

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT SONGEA

LAND CASE APPEAL NO. 6 OF 2006

SAMSON NAHUMU MACHAAPPELLANT

VERSUS

**SAITABAHU LAISER
(CHAIRMAN, KARANSI
VILLAGE COUNCIL).....RESPONDENT**

JUDGMENT

FIKIRINI, J:

Appealing the Kilimanjaro District Land and Housing Tribunal decision the appellant one Samson Macha challenged the Tribunal for failing to grant extension of time for the appellant to file his appeal out of time basing its decision on technicalities.

The appeal was argued by way of written submissions. In his written submission the appellant argued that the District Land Tribunal did not give parties opportunity to be heard. He further argued that the procedure for filing an appeal have not been prescribed by the Minister in terms of section 21 of the Land Disputes Courts Act No.2 of 2002. However this argument was not elaborated further.

The appellant further submitted that his application was properly before the tribunal as it was pursuant to section 20 (2) of Act No. 2 of 2002. As for the good and sufficient cause, he argued that after the decision he opted to pursue his matter by lodging complaints with various administrative offices and filed the application for extension of time later but by then time had already elapsed.

On a different ground, the appellant submitted that the Ward Tribunal was not properly constituted as there was no woman member on the panel. That according to him tainted the jurisdiction of the Ward tribunal and though the point was not raised as one of the ground of appeal but since it is pertinent issue, he thought it proper to raise it in his submission as this concerns the issue of jurisdiction.

It was thus his prayers that the District Land Tribunal decision be set aside and his application be allowed as to file appeal out of time.

Responding to the appellant's written submission, the respondent submitted that the parties were accorded

enough opportunity to present their case and not as stated by the appellant in his submission. As for the applicability of section 21 of the Act, no.2 of 2002, it was his submission that the appellant had to adhere to the procedure as he was apprised of his rights to appeal at the Ward tribunal after decision was read out. Otherwise as the case is, the appellant is time barred.

Regarding the chairman decision to concur with one of the member, it was the respondent's position that there was no any misdirection. He as well countered the submission that had the chairman considered the reasons for the appellant's delay he would have had arrived at a different decision. It was his submission that since the appellant was informed of his rights to appeal, only that he opted to pursue administrative route he then cannot resurface and claim not to know where to go and seek for relief. According to the respondent this was baseless and no defence. According to him the Tribunal decision was properly and fairly arrived at. He thus prayed for the dismissal of the appeal with costs.

In rejoinder, the appellant argued that the District Land Tribunal did not live up to its role of adjudicating. This because it did not guide the appellant along when dealing with his application for extension of time and particularly the way both the appellant's affidavit and respondent's counter affidavit were. The appellant's affidavit did not appropriately represent his application while that of the respondent did not respond to the substance in the appellant's affidavit.

The appellant as well challenged the respondent's submission on the chairman's decision by stating that no reasons were given for the decision except he just endorsed the erroneous view of one of the member that the application was to fail as time had run out.

As to the delay in filing appeal, it was the appellant's submission that he had attached four documents to his affidavit to show why he was late in lodging his appeal and he was just asking the District Land Tribunal to give him opportunity to be heard and the Tribunal to use its discretion to grant extension of time. And it was not correct that he was playing on maxim "**ignorance of law**" as suggested by the respondent.

As to the jurisdiction issue, it was his submission that since that was the point of law, it could thus be raised at any stage. He finally suggested for the application of section 36 of Act, No.2 of the 2002 whereby the Tribunal could invoke its revisional power. He thus prayed for Ward Tribunal proceedings to be quashed and the appeal be allowed and heard on merit.

After careful evaluation of the submission, this court made the following observations, that the appellant after the Ward Tribunal decision he decided to go around shopping for better ideas rather than pursuing his appeal. On coming back time was no longer on his side. However, instead of arguing his application by showing good and sufficient cause warranting grant of his application for

extension of time to file appeal out of time, he argued his application as reflected in the District Land Tribunal record.

