

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA SUB – REGISTRY)

AT ARUSHA

LAND CASE APPEAL NO. 28 OF 2023

*(C/F Miscellaneous Land Application No. 66 of 2013, District Land and
Housing Tribunal for Arusha)*

RICHARD EPHRAIM (As Administrator of the estates

of the late EPHRAIM NANGESAI)APPELLANT

VERSUS

AMON RICHARD RESPONDENT

JUDGMENT

9th April & 24th May 2024

KIWONDE, J.

The appellant, Richard Ephraim, being dissatisfied with the decision of the District Land and Housing Tribunal for Arusha in Miscellaneous Land Application No.66 of 2013, preferred an appeal to this court based on two (2) grounds of appeal. But they are wordy and referred to provision of the law while they are supposed to be concise, thus, I paraphrase them without distorting the meaning; these grounds include: -



- 1) That, the learned Tribunal Chairman erred in law and in fact by his failure to note and consider that the Ward Tribunal lacked pecuniary jurisdiction to entertain the matter.
- 2) That, the learned tribunal chairman erred in law and in fact by his failure to analyse and consider facts (sic) adduced by the applicant which proved that the applicant had genuine reasons to warrant extension of time.

The appellant prayed that the ruling of the District Land and Housing Tribunal be quashed and set aside and in lieu thereof, this court issue an order extending time for the appellant to file his intended appeal against the decision and proceedings of Kiranyi Ward Tribunal in Land Case No. 65 of 2007.

On 22nd February 2024, it was agreed by the counsels and ordered by the court that the appeal be argued by way of filing written submissions. Both sides filed them.

In his submissions in-chief, the counsel for appellant argued both grounds of appeal together. The counsel argued that the pecuniary jurisdiction of the Ward Tribunal is limited to TZS 3, 000, 000/= under section 15 of the Land Disputes Courts Act, 2002. He said in the

proceedings of the Ward Tribunal, it is clearly shown that the value of the houses built by the respondent was TZS 20, 000, 000/= and 45, 000, 000/= for the first and second houses respectively. The counsel said, the total value of the subject matter in dispute was TZS 65, 000, 000/=.

Besides that, the counsel for the appellant argued that it is this illegality which even Gwae, J. considered when extending time to file appeal. Therefore, the counsel argued that the illegality rendered the Ward Tribunal proceedings a nullity and so, this court quash the same and those of the District Land and Housing Tribunal.

The counsel for the appellant argued further that had the chairman properly evaluated the facts of the main case, he would have concluded that the proceedings of the Ward Tribunal were a nullity. He cited case laws for reference which I do not find necessary to repeat them here.

In reply, the counsel for the respondent started by raising a sort of objection by submitting that this appeal is incompetent for failure by the appellant to attach the order of Miscellaneous Application No.66 of 2013 which refused extension of time.

As to the grounds of appeal, the counsel for the respondent argued that the same are devoid of merits on reasons that the said Application No.66 of 2013 was *res sub judice* because it was filed while there was a pending Miscellaneous Application No. 93 of 2012 filed by the deceased Ephraim Nangesai seeking for extension of time to appeal against the decision of Kiranyi Ward Tribunal in Application No.65 of 2007. So, the administrator was barred from instituting new application. Yet, the counsel said even if the application was marked to have abated, it was not proper to file fresh application for the cause of action does not abate by the death of the party to the suit.

The counsel for the respondent said the application for extension of time was refused based on the reasons raised by the deceased, that is to say, illness and that the case was determined *ex parte*. But the deceased had his application 93/2012.

The counsel added that the appellant has challenged the decision of Kiranyi Ward Tribunal on the lack of jurisdiction while it was not raised during hearing of Application No. 66 of 2013. The appellant had to challenge the refusal of extension of time in Application No. 66 of 2013. He asked this court to dismiss the appeal with cost.

In his rejoinder submissions, the counsel for the appellant said he attached the orders which rectified the same, Miscellaneous Application No.243 of 2018, No.66 of 2013 and Miscellaneous Application No. 242 of 2013.

On the issue of *res sub judice*, the counsel for the appellant said there is no such pending application in the trial tribunal. As to the jurisdiction of the Ward Tribunal for Kiranyi, he said it is fundamental matter, so, even the District Land and Housing Tribunal had no jurisdiction to entertain Application No.66 of 2013.

The counsel, further said that the value of the subject matter in dispute can require valuation report if the same is in dispute; but the Ward Tribunal clearly stated the value of the houses at the trial.

From the pleadings, written submissions and the records of the lower tribunals, the main issue for determination by this court is whether the appeal has merits or otherwise.

To start with the competency of the appeal, it was alleged by the counsel for the respondent that the appellant did not attach the orders sought to be appealed against. However, it is in record that such orders and a ruling are attached to the petition of appeal. They are orders in

Application No. 66/2013 which dismissed the application for no-appearance, order of Miscellaneous Application No. 243 of 2018 which shows that it rectified Application No. 242 of 2013 to be numbered as Application No. 66 of 2013 and its decision changed; the ruling in Miscellaneous Application No. 242 of 2013 and drawn order of the same application. Thus, this argument by the counsel for the respondent was misplaced and it is overruled.

Concerning the point of *res sub judice*, the counsel for the respondent said the Application No. 93 of 2012 filed by the deceased was marked abated by order of the tribunal chairman dated 13th February 2013. Therefore, it is clear that such application was determined by marking it to have abated. Whether it was right to do so or not, cannot be challenged by the respondent at this stage.

It should be remembered that this is the appeal filed by the appellant and there is no cross-appeal. Thus, this averment lacks merits and it is rejected.

However, the appellant is appealing against the decision of the District Land and Housing Tribunal in Application No. 66 of 2013. This means that he was aggrieved by such decision. I asked myself, what was before the said tribunal? The records show that at the District Land and

Housing Tribunal, the appellant, on 21st March 2013 filed an application, that is, Miscellaneous Land Application No. 66 of 2013 seeking for an order for extension of time to appeal against the decision of Kiranyi Ward Tribunal. So, it was just an application which, at first, was dismissed for non-appearance. But latter on, the results were rectified by Miscellaneous Application No. 243 of 2018. Though, there are some confusions, but I tried to make it clear.

It was stated in that application that Miscellaneous Application No. 242 of 2013 should be numbered as Miscellaneous Application No. 66 of 2013, so, the decision in application No.242/ 2013 be regarded as the decision in Application 66 of 2013. Also, the decision in Application No. 242/2013 was corrected from dismissal order with cost to granting the application by the ruling delivered on 7th March 2014.

In simple words, the application for extension of time to appeal to the District Land and Housing Tribunal against the decision in Application No. 65 of 2007 was granted. For that matter, the appellant was allowed to appeal to that body and not to the High Court.

It follows therefore, that the appeal before this court challenging the decision of the District Land and Housing Tribunal is incompetent.

Consequently, the appeal is struck out with cost for being incompetent.

It is so ordered.

DATED at **ARUSHA** this 24th day of May, 2024.


F. H. KIWONDE

JUDGE

24/05/2024

Court: Judgment is delivered in the court room in the presence of the appellant, Mr. George Mrosso, counsel holding brief of Mr. Josephat Msuya for the respondent and Maryciana (RMA) this 24th May 2024 and the right of further appeal is explained.




F. H. KIWONDE

JUDGE

24/05/2024