

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

**MISC LAND APPEAL NO. 3 OF 2023**

*(C/f the decision of Karatu District Land and housing Tribunal,  
Misc. Land Application No 59 of 2022)*

**BOAY AMSI .....APPELLANT**

**VERSUS**

**FAUSTIN DAHAYE .....RESPONDENT**

**JUDGMENT**

03<sup>rd</sup> July & 29<sup>th</sup> September, 2023

**KAMUZORA, J.**

This appeal emanates from the decision of the District Land and Housing Tribunal of Karatu at Karatu (the DLHT) in Misc. Land Application No. 59 of 2022. The the Appellant herein unsuccessfully applied for extension of time to file revision application against the decision of the Baray Ward Tribunal, which originated from Qang'ded Village Council Complaint No. 03 of 2017.

According to the tribunal record, the Appellant adduced two reasons for extension of time. At paragraph 4, 5, 6 and 7 of affidavit

filed in support of the application at the trial tribunal, the Appellant pleaded illegality while at paragraph 9 of the same affidavit, the Appellant pleaded sickness as reasons for extension of time.

The trial tribunal made the decision that there was no reasonable cause that was advanced by the Appellant to justify the delay. The trial tribunal formed view that the illegality ought to be seen in the face of record and the delay of four years by the Appellant was unjustified. The application for extension of time was therefore dismissed with costs. Being aggrieved by the tribunal's decision, the Appellant preferred the current appeal on the following grounds: -

- 1) That, the chairman of the District Land and Housing Tribunal erred in law and in fact for failure to properly observe the procedural irregularities committed by the Qang'ded village land council which was later on upheld by the Baray Ward Tribunal.*
- 2) That, the chairman of the District Land and Housing Tribunal erred in law and in fact by finding that there is no illegality apparent on the face of record of the Baray Ward Tribunal's order while the decision of the Baray Ward tribunal was signed by the secretary of the tribunal.*
- 3) That, the chairman of the District Land and Housing Tribunal erred in law and in fact for failure to observe that Baray Ward tribunal made a decision in the case which it failed to register and assigned case number.*

- 4) *That, the chairman of the District Land and Housing Tribunal erred in law and in fact for failure to extend time for the reason that the Ward Tribunal was not legally proper to uphold the decision of the Village Land as the same had no jurisdiction.*
- 5) *That, the chairman of the District Land and Housing Tribunal erred in law and in fact for failure to observe that Baray Ward tribunal have no appellate jurisdiction over the decision of the Village council.*
- 6) *That, the chairman of the District Land and Housing Tribunal erred in law and in fact for failure to observe that the quorum of the Ward tribunal was not properly constituted.*
- 7) *That, the chairman of the District Land and Housing Tribunal erred in law for finding that the Appellant was required to go back to the ward tribunal to set aside the dismissal order while the decision of the Baray Ward Tribunal was a nullity as it was steamed from nullity.*
- 8) *That, the chairman of the District Land and Housing Tribunal failed to find out that illegality, impropriety and procedural irregularity amount to sufficient reason that warrant grant of extension of time.*

Hearing of the appeal was by way of oral submission and as a matter of legal representation the Appellant was represented by Mr. Nelson Masawe whereas the Respondent was dully represented by Mr. Samwel Welwel, all learned advocates.

Arguing in support of the appeal, Mr. Masawe submitted for the 1<sup>st</sup> ground of appeal that, the DLHT erred for failure to observe the procedural irregularity of the Village Land council which had no jurisdiction to determine land matters rather to mediate the parties. That, the decision of the Village Land Council could not bar the court with competent jurisdiction to hear and determine the dispute. That, the ward tribunal acted as an appellate tribunal, an act which he stated that was not correct as they have no appellate jurisdiction from the Village Land Council hence, contrary to section 9 of the land Disputes Courts Act, Cap 216 R.E 2019. To cement on his submission, the Appellants counsel cited the case of **Paulo Rumbei Vs. Margarita John**, Misc Land Appeal No 62 of 2018.

Arguing jointly for the 2<sup>nd</sup> and 6<sup>th</sup> ground of appeal, the counsel for the Appellant submitted that, the secretary of the ward tribunal signed the decision of the ward Tribunal while he was not part of the quorum of the members of the Ward tribunal, an act which he stated to be contrary to section 4(1) (a) (2) and (4) of the ward Tribunal Act Cap 206 R.E 2019. That, in considering that error, the DLHT was supposed to extend time to file revision application before it so that the said error could be rectified. The Appellant counsel referred this court to the case of **Adon**

**Mhindila Vs. Hasan Maulid and Hild Malekela**, Misc. Land Appeal  
No 106 of 2020.

Submitting on the 3<sup>rd</sup> ground the Appellant's counsel stated that, the DLHT erred in dismissing the Appellant's case without mentioning the number of the case that was dismissed. He pointed out that there was citation of the case number for the case originating from the Ward Tribunal in the decision that was issued by the DLHT. He insisted that the omission contravened section 9(2) of the LDCA Cap 216 R.E 2019. He referred this court to the case of **Paulo Lumberi** (Supra).

