

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB – REGISTRY

AT MUSOMA

LAND APPEAL NO. 89 OF 2023

*(Arising from the Decision of the District Land and Housing Tribunal for Tarime at
Tarime in Misc. Land Application No. 33 of 2023)*

ROBI CHAMBILI MWITA APPELLANT

VERSUS

MWITA WAINAGI (MKEMIA)RESPONDENT

JUDGMENT

21st & 26th March, 2024

M. L. KOMBA, J.:

Appellant herein was dissatisfied by the decision of the District Land and Housing Tribunal for Tarime at Tarime (the DLHT) in the Misc. Land Application No. 33 of 2023 where the respondent applied for time within which he can file an appeal against the decision of Bumera Ward Tribunal in Land Application No. 23 of 2021 for illegality he pointed.

Previous, appellant filed a Land Application at Bumera Ward Tribunal where he claimed the respondent had trespassed into his land without permission. Respondent did not make appearance at Ward tribunal on account that it lacks jurisdiction. Ward tribunal proceeded in exparte and pronounced the

appellant herein is a lawful owner of the disputed land. Respondent after noting he is out of time to appeal against Land Application No. 23 of 2021, he lodged Misc. Land Application No. 33 of 2023 so that DLHT can grant time.

On 14/08/2023 the DLHT granted time to respondent to lodge his appeal. The grant of time by the DLHT is protested by the appellant herein with two grounds that;

- 1. That, the Tribunal Chairman erred in law and in fact by granting the extension of time to the respondent to appeal out of time against the decision of Bumera Ward Tribunal in Land Case No. 23/2021 without any reasonable grounds for such extension.*
- 2. That, the Tribunal Chairman erred in law and in fact by reasoning that the judgment of Bumera Ward Tribunal did not show the description and size of the disputed land while in fact the said decision clearly shows the description and size of the disputed land which was never contested by the respondent.*

When the appeal was ready for hearing, the appellant stood solo without any representation while respondent was represented by Mr. Amos Wilson, an Advocate.

It was the appellant who started submission, he was brief as he prayed this court to consider his petition of appeal and allow the appeal.

Mr. Amos prayed to combine two grounds of appeal which faulted the DLHT on the grant of time. It was his submission that applicant while at the Ward Tribunal did not mention size of his land and demarcation hence makes difficult to execute the decree/order for failure to mention demarcation of the disputed land. He noted that appellant mentioned his land to be seven (7) acres but he did not mention its borders, as the land is unsurveyed that was not enough.

He further submitted that from record, the Ward Tribunal find the disputed land has 212 by 145 footsteps but they did not explain how they recognize the disputed land. He reminds this court that parties are bound by their own pleading and supplied a decision in **Barclays Bank (T) Ltd vs Jacob Muro**, Civil Appeal No. 357/2019 that applicant should state what is praying in court and he found the DLHT was correct to extend time so that the irregularity may be cured. He further referred this court to the decision in **Hashim Mohamed Mnyalima vs Mohamed Nzai and 4 Others**, Land Case No. 18 of 2020 where it explain in length the importance of mentioning size and demarcation, failure to which amount to illegality and it is this court's position that illegality is among the reason to extend time as was decided in **Amour Habib Salim vs Hussein Bafagi**, Civil

Application No. 52 of 2009 CAT at DSM. He prayed this court not to close its eyes on the issue which is wrongly filed as was said in **Tryphone Elias @ Ryphone and Another vs Majaliwa Daudi Mayaya**, Civil Appeal No. 186 of 2017.

Counsel winded up by calling this court to find the grounds of appeal are devoid of merit and dismiss the appeal. As officer of the court, he submitted he shall not pray for costs but the appellant has to be willing and participate during hearing at the DLHT so the disputed will be identified and the dispute be solved as the matter was not heard on merit rather it was extension of time.

During rejoinder the appellant insisted that the member of the ward tribunal measured the area and found it has 212 x 145 footsteps. He believes the ward tribunal measurements were correct.

Now, it is my duty to analyses whether the appeal is properly before this court. Starting with the issue of the size of the disputed land. In determining land disputes, lower tribunals must assure themselves with size, location, demarcation and value of the land is known. This is the requirement of the law under Regulation 3 (2) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No.

174 of 2003 (the Regulation). I am saying so because the cited regulation 3 (2) (b) has been interpreted by Court of Appeal and this court in **Daniel D. Kaluga vs Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015; **Rev. Francis Paul vs Bukoba Municipal Director & 17 Others**, Land Case No. 7 of 2014, **Martin Fredrick Rajabu vs Ilemela Municipal Council and Another**, Civil Appeal No. 197 of 2019, **Aron Bimbona vs Alex Kamihanda**, Misc. Land Case Appeal No. 63 of 2018, **Hashim Mohamed Mnyalima (Administrator of the Estate of the late Mwamtumu Shehe Mashi) vs Mohamed Nzai and 4 others**, Land Appeal No. 18 of 2020 and **Robert Mnanka Robert Mnanka vs Semeni Samwel**, Misc. Land Appeal No. 33 of 2022.

From the record of Ward Tribunal when filing Land Application No. 33 of 2021, applicant only explained location of the land and the village which the disputed land is located. The application is silent over the size and demarcation. Failure to adhere to this requirement and court directives is fatal, the decision of the Ward Tribunal cannot stand in an appeal stage. Importance of adhering to cited regulation and decided cases (Directives of the court of Appeal) is to distinguish the disputed land from other land and to enable execution of the decree.

Appellant was of the submission that the size of the land was ascertained by the members of the Ward tribunal, Mr. Amos too submitted on that and further clarified that it was not stated who directed members on boundaries when they were at site. Further, it is in record that appellant filed execution of decree claiming for seven acres while members of the tribunal, though not agreed, decided that appellant's land has measurement of footsteps. I shall stand firm on the principle that parties are bound by their own pleading and maintain that appellant did not indicate the size and boundaries of his land while lodge Land Application No. 23 of 2021 but wanted to execute seven (7) acres. That is irregularity which cannot be left in court files. The decision by the respondent to apply for time to appeal was correct. Further the DLHT was correct to grant time for the said appeal so that the irregularity may be pointed, discussed and decided as it was said in **James Anthony Ifada vs Hamis Alawi, Civil Application No. 482/2014 of 2019** that;

'... where there is allege illegality to the decision, extension of time need to be granted so that all alleged illegality can be addressed in the CAT to that appeal...'

So far as the two grounds have the same and similar issue on reason for extension of time and size of the disputed land, I find the analysis done is

suffice to dispose the appeal at hand as conceded by counsel for respondent. However, the order issued by the Chairman did not finalize the matter and therefore it non appealable.

In the circumstances of the case at hand and for the aforesaid shortcomings, my mind is settled that Chairman of the DLHT exercised his discretion judiciously. I therefore find the appeal lacks merit and I hereby dismiss. I make no order as to costs.



M. L. KOMBA

JUDGE

26th March, 2023

Judgment Delivered in chamber in the presence of appellant and respondent who appeared in person.

M. L. KOMBA

JUDGE

26th March, 2023