

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

**ARUSHA SUB-REGISTRY**

**AT ARUSHA**

**LAND APPEAL NO. 16 OF 2023**

*(C/F the decision of Karatu District Land and Housing Tribunal at Karatu, Misc. Land*

*Application No. 22 of 2022)*

**PAULO SAFARI.....APPELLANT**

**VERSUS**

**ELIYA KWASLEMA.....RESPONDENT**

**JUDGMENT**

13<sup>th</sup> November, 2023

**D.D. NDUMBARO, J.**

Application for an extension of time is made by the appellant. The appellant was dissatisfied with the Ward Tribunal's *ex parte* decision on the claim of land, he appealed before the District Land Housing Tribunal. He applied for an extension of time before the district Land Tribunal claiming to have delayed getting a copy of the judgement.

The decision from the ward tribunal was in 2016 and the application for an extension of time was filed in 2022. District Land and Housing Tribunal did not consider the application because it was found with no merit.

The appellant hereby lodges an appeal to this Court against the decision of the District Land and Housing Tribunal with grounds as follows: -

1. That, the District Land and Housing Tribunal erred in law and fact for failure to extend the time while the Appellant adduced sufficient ground to warrant an extension of time.
2. That, the chairman of the District Land and Housing Tribunal erred in law and fact to employ wrong reasoning resulting in an erroneous decision.
3. That, the trial Tribunal made an erroneous decision to ignore the grounds of illegality which was sufficient to extend time.
4. That, the chairman erred in law and fact for failure to rule that the Appellant accounted for every day of delay.
5. That, the chairman erred in law and fact to hold that quorum was proper while the ward tribunal was not duly composed.
6. That, the chairman erred in law and fact to ignore the Appellant's strong argument on failure to be supplied with a copy of the decision timely.
7. That, the trial tribunal made an erroneous decision to ignore the fact that the trial Tribunal had no jurisdiction

During their submission applicant enjoyed the service of Learned Advocate Samwel Welwel and the Respondent self-represented.

During submission grounds, 1,2,3,5,6, and 7 were combined and the 4<sup>th</sup> ground was presented separately. The appellant argued that there are two grounds to convince the court to extend the time. 1<sup>st</sup> there is illegality which the court can consider to extend time.

The word tribunal; did not have jurisdiction to entertain the case, the suit land is in Endabashi ward and the tribunal was in Endamararieki ward. He supported his argument in the case of Philipo Daffi Lolo vs Richard Aman, Misc. Land Application No. 11 of 2009, H. C. Arusha's unreported case instituted in Karatu Ward has no jurisdiction to be entertained in Daa Ward.

On the second ground, He further faulted that, the column was not properly constituted. Coram was not sufficient as per section 11 of Land Dispute Court Act Cap 216 RE 2018 the members should be 4 and a maximum of 8 three out of them must be women. In support of his case cited a case of the **Principal Secretary Ministry of Defence and National Service vs Derma Valambia** 1981 387 TLR page 185, and Husein Shariif vs Alham Abdala (As an administrator of the estate of Sauda

Abdala and 3 others), Civil Appl. 135/2017 which provides that illegality is one of the grounds for extending time.

The applicant was not supplied with a copy of the judgment despite his effort to make a follow-up. He wrote a letter to the district area commissioner complaining about the delay in getting judgment. We pray this court to grant an extension of time so that we may file an appeal.

In reply respondent argued that the decision of the trial tribunal was given on 22/12/2016 appellant was given 45 days to appeal, almost six years. The appellant lodged an application after he applied for execution of judgment; his application has no merit he slept for 6 years.

On the issue of jurisdiction, the case was indeed heard at Endamararieki while the Land Dispute was situated at Endabashi; in those days there was no land tribunal at Endabashi all land case was heard at Endamararieki. On his rejoinder applicant prays for the court to grant an extension of time.

On the first ground, going through the tribunal record exparte judgment was on 22 days of December 2016, an application for an extension of time was made in 2022, almost seven years later. The applicant submitted that he made an effort to write a letter to the Karatu District Commissioner

for a copy of the said judgment. The said letter was written on the 6th day of February 2017, 64 days after the delivery of the judgment of the ward tribunal.

The court has mandate to extend time however before granting an extension of time should consider all relevant factors in granting an extension of time. The case of Mbogo **Vs. Shah [1968] EA** the defunct Court of Appeal for Eastern Africa, is in support of this as

*"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 against the defendant if time is extended*

It is clear that even the date when he started making follow-up, he was out of time almost 62 days from the date of judgment. I wonder why the letter was addressed to the District Commissioner and not the Chairman Ward Tribunal. The letter was sent to the district area commissioner in 2017 since then no effort was made till 2022, almost six years. What was he doing then to convince this Court to grant an extension. Endless litigation without reasonable cause should not be entertained. The length and reasons for the

delay were not sufficient to allow the appeal I found this ground to have no Merit.

On the issue of place for sitting of tribunal, it was clearly stated by the Ward Tribunal Chair of the district land housing tribunal that, in those days, there was no ward tribunal in Endabashi. Endamararieki used to hear land matters from Endabashi. The case of **Derma Valambia** cited supra by the applicant is distinguishable it applies if a specific ward has tribunal.

On the issue of improperly constituted coram, Section 11 of the Land Dispute Act Cap 216 and Section 4 of the Ward Tribunals Act. Cap. 206 requires that three out of 4 to 8 members, at least three should be women. There were four members, and one out of them was female. The applicant claimed that there were irregularities, and therefore the ward tribunal lacked jurisdiction.

In the case of **Adelina Koku Anifa Versus Byarugaba Alex, Civil Appeal No. 46 of 2019 CAT (unreported)**, even though emphasis was placed on a need to maintain the necessary coram in the Ward Tribunal, it was argued that: -

*" ....the main duty of the court is to determine whether the pointed-out irregularities existed, and if yes, whether they are capable of vitiating the proceedings and judgments of both Tribunals".*

On the issue of Coram, despite the fact that the provision requires three members out of four to be women. There are two things in here, a matter of **coram** and a matter of **sitting**.

The provisions of Section 11 of the Land Disputes Courts Act, Cap. 216 R.E 2002 provides for the **composition of the Ward** Tribunal. That, it shall consist of four members at the minimum to eight (8) members at the maximum and three among them shall be women. These are selected from the members of the ward, by the Ward Committee. It provides as follows: Section 4(3) of the Ward Tribunals Act, Cap. 206 2002 provides for the number of members at each sitting in dispute resolution. "**The quorum at a sitting of** a Tribunal shall be **one-half of the total number** of members."

Two things to be noted, **composition** and **sitting**. The composition of the tribunal is supposed to be not less than 4 and not more than 8, three among them shall be women. But the sitting shall not supposed to be less than one-half of the total members, that is to say, if the tribunal is

composed of a maximum number of 8 members sitting is supposed to be 4 regardless of gender.

The Coram was properly constituted, and there was no irregularity to vitiate proceedings. I found this ground to have no merit.

Based on the above reasons, the application for an extension is rejected for the reasons adduced.

Each part shall bear its own cost

DATED at ARUSHA on this 14<sup>th</sup> day of November 2023.



*D.D. Ndumbaro*  
**D.D NDUMBARO**  
**JUDGE**