On the 4<sup>th</sup> and 5<sup>th</sup> ground, it is the submission by the counsel for the Appellant that the Ward tribunal of Baray erred in playing the role of appellate tribunal by dealing with the decision of the village counsel as if there was an appeal before it. That, the said act contravened the provision of section 9(2) of the LDCA Cap 216 R.E 2019 as the DLHT was supposed to consider the Appellant's prayer for extension of time to correct the error because the Ward Tribunal of Baray was wrong to bless the decision of the Village Land Council.

On the 7<sup>th</sup> and 8<sup>th</sup> grounds, the Appellant's counsel argued that, the ward tribunal did not register the Appellants complaint that was submitted before the trial tribunal by way of objection. That, the ward

tribunal went contrary to section 9(2) of the LDCA CAP 216 R.E 2019 in receiving the objection as an appeal. That, the whole proceedings resulting to the dismissal of the Appellant's complaint was void as there was no competent quorum of the tribunal members. That, the secretary of the tribunal who was involved in making the decision was not part of the members of the tribunal and her involvement contravened section 4(1) of the Ward Tribunal Act Cap 206. He insisted that the DLHT erred in not finding that there were errors committed by the village Land Council and the Ward Land tribunal and those errors were good grounds to extend time for the purpose of filing the revision application.

The Appellant's counsel also submitted that, the DLHT did not consider that the Appellant deponed in his affidavit that he was sick for 4 years. That, for the interest of justice, it was important for the time to be extended for the illegalities and irregularities to be corrected. The Appellant's counsel concluded his submission by insisting that the appeal be allowed and an extension of time be granted for the Appellant to file revision application.

Replying to the grounds of appeal, Mr. Welwel considered this appeal as devoid of merit. He first gave the descriptive history of the dispute. He explained that the parties had a land dispute which was

referred to the Village Land Council which ruled in favour of the Respondent. That, the Appellant referred the matter to the ward tribunal and failed to appear and prosecute the matter and the ward tribunal adopted the decision that was issued by the Village land council. That, the Appellant failed to challenge the said decision from 2018 and it was until 13/7/2022 when he made an application for extension of time before the DLHT and the said application was rejected hence, the present appeal.

Responding to all grounds of appeal the counsel for the Respondent submitted that before the DLHT the Appellant adduced two reasons for extension of time; one being sickness and illegalities in the decision of the Ward tribunal. To him, there is no any illegality that is apparent in the face of record in the decision of the DLHT. He contended that it a position of law that, for extension of time to be granted there must be sufficient grounds for the delay and the applicant must account for each and every day of delay, that the applicant must be diligent and not negligent and the delay should not be inordinate.

The counsel submitted that the Appellant took more than five years without taking any action against the order of the Ward Tribunal. On the reasons for sickness, he stated that the same was not supported with

any documentary evidence thus, sickness was raised as an afterthought. On the reasons for illegality, he submitted that, pursuant to section 15(1) (2) of the Ward tribunal Act, the tribunal has powers to regulate its own procedures and it is not bound by strict rules of evidence and procedures. He insisted that the decision of the ward tribunal was correct as the Appellant lodged a complaint before the ward tribunal but failed to prosecute the same. That, since the Appellant was the one who lodged the complaint before the ward tribunal, he cannot be heard to complain that his own complaint was improperly filed.

On the argument that the secretary was involved in decision making the counsel for the Respondent responded that, such fact was not pleaded in the affidavit that was filed before the DLHT. That, in this appeal, the said issue cannot be addressed as it was not among the grounds raised before the tribunal for the extension of time.

On the illegality based on failure to indicate the case number, Mr. Welwel responded that the same is a mere administrative error and not a legal one and it cannot be the ground for extension of time. He acknowledged that there are numerous decisions which support the point that illegalities can be a reason for the grant of extension of time. He however insisted that illegalities must be in face of record and not



those which will be discovered by a long-drawn argument or process. He argued that none of the illegalities referred by the Appellant are on the face of record. He was of the view that since the decision of the Ward tribunal dated 26/03/2018 was not challenged, the same remains valid. He therefore prayed for the appeal before this court to be dismissed with costs for being meritless.