There is no doubt at all that the appellant's application for extension of time before the District Land Tribunal failed as no good and sufficient reasons were advanced in support of the application. In his argument the appellant argued that the District tribunal ought to have guided him along. There is validity in his argument and most of the time seating chairman or magistrates do so, but I must admit it is sometime difficult for them and especially when there is already a sworn affidavit before the tribunal.

In addition, the appellant ought to have sought for the assistance had he needed one, instead of expecting miracles. I believe parties should know and own their cases. The court can only jump in when as I said above necessary. In the application before the District Land Tribunal I do not know what the chairman would have do after the applicant had ignored the Ward Tribunal's guidance when parties were apprised of their right to appeal. From the lower court record it is clear after the Ward Tribunal decision the appellant instead of appealing the decision he decided to detour and embraced an administrative approach. It is after that had proved ineffective he decided to come back, by then time for him to lodge an appeal had elapsed. Though the main function of the courts or tribunals is to dispense justice but that can only be easily done if conflicting parties adhere to the proper procedures in place and especially when they are advised on what to do, how and when. Justice does not only happen, it has to be made to happen. Both the courts

and the parties involved have to each play their roles to see that justice takes its course and not otherwise.

As regards the chairman's decision relying on one of the member's opinion, again the appellant's argument is devoid of merits. In this particular application the two members had different opinions and it is quite normal that the chairman will concur with one. This does not necessarily mean the two shared the same opinion but since they have the same conclusion that is what will count in concluding the matter before it. The appellant was questioning the laid down law referred by the tribunal chairman. The laid down law in this aspect was that the appeal ought to have been filed within 45 days after the Ward Tribunal decision. The appellant did not comply with that. Indeed upon realizing he is out of time he filed for an application for extension of time, but again he did not have good and sufficient reasons warranting for the grant of the application for extension of time. Filing for an application pursuant to the proper provision of the law in itself is not sufficient. Other requirements had to be fulfilled as well. The appellant did not and as a result the application for an extension of time was dismissed.

The appellant raised the question of jurisdiction under section 11 and 14 of the Act No. 2 of 2002, that no woman was included in constituting the panel of members. It was therefore his submission that the panel was not properly constituted and therefore the proceedings were a nullity. That would have compelled the chairman to allow the application for extension of time or apply section 36 of the

Act No. 2 of 2002 and revise the Ward decision. This was not raised as one of the grounds of appeal.

After carefully reading section 11 of the Land Disputes Courts Act, 2002 read together with section 14. I am in agreement that the proceedings before the District Land Tribunal were a nullity. This is because the District Land Tribunal ought to have acted accordingly by invoking section 36 (1) (b). This provision gives the said tribunal its revisional jurisdiction. And under such powers could have quash the Ward Tribunal proceedings and decision.

Section 11 of Act No.2 of 2002 reads.

“Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act, 1985”.

My understanding of this is that at any sitting of the tribunal there must be not less than 4 members. Among those four members one or more is expected to be a woman so as to create gender balance since the same had been considered in the election of the members. Therefore it will only make sense if their appearance on the panel takes place on every sitting.

Coming to this particular appeal, the Ward Tribunal record does not indicate the composition had a woman member as required by section 14 (1). The provision reads:

“The tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman”.

Now going back to the record the four names with signatures against them were that of:

1. Rogasian K. Mbise – Chairman
2. Nasson N. Kitomari – Secretary
3. Amedeus S. Mollel – Member, and
4. Leonard K. Tarimo – Member.

In my view none of the above names indicate the name of a woman or women. Failure of a composition with no single woman contravened the mandatory requirement of section 14 (1) and hence the said proceedings were a nullity.

In light of the above, I therefore allow the appeal, quash and set aside the District Land Tribunal decision and all subsequent proceedings. I accordingly proceed to order retrial of the case with proper composition of members.

It is so ordered.

Judgment Delivered this 7th day of August, 2012 in the presence of parties.

P. S. FIKIRINI

JUDGE

7TH AUGUST, 2012

Right of Appeal Explained.

P. S. FIKIRINI

JUDGE

7TH AUGUST, 2012