

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO.21 OF 2022

(Originating from District Land and Housing Tribunal for Mtwara
in Misc. Land Application No.62 of 2022)

AHMAD HAMISI MKWAMBA.....APPELLANT

VERSUS

SEVARINE KORONEL NACHIHANGU.....RESPONDENT

JUDGMENT

22/8 & 29/9/2023

LALTAIKA, J.

The Appellant, **AHMAD HAMISI MKWAMBA**, moved this court via a Petition of Appeal dated December 8, 2022, and filed on December 14, 2022, against the Respondent. The Appellant is challenging the Ruling of the District Land and Housing Tribunal for Mtwara in Miscellaneous Land Application No. 62 of 2022, delivered on November 11, 2022.

The Respondent filed an application seeking an extension of time to file an appeal out of time against the decision of the **Ward Tribunal of Nangoo in Land Case No. 25 of 2021**. The Respondent filed this

application after the DLHT had dismissed Land Appeal No. 133 of 2021 for being filed out of time. With a vested interest in pursuing this matter, the Respondent filed the impugned Miscellaneous Land Application No. 62 of 2022. The District Land and Housing Tribunal for Mtwara granted the application and afforded the Respondent thirty (30) days to file his appeal out of time. Dissatisfied with this decision, the Appellant filed the present Petition of Appeal, in which he raised two grounds of appeal:

- 1. That, the trial Chairman erred in law and fact by granting an order for extension of time to the respondent without the respondent to adduced good cause enough to be extended time and hence the trial chairman misused the discretionary power of granting an order for extension of time to the respondent.*
- 2. That, the trial Chairman erred in law and fact by granting an order for extension of time to the respondent without the respondent to prove his case on the standard required by the law.*

The necessary factual backdrop to understand the gist of the appeal is as follows. The appellant instituted **Land Dispute/Case No. 25 of 2021** before the **Nangoo Ward Tribunal**. After due proceedings, the Ward Tribunal delivered its decision in favor of the Appellant on July 19, 2021. However, dissatisfied with this decision, the Respondent filed Land Appeal No. 133 of 2021 on December 28, 2021, which was subsequently dismissed as being time-barred.

In light of these events, the Appellant filed Miscellaneous Land Application No. 621 of 2021 on November 4, 2021, seeking an order for the execution of the decision in Land Case No. 25 of 2021. This application was heard on its merits and decided in favor of the Appellant. Consequently, the Respondent and his representatives were ordered to vacate the disputed

land within fourteen (14) days and refrain from any trespassing or activity on the said land. This ruling and order were delivered on January 11, 2022.

On July 18, 2022, the Respondent filed Miscellaneous Land Application No. 62 of 2022, requesting an extension of time to appeal out of time against Land Case No. 25 of 2021. On November 11, 2022, the DLHT issued a ruling in favor of the Respondent, which is the subject of the present appeal.

The matter was brought before me for hearing on April 25, 2023, with both parties appearing in person and without legal representation. The Appellant asserted that he had won the case at the District Land and Housing Tribunal. He argued that the Respondent had sought intervention from the *Katibu Tarafa* (Ward Executive Officer). The Appellant, in turn, lodged a complaint with the DLHT, where he emerged victorious once again. He further contended that the Respondent did not appeal within a year and did not comply with the court orders.

The Respondent maintained that the Appellant's claims were entirely untrue and that the dispute had originated in 2020. He emphasized that he was unable to appeal at that time, and his reasons were found credible by the trial Tribunal.

Having dispassionately considered the grounds of appeal in the light of the court records before me, I am inclined, first and foremost, to determine whether the appeal before me is competent.

Initially, there was an inclination to categorize this matter as interlocutory proceedings. This was based on the provisions of **Regulation**

22 of the Land Dispute Courts (District Land and Housing Tribunal) Regulations, 2003, G.N. No. 174 of 2003. The proviso to Regulation 22 precludes an appeal based on a ruling on a preliminary point of law or on any interlocutory application that does not finally decide the case. For reference, the said provision reads as follows:

"22. The Chairman shall have powers to determine:-
(a) Preliminary Objections based on points of law;
(b) Applications for execution of orders, and decrees;
(c) Objections arising out of execution of orders and decrees;
(d) Interlocutory orders;
Provided that a ruling on a preliminary point of law or on any interlocutory application which have no effect of finally deciding the case shall not be appellable." [Emphasis supplied]

In light of the above legal provisions, the critical issue is whether the order granted by the District Land and Housing Tribunal in Miscellaneous Land Application No. 62 of 2022 had the effect of finally determining the rights of the parties. To answer this issue, the Court of Appeal of Tanzania, in the case of **Zanzibar Electricity Corporation vs Infratech Limited & Another** (Civil Appeal 100 of 2021) [2022] TZCA 365 (June 16, 2022), established a test for determining the above issue. The Court relied on its previous decision in the case of **Tanzania Motor Services Ltd. and Another vs. Mehar Singh t/a Thaker Singh**, Civil Appeal No. 115 of 2005 (unreported). In this context, the Court quoted with approval from the decision in **Bozson vs Altrincham Urban District Council** [1903] 1 KB 547 at p. 549, which stated:

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does,

then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order."