In a brief rejoinder, the counsel for the Appellant reiterated his submission in chief and added that the Village counsel has no mandate to determine dispute on ownership of land rather to mediate parties and the parties had right to file a fresh complaint before the Ward Tribunal. He insisted that, since the Respondents counsel admitted that there is a dispute between the parties, time be enlarged for the same to be determined. He added that the delay is for only 4 years and 4 months and the same was due to the fact that the Appellant was suffering from diabetic. He insisted that, since there were errors; unregistered case before the Ward tribunal and the secretary participated in the decision of the ward tribunal, the appeal be allowed.

Having heard the submissions made by the parties for and against the appeal, the pertinent issue for the adjudication by this court is whether the the trial tribunal was correct in denying the Appellant's

application for extension of time. In determining that, this court will assess the record and see if the applicant before the DLHT (Appellant herein) adduced sufficient reasons for grant of extension of time.

It is a settled principle of law that, the decision to grant or refuse application of extension of time is within the discretion of the court, the discretion which however must be exercised judiciously, see **Mbogo Vs. Shah** [1968] EA 93. In exercising powers judiciously, there are certain guides which the court has to take into consideration. In Mbongo's case cited above the court highlighted factors to be taken into account in deciding to either grant or refuse to grant extension of time. It was held that: -

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the **length of the delay, the reason for the delay/whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended**".* Emphasis provided.

Reading the records of the DLHT it is undisputed fact that the Appellant pleaded two reasons for extension of time; sickness and illegalities based on impropriety and incorrectness of the impugned decision and proceedings. Starting with the reason for sickness, I

understand that sickness if proved can be relied upon in granting extension of time. For this see the case of **John David Kashekya Vs. The A.G**, Civil Application No 1 of 2012.

The record of the DLHT, paragraph 9 of the affidavit filed in support of chamber application reveals that the Appellant pleaded that he was sick suffering from Diabetes mellitus. Apart from stating that he was suffering from diabetic, no any evidence like medical chit or any other hospital document was attached to authenticate his claim for sickness. This court find that the DLHT was correct to hesitate in relying on sickness as reason for extension of time.

On the argument based on illegality, it is a settled principle of law that when a party is alleging illegality of the decision being challenged, the court can extend time for the purpose of ascertaining the point of the said illegality. However, the said illegality must be that of sufficient importance and must be on the face of record and not that which would be discovered by a long-drawn argument or process. See the case of **Principle Secretary Ministry of Defence and National Service Vs. Dervan Valambia** 1991 TLR 387.

In the present appeal, the record shows that the illegalities that was pointed out by the Appellant regarding jurisdiction, absence of complaint

number and absence of a proper quorum composition of the trial were all considered by the DLHT. However, the records are clear that the Appellant instituted a complaint before the ward tribunal against the decision of the village counsel. Since he does not dispute having lodged a complaint, the fact that it did not indicate the case number cannot be an error vitiating the proceedings.

On the argument based on the jurisdiction, this court finds that could be properly addressed if the Appellant was able to justify his failure to challenge the same within time. Irrespective of whether there was illegality or not, a party seeking for extension of time, he/she is bound to explain what he was doing for the time he delayed in referring the matter to court. Extension of time does not become automatic upon pleading illegality. If assumed so, it may lead to absurdity in the sense that a person may wait for a decade before he comes to court and allege illegality with intention to frustrate the court process. In my view, illegality goes along with demonstrating immediate measures taken in challenging the decision. The party alleging illegality is bound to prove simultaneously the illegality and account for delay by explain of what he was doing for the whole period he did not take action to convince the court that he was not reluctant in making follow up of his case. Where a


party is reluctant in taking action for no reason, he cannot come forward after a period of four or five years and claim that he deserves extension of time for reason of illegality.

Now looking to the time spent by the Appellant in referring the matter to the DLHT, the Appellant had admitted that he delayed for over 4 years and 4 months in filing the revision. He however did not account for each and every day of the delay as so required in the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil Application No 3 of 2007. He gave a general account that he was sick suffering from diabetic, a reason that was not supported with any evidence.

In the final analysis, this court is satisfied that the Appellant failed to satisfy the DLHT that he had good reason for delay to justify the grant of extension of time. The DLHT therefore correctly dismissed the application for extension of time. I equally find that there was no reasonable cause shown by the Appellant for extension of time. This appeal is therefore devoid of merit and it is hereby dismissed with costs.

**DATED at ARUSHA** this 29<sup>th</sup> day of September, 2023



  
**D.C. KAMUZORA**  
**JUDGE**

