

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT MWANZA**

**LAND APPEAL NO. 73 OF 2010  
(From the Decision of the District Land and Housing Tribunal of Mwanza at  
Mwanza in Land Case Appeal No. 49 of 2010)**

**MKURUGENZI WA NELIS ..... APPELLANT  
VERSUS  
ELIAB CASSIUS ..... RESPONDENT**

**JUDGMENT**

**MWAMBEGELE, J.:**

On 30.04.2009 the Ward Tribunal made the following order:

*“kuanzia sasa eneo linalolalamikiwa ni mali ya  
mlalamikaji Eliab Cassius. Mdaiwa unatakiwa  
kuondoa sehemu ya nyumba iliyojengwa kwenye  
eneo la mdai. Mdaiwa unatakiwa kufukia  
mashimo ya choo pamoja na mashimo ya  
takataka ulilyochimba katika eneo la mdai bila  
ridhaa yake. Utekelezaji ufanyike ndani ya siku  
14 kuanzia siku ya uamuzi kutolewa.*

*... Rufaa iko wazi kwa asiyeridhika na uamuzi huu  
ndani ya siku 45 kunzia siku ya hukumu  
kutolewa”*

That was an order given in respect of an application filed by Eliab Cassius; the Respondent against Mkurugenzi wa Nelis; the Appellant. The Appellant did not appeal against the order. It is said he was negotiating with the Respondent so that he could compensate him instead of demolishing the premise that encroached his land.

Amidst negotiations, to the Appellant's surprise, the Respondent started the execution process. That is when the Appellant thought of appealing against the decision of the Ward Tribunal. But then he was already out of time. He thus filed an application in the District Land and Housing Tribunal for extension of time to file the appeal. On 26.06.2010 the District Land and Housing Tribunal dismissed the application. It is against this order that the Appellant has appealed to this court. Through the services of M. B. M. Ngero (Advocate), he has filed only one ground of appeal; which reads:

In view of the reasons that were given by the  
Appellant in support of its Application for leave

to appeal out of time, the District Land and Housing Tribunal was not justified in its dismissing the said Application.

The appeal was argued before me on 31.10.2012 during which the Appellant, who was present, was ably represented by Mr. Ngero, learned Counsel. The Respondent was present in person and unrepresented. He therefore argued the appeal by himself.

In sum, it was the submission of Mr. Ngero that the Appellant did not file an appeal in the District Land and Housing Tribunal because he was negotiating with the Respondent so that the Respondent could be compensated, instead of demolishing the structure and refilling the septic tanks and trash pits. Mr. Ngero submitted that, before the negotiations were complete, and after the expiry of the 45 days limitation, the Respondent commenced the execution process. That is when the Appellant proceeded to file the application in the District Land and Housing Tribunal for enlargement of time to file an appeal out of time. He submitted that the District land and housing Tribunal ought to have seen this as sufficient reason for the delay. Mr. Ngero also submitted that the Appellant, being a lay person, he was not

aware of the process of the machinery of justice. To bolster this argument, he cited to me *Ramadhani Nyoni Vs M/S Haule & Company, Advocates* 1996 TLR 71 (HC). He concluded with a prayer that the appeal be allowed with costs.

On his part, the Respondent retorted that it is not true that the delay was caused by negotiations between him and the Appellant. After the judgment and order of the Ward Tribunal, the Appellant, the Respondent submitted, was adamantly boasting that he (the Appellant) was going to take his (Respondent's) land and other people's lands as well despite the judgment of the Ward Tribunal. And that he (the Respondent) was wasting time to pursue the matter. He submitted further that indeed the Respondent went to the City Council and the area was eventually surveyed and land belonging to fifteen families was taken. He concluded with a prayer that the decision of the District Land and Housing Tribunal be endorsed.

In a short rejoinder, Mr. Ngero submitted that the negotiations were conducted in the presence of the area chairman. As to the survey being instigated by the Appellant, Mr. Ngero submitted that the Appellant did not

have any hand in the survey; it was the City Council which surveyed the area *suo motu*.

I have given due consideration to reasons for delay as stated to me by the Appellant. I think they are sufficient causes to allow him pursue his case to its finality. Admittedly, courts in this jurisdiction will not bar any person to access justice under the guise of procedural rules or technicalities, if in so doing no injustice will be occasioned. As rightly pointed out by Mr. Ngero, learned Counsel the ***Ramadhani Nyoni*** case (supra) is a good authority to buttress this point. In the ***Ramadhani Nyoni*** case it was held:

*“... in a case where a layman, unaware of the process of the machinery of justice, tries to get relief before the courts, procedural rules should not be used to defeat justice ...”*

The court of appeal, seized with an identical situation in ***Zuberi Mussa Vs Shinyanga Town Council*** Civil Application No. 100 of 2004 (unreported) quoted *in extenso* what was held in ***the Judge In-charge High Court Arusha Vs N.I.N. Munuo Ng’uni***, Civil Appeal No. 45 of 1998 (unreported) had this to say:

*“the Munuo case ... [held] that:-*

*‘... Now, it is trite law that procedural irregularity should not vitiate proceedings if no injustice has been occasioned ... we agree with the respondent that rules should not be used to thwart justice. In fact a prominent judge in this jurisdiction the late BIRON, J. said ... that rules of procedures are handmaids of justice and should not be used to defeat justice’ pp. 2–3 of the typed judgement.*

*The Court, went on to observe thus:-*

*‘To clinch it all, the thirteenth Amendment to the Constitution has promulgated Article 107A which provides, in sub-article 2 (e), as follows:*

*Katika kutoa uamuzi wa mashauri ya madai na jinai kwa kuzingatia sheria, mahakama zitafuata kanuni zifuatazo, yaani:*

*Kutenda haki bila ya kufungwa kupita kiasi  
na masharti ya kifundi yanayoweza  
kukwamisha haki kutendeka.*

*That can be translated as follows:-*

*(2) In the determination of civil and criminal  
matters according to law, the courts shall have  
regard to the following principles, that is to say:*

*(a) ...*

*(b) ...*

*(c) ...*

*(d) ...*

*(e) administering justice without being  
constrained unduly by technical requirements,  
which are capable of preventing justice from  
being done' (emphasis is ours) at pp. 3-4".*

I have quoted *in extenso* the above decision to show the current position of the law in respect of the issue I am seized with. It is now settled law that procedural irregularity should not vitiate proceedings if no injustice has been occasioned. In the same line of argument, the court will not block any citizen to access justice basing on legal technicalities provided that in doing so no injustice should be occasioned. As already alluded to hereinabove, I find and hold that in delaying to file the appeal within time, the Appellant

was caused by reasonable and sufficient cause. The District Land and Housing Tribunal ought to have allowed the Appellant to file his appeal out of time so as to leave justice smile. That is the reason why I allow this appeal.

This appeal is allowed with costs. The appellant to file his appeal, if he so wishes, in the District Land and Housing Tribunal within forty five days from the date of this judgement. In order that justice is not only done but also seen to be so done, it will be prudent if the appeal, if filed, is heard by another chairman.

DATED at MWANZA this 2<sup>nd</sup> day of November, 2012.

  
J. C. M. MWAMBEGELE

JUDGE