Therefore, in accordance with the test articulated by the Court and based on my examination of the records of the Tribunals, it is clear that what the Appellant has appealed before this court is the ruling that allowed the Respondent to file an appeal out of time at the DLHT. The impugned ruling effectively finalized the rights of the parties and is thus amenable to appeal. Consequently, **I find that the present appeal is competent before this court** because it does not fall within the categories defined by Regulation 22 of the Land Dispute Courts (District Land and Housing Tribunal) Regulations (*supra*).

Having established competency of the appeal, my next task is to find out whether in exercising its discretion to grant an extension of time to appeal out of time, the DLHT made any errors warranting interference by this Court in this appeal. As alluded to earlier, the present appeal arises from the decision to grant an extension of time to file an appeal beyond the statutory time limit, a matter that falls within the discretion of the lower court or tribunal.

It is a well-established legal principle that the superior courts may intervene in the exercise of discretion by lower courts or tribunals under certain circumstances. In **Yege s/o Gawe vs Republic** Criminal Appeal 45 of 2019 [2022] TZCA 134 (March 23, 2022), *Tanzlii* at pages 5-6, the Court of Appeal of Tanzania, sitting at Tabora, referred to its earlier decision in **Samo Ally Issack & Others v. R**, Criminal Appeal No. 136 of 2021

(unreported) and cited **Mbogo & Another v. Shah** [1968] E.A. 93. In its ruling, the Court stated:

"Discussing parameters on which an appellate court can act in interfering with the exercise of discretion by a lower court or tribunal, that is to say; one, if the inferior court misdirected itself, or; two, it has acted on matters on which it should not have acted, or three, it has failed to take into consideration matters which it should not have considered thereby arriving at a wrong conclusion...It may not entirely be irrelevant to draw inspiration from the Supreme Court of Colorado which has held that the improper exercise of jurisdiction is regarded as an abuse of it which occurs when the exercise of jurisdiction is regarded as an abuse of it which occurs when the impugned decision is manifestly arbitrary, unreasonable or unfair. See: Marcia Pinkstaff v. Black & Decker (US) Inc., And Baldwin Hardware Corporation 211 P.2d. 698 (2009)."

In addition, the Court of Appeal of Tanzania, in **Emmanuel Rurihafi & Another vs. Janas Mrema** (Civil Appeal 314 of 2019) [2021] TZCA 332 (July 28, 2021), Tanzlii at pages 5-6, stated:

"We understand that the appeal at hand arises from a Decision refusing an extension of time, which falls within the discretion of the lower court. While we are aware that a lower court enjoys a wider jurisdiction to grant or deny an extension of time, our understanding of the law is that, for a decision arising therefrom to be valid, the discretion must have been exercised reasonably, judiciously, and on sound legal principles."

It goes without saying therefore that, although as a general rule, an appellate court would not interfere with the discretion of the lower court, where the discretion is exercised in violation of the principles mentioned above, the appellate court may, where the result thereof leads to a

miscarriage of justice, intervene. There are many decisions supporting this view. See for instance, in **Swabaha Mohamed Shosi v. Saburina Mohamed Shosi**, Civil Appeal No. 98 of 2018 (unreported) and **Tusekile Dancan v. Republic**, Criminal Appeal No. 202 of 2009 (unreported),

Given the principles outlined above and the grounds of appeal raised by the Appellant, the central issue before this court is whether the DLHT exercised its discretion judiciously, reasonably, and on sound legal principles when it granted an extension of time for the Respondent to file an appeal that had already been executed.

It is widely recognized that the granting or refusal of an extension of time to file an appeal or lodge an application for revision or review is within the discretion of the lower court or tribunal, guided by whether sufficient or good reasons for the delay have been presented. The DLHT granted an extension of time to the Respondent, allowing him to file his Petition of Appeal beyond the statutory limit, affording him thirty (30) days from the date of the impugned ruling. The DLHT cited the reason for this extension as the delayed supply of the judgment copy from the Nangoo Ward Tribunal to the Respondent. For clarity, I quote the relevant passage

"Kwa kuwa mleta maombi analalamikia baraza la kata kumcheleweshea kumpa nakala ya hukumu, naona mleta maombi amekuja na sababu ya msingi ya kulishawishi baraza hili kumuongezea muda wa kukata nje ya muda. Huo ukiwandio msimamo wangu nayaruhusu maombi haya. Mleta maombi anapewa siku thelathini (30) tangu tarehe ya uamuzi huu ili aweze kuleta sababu zake za rufaa nje ya muda."

