

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT SONGEA

MISCELLANEOUS LAND APPEAL NO. 1 OF 2008

MAXIMILIAN MBOGORO.....APPELLANT

VERSUS

MARCELIN KOMBA.....RESPONDENT

JUDGMENT

FIKIRINI, J:

Maximillian Mbogoro through his counsel Mr. E.O. Mbogoro is appealing to this court the decision of the District Land and Housing Tribunal dismissing his application for an extension of time to file appeal from the Magaguru Ward tribunal decision. The appeal was argued by way of written submission. In his submission Mr. Mbogoro argued that the District Land tribunal applied Regulation 13 (3) of the Land Disputes Act, No.2 of 2002 out of context. This is because the District Tribunal did not rely on the appellant/applicant's affidavit and the

respondent's counter affidavit which did not dispute the reason advanced for failure to file a timely appeal. The reason advanced in the applicant's sworn affidavit was that the preferred advocate by the appellant/applicant was alleged to be in Tunduru attending High Court sessions, the fact which was not disputed by the respondent. According to Mr. Mbogoro since the District Land Tribunal did not consider that then the dismissal of the application was not justified. He thus prayed for this appeal to be allowed with costs.

Reacting to the above submission Mr. S.M. Waryuba counsel for the respondent, submitted that Regulation 13 of the District Land and Housing Tribunal was properly applied and on failure of justice was occasioned on belief that the appellant's application was based on the failure by the appellant's counsel to produce a relevant cause list. It was his position that the application lacked sufficient reasons for the grant of extension of time to lodge appeal from the Ward Tribunal to the District Tribunal. He thus prayed for the appeal to be dismissed with costs.

I have carefully read the record and the submissions by the counsels for the party and without any doubt conclude that this appeal has no merit. First, it has to be understood that appeal from Ward Tribunals to District Tribunals do not generally require a copy of the judgment or proceedings to effectively lodge for an appeal to the District Tribunal. Second, it is clear truths that may people are not conversant with the law and court procedures. However, that cannot be a safe defence to be relied on. And in this particular case this court fails to consider it as a sufficient

ground to rely on in allowing the appeal. Third, since the appellant had an advocate representing him, then he should know better that in application for extension of time good and sufficient reasons where the key element and not what had been stated in the respondent's counter affidavit.

Not knowing what to do in my view could not hold. The reason being doing so would open a legal pandora's box. In addition, the appellant seem to have not used the services of the Ward Tribunal properly. This position is taken on assumption the appellant was apprised of his rights of appeal, as that is what is normally done by any judicial or quasi-judicial body giving decision and especially where appeal is an option for any one aggrieved. The appellant has not indicated being denied of such information by the Ward Tribunal.

Even, if it were to be assumed that he was not informed but still this court did not find the reason raised that the preferred advocate was away in Tundu and therefore had to wait for him as sufficient. Most of the Advocate's have offices and staffs other than themselves. A visit to the Advocate's office would have assisted the appellant to take the necessary steps which would have made him be within the required time. But if the appellant did not want to consult with any other person except the preferred advocate, then that is a problem and hence he is here with no sufficient reasons to allow his appeal.

Besides, this court does not see any good reason to fault the District Land Tribunal decision. It is clear even the

preferred advocate did not have good and sufficient cause to warrant the grant of the application. It is correct that Regulation 3 (3) suitably refer to appearance before the tribunal but still the said requirement would have probably enhance the applicant's application as there would have been a proof that indeed Mr. Mbogoro was attending to High Court session in Tunduru. Though not sufficient reason in its strict meaning but who knows might have carried the day.

For the foregoing this court does not find any reason to disturb the District Land Tribunal's decision and hence proceed to dismiss this appeal with costs.

It is so ordered.

P. S. FIKIRINI

JUDGE

4TH AUGUST, 2012