

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

**THE SUB-REGISTRY OF MWANZA**

**AT MWANZA**

**LAND APPEAL NO. 22 OF 2023**

*[From Misc. Application No. 113 of 2022 of the District Land and Housing Tribunal for Ukerewe; Originating from Irugwa Ward Tribunal's Land Appli. No. 9 of 2021]*

**SHUDRUCK MAZUBU MSONGE-----APPELLANT**

**VERSUS**

**SAFINA MASATU-----RESPONDENT**

**JUDGEMENT**

*August 17<sup>th</sup> & 28<sup>th</sup>, 2023*

**Morris, J**

The District Land and Housing Tribunal for Ukerewe (DLHT) gave a ruling in Land Appeal No. 113 of 2022 which aggrieved Shudruck Mazubu Msonge. He has preferred this appeal with two grounds. He alleges that, the trial tribunal erred in law in two aspects: to grant extension of time to the respondent; and to determine an omnibus application.

The dispute subject of this appeal relates to parties' row over a farm situate at Buruza area, Irugwa Ward of Ukerewe District, Mwanza. The appellant sued the respondent before the Irugwa Ward Tribunal (trial

tribunal) for trespass to the suit property. The matter was heard in his favor without the presence of the respondent. Consequently, the respondent was ordered to demolish her houses built on the suit property and hand vacant possession of the property to the appellant.

Dissatisfied with the decision of trial tribunal, the respondent filed an omnibus application before the DLHT praying for extension of time to file revision and the revision itself. The DLHT decided in her favor. It accordingly nullified both proceedings and judgement of trial tribunal. Such decision displeased the appellant. He has the present appeal in contention thereof.

During hearing, the appellant appeared in person, unrepresented. The respondent was, however, represented by Advocate Maligisa Sakila. It was the submissions by appellant that when he filed an application for execution at the DLHT, the respondent denied to have had been summoned to appear before the trial tribunal. He argued that such asseveration was untruthful because she had once appeared before the ward tribunal and defaulted appearance thereafter. To the appellant, the DLHT disregarded that critical fact. On the second ground he submitted that the DLHT should have heard both parties. Being a lay person, he indeed submitted nothing substantial



on the presented grounds of appeal, namely, wrong citation of law and the validity of entertainment of an omnibus application by DLHT.

In reply, it was submitted by Advocate Sakila that section 20 of ***the Land Disputes Act***, Cap 216 R.E. 2019 (elsewhere, "the Act") was repealed by ***the Written Laws (Miscellaneous Amendments) (No. 3) Act***, Act No. 5 of 2021. In effect, with such repeal no provision provided for extension of time to appeal to the DLHT from the ward tribunal. Hence, the time limit which existed in the repealed law regarding appeals to the DLHT became obsolete. Therefore, to him the first ground of appeal lacks merit.

Regarding the second ground of appeal, he submitted that the application was for extension of time for and revision. According to him, the appellant was not prejudiced. It was argued further that, in law when two applications do not contradict one another, they may be entertained simultaneously. I was refereed in the case of ***MIC Tanzania Ltd v Minister for Labour and Youth Development and AG***, Civil Application No 103 of 2004 (unreported). Further, as argued in favour of the first ground; extension of time application was unnecessary. Thus, technically, the application was not omnibus, anyhow. The counsel, thus, prayed for the

appeal to be dismissed with costs. In rejoinder, the appellant maintained that the DLHT applied wrong law and he was not heard.

I have dispassionately considered the submissions by both sides. For the first ground, the appellant is faulting the DLHT on allegation that it erroneously entertained an application made under section 20 (2) of **the Act**. Literally, the counsel for the respondent admits the same. However, he submits further that as the application for extension of time was unnecessary due to amendment to **the Act**, the same was as good as non-existent.

As correctly submitted for the respondent, section 20 of **the Act** was repelled by section 47 of **the Written Laws (Miscellaneous Amendments) (No. 3) Act (supra)**. Undisputedly, the foregoing amendment was applicable effective from 11/10/2021. The application by the respondent before the DLHT was filed on 18/10/2022. However, she cited section 20 (2) of **the Act** which provided for extension of time to file appeal. The submissions by the respondent that it was not necessary for her to apply for extension of time is, with sufficient respect to her counsel, out of place.



The first prayer in the respondent's chamber summons was in respect of extension of time to file revision. Therefore, she was required to cite proper enabling provision of the law. In ***the Act***, there is no specific law for extension of time to file revision. Consequently, item 21 of Part III to ***the Law of Limitation Act***, Cap 89 R.E. 20219 (***LLA***) which fixes time-line for the current situation is invocable. The cited item provides for 60 days' period of time. In the present matter, the judgement of the trial tribunal was delivered on 11/10/2021. The application by the respondent was filed on 18/10/2022- over a year later. Therefore, she was required to apply for extension of time in purview of ***LLA***.

The foregoing anomaly notwithstanding, with invent of the overriding objectives, courts may condone non-citation or improper citation of enabling provision of law. When the power to extent the time exists, the court may extend such time irrespective of wrong/non-citation of law. See the case of ***Bin Kuleb Transport Company Limited v Registrar of Titles and 3 Others***, CoA Civil Application No. 522/17 of 2020 (unreported).

From the availed record, among other factors, the revisional DLHT extended the time for the respondent basing on illegalities of the decision



of the trial tribunal. In my view, although the applicant cited improper provision of law, the DLHT still had mandate to entertain the application before it and extend the time as it rightly did. Therefore, the first ground of appeal lacks merit.

Regarding the second ground of appeal, the appellant faults the DLHT to have decided an omnibus application. To the respondent, when two applications are congruent to one another, it is proper for the court/tribunal to determine them conjunctively. In the course of his seemingly unfocused submissions, the appellant alleges that he was not afforded the right to be heard before the DLHT. That allegation was not part of the grounds of appeal. The same, ordinarily, calls for no decision of this Court. However, being a matter of law, I perused the proceedings of the DLHT to see whether he was afforded the right to be heard. At page 5 of the DLHT proceedings, the appellant herein was given right to reply to the submissions of the counsel for the respondent herein. Therefore, the subject allegations are incorrect.

The above said and done, after keenly considering the second ground of appeal and the rivalry submissions of parties thereof; this Court now



decides on whether the application before the DLHT was proper. There is a chain of authorities to the effect that where there are identical applications which in effect follow one another, they can be properly pursued together in one application. That is, the court/tribunal with jurisdiction may determine such technically-known omnibus application.

In line with the foregoing, see for example, the cases of ***MIC Tanzania Ltd v Minister for Labour and Youth Development and AG*** (*supra*); and ***Evangelina K. Charles v Projestus Rutinwa Bendabenda***, Misc. Civil Application No. 06 of 2022; ***Ally Salum Said (Administrator of late Antar Said Kleb's estate) v Idd Athuman Ndaki***, CoA Civil Appl. No 450/17 of 2021 (all unreported).

In my view, the application for extension of time to file revision and one for revision itself are interrelated. Determination of the first leads to determination of the second. Therefore, it was not unsafe and, thus, in interest of justice to combine them in one application did not prejudice parties herein.

In upshot, both grounds of appeal are not merited. The appeal stands dismissed. No costs are awarded to either party. It is so ordered and right of appeal is fully explained to the parties.



**C.K.K. Morris**

**Judge**

**August 28<sup>th</sup>, 2023**

Judgement is delivered this 28<sup>th</sup> day of August 2023 in the presence of Shudruck Mazubu Msonge, the appellant; and Advocate, Maligisa Sakila for the respondent.

**C.K.K. Morris**

**Judge**

**August 28<sup>th</sup>, 2023**