In addition to the above clearly articulated reason of the DLHT, it is essential to consider what the parties submitted before the DLHT. The Respondent (the applicant) submitted:

"Naomba niongezewe muda wa kukata rufaa. Jinsi kesi ilivyoendeshwa kwenye baraza la kata sikubaliani nayo. Nilichelewa kukata rufaa kwa kuwa baraza la kata lilipotoa hukumu mimi sikuwa na taarifa wao walienda shambani mimi sikuwa na taarifa. Taarifa nimeipata tarehe 08/10/2021 ya kuitwa Mtwara, ikiwa imeambatanishwa na nakala ya hukumu kutoka baraza la kata la Nangoo. Hukumu inasema mimi ning'oe mikorosho."

Furthermore, the Appellant stated:

"Shauri hili lilianza mwaka 2019, mimi nikiwa mmiliki wa miaka 32 wa eneo hilo. Baadae mleta maombi alipeleka shauri baraza la kata mimi nikashinda. Mleta maombi alikata rufaa baraza la Wilaya maamuzi yalifutwa. Mleta maombi alirudi hakupeka shauri baraza la kata. Mimi nikapeleka maombi baraza la kata na mimi nikashinda. Nimekazia hukumu na mleta maombi akaaniriwa aondoke kwenye eneo la mgogoro ndani ya siku 14. Amekaa baada ya mwaka nimoja ndipo akaleta maombi haya, mleta maombi aninisumbua tu. Ingawa mleta maombi ameshindwa kesi lakini bado anendelea kutumia eneo la mgogoro."

Of utmost importance, the Respondent, through an affidavit, under paragraphs 5, 6, and 7, averred:

"5. Kwamba naleta maombi haya ya kuongezewa muda wa kukata rufaa kwa kuwa zipo hoja za kisheria zilizokiukwa za uendeshaji wa kesi ya ardhi Na. 25/2021 katika baraza la kata ya Nangoo ambayo kama baraza hili halitayatua

yatasababisha ukiukwaji wa haki zangu za msingi kwa sababu taratibu hizo zinapaswa kubatilishwa.


6. Kwamba wajumbe wa baraza la ardhi la kata ya Nangoo walikuwa zaidi ya wajumbe wanaotajwa kisheria kusikiliza mgogoro, kitu ambacho kikibakia kama kilivyo katika hukumu kitakuwa ni kinyume na utaratibu uliowekwa kwa mujibu wa sheria Sura ya Na. 216 ya Mahakama za Migogoro ya Ardhi. Hivyo, ikiwa hukumu ya kesi ya ardhi Na. 25/2021 itaendelea kuwepo bila kurekebishwa katika rufaa, inaweza kuweka msimamo usio sawia katika uendeshaji wa mashauri ya ardhi. Hivyo, naliomba baraza hili tukufu kuniongezea muda ili niweze kuleta rufaa yangu ili baraza hili lijiridhishe au uhalali, usahihi au utaratibu ria mwenendo wa kesi Na. 25/2021 kutoka katika baraza la ardhi la kata ya Nangoo."

In light of the reasons presented, it can be read between the lines that the learned Chairman considered the allegations of illegality. More importantly, it is my finding that the DLHT exercised its discretion judiciously, reasonably, and on sound legal principles when it granted the extension of time for the Respondent to file his appeal.

Consequently, this appeal fails. The parties are advised to accord the trial Tribunal uttermost cooperation to ensure the matter is determined on merit. Appeals to this Court should be reserved to those issues that no longer fall under the trial Tribunal's jurisdiction having been finally determined or are tainted with outright illegality and/or abuse of discretion.

It is so ordered.

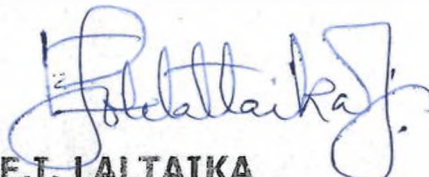



E.I. LALTAIKA
JUDGE
29/09/2023

Court

Ruling delivered under my hand and the seal of this court this 29th day of September 2023 in the presence of the parties who have appeared in person, unrepresented.




E.I. LALTAIKA
JUDGE
29/09/2023