if aggrieved, I think is to appeal before the Court of Appeal directly and does not need a leave of this Court.

That notwithstanding, I consequently dismiss this application for the applicant's failure to provide sufficient grounds for the grant of his application.

No orders as to costs.

It is so ordered.

DATED at SHINYANGA this 4th day of August, 2023.



F.H. Mahimbali

Judge