

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 7 OF 2012

(From the decision of the District Land and Housing Tribunal
of Iringa District at Iringa in Land Case Appeal No. 68 of 2011
and Original Ward Tribunal of Magulilwa Ward in
Application No. 28 of 2011)

VICENT KUTIKA APPELLANT

VERSUS

ANJELINA NYAMAHANGA RESPONDENT

29/5/2014 & 22/8/2014

R U L I N G

MADAM SHANGALI, J.

Before the District Land and Housing tribunal at Iringa, the appellant filed an application seeking for leave to appeal out of time against the decision of the Magulilwa Ward Tribunal. Having heard the application the District Land Tribunal ruled in favour of the respondent and dismissed the application. Aggrieved with that decision the appellant has

filed this application based on the following grounds.

1. *That, the District Land and Housing Tribunal erred in law and fact for holding that the appellant did not make any efforts to pursue his appeal in time despite strong evidence to the contrary adduced by the appellant.*
2. *That, the District Land and Housing Tribunal erred in law and fact for holding that there were no efforts made by the appellant to procure copies of the necessary documents without considering that the trial Magulilwa Ward Tribunal ought to have given the applicant the necessary document in time as per his application.*
3. *That, the District Land and Housing Tribunal erred in law and fact for holding that the appellants oral application to the trial Magulilwa Ward Tribunal for the copies on 12th September, 2011 was unknown of belief.*
4. *That, the district Land and Housing Tribunal erred in law and fact for deciding that the appellant did not avail good cause for delay of appeal without considering the strong oral evidence tendered by the*

appellant.

When the matter was called for hearing before this court both parties appeared in person and unrepresented by advocates. As a result their submission before this court was short and sketchy.

Nevertheless, the appellant submitted in support of his grounds of appeal to the effect that his appeal to the District Land Tribunal was late due to the failure of the trial Ward Tribunal to supply him with the copies of judgment and proceedings in time. He contended that the judgment was delivered on 29/8/2011 and the appeal was filed on 22/11/2011 whereby at that time he was not late because he received the required documents on 27/10/2011. He insisted that all along he was making a follow-up for the documents from the Ward Tribunal although he did not put his request for the documents in writing. He prayed his appeal to be allowed.

In reply, the respondent submitted to the effect that there is no evidence to support the appellant's allegations and claims that he requested for the required documents and that the delay was caused by the trial Ward Tribunal. He contended that he has been in the occupation of the said piece of land for more than 25 years and the appellant has

only been disturbing him for nothing. He argued that the appellant failed to file appeal on time because he is not serious with the matter.

At this juncture the crucial question is whether the appellant had shown sufficient reason for the delay and whether his complaints against the decision of the District Land and Housing Tribunal are tenable. The position of the law is that where the applicant is seeking for extension of time to file an appeal out of time he must advance sufficient reason for the delay. See **Chesco Muyinga Vs. Sietco** Misc. Civil Application No. 50 of 2005 (*HC Unreported*).

In this appeal there is no dispute that the appellant was late to lodge his appeal. The trial Ward Tribunal delivered its decision on 29.8.2011 and the appeal was filed on 22.11.2011 after expiry of almost 95 days. The appeal was supposed to be filed within 45 days from the date of decision, and therefore the appeal was late for 40 days.

The reasons for delay advanced by the appellant which were also enshrined in his affidavit filed before the District Land and Housing tribunal may be amply summarized as follows;

- **One**, That after being aggrieved by the decision of

the trial Ward Tribunal the appellant informed the Ward Tribunal on his intention to appeal against that decision;

Two, that he orally applied to be availed with a copy of judgement and proceeding on 12.9.2011;

Three, that on 6/10/2011 he went to the trial Ward Tribunal and paid T.Shs.14,000/= for that purpose as directed by the Ward Tribunal;

Four, that he was instructed by the Ward Tribunal to return to the tribunal on 12/10/2011 for collection of the said documents but when he went there as instructed he was not able to get the documents;

Five, that, he was re-instructed further to go back for collection of the documents on 17/10/2011 but nothing materialized;

Six, that it was on 21/10/2011 when he was able to be supplied with the necessary copies and filed his belated appeal on 22/11/2011.

Basing on those facts the District Land Tribunal correct conceded that delay by the trial Ward Tribunal to supply copies of judgement and records of proceedings to the applicant for the purposes of appeal within prescribed period

constitutes sufficient reason for granting leave for extension of time to appeal. However, the District Land Tribunal observed, and correctly so, that it is upon the applicant/appellant to prove that the delay to supply the said documents was actually caused by the trial Ward Tribunal and the applicant/appellant made reasonable and diligent efforts to procure the copies within reasonable time. The District Land Tribunal also found that there was no evidence to support the applicant/appellant allegation that he applied for copies on 29/9/2011 or evidence to support any of his alleged subsequent follow-up claims including the payment of T.Shs.14,000.00.

I entirely agree with the findings of the District Land Tribunal because if the request for the said documents was indeed made orally, one would have expected the appellant's affidavit to have been supported and annexed with the affidavits of the Magulilwa Ward Tribunal officials who were orally communicating with him. That would have verified the alleged oral efforts taken by the appellant in obtaining the said documents and indeed would have exonerated him from blames of negligency, complacency and inaction to process his appeal. Furthermore the appellant was supposed to attach to his affidavit a receipt of payment of T.Shs.14,000/- claimed to have been paid to the trial Ward Tribunal.

In my considered opinion the District Land Tribunal was correct to refuse the application because there is no evidence whatsoever to support and substantiate the appellant's claims.

In conclusion the four grounds of appeal filed by the appellant are devoid of merits. The appeal is hereby dismissed with costs.

M. S. SHANGALI

JUDGE

22/8/2014

Judgement delivered to date 22/8/2014 in the presence of both parties.

M. S. SHANGALI

JUDGE

22/8/2014

M. S. SHANGALI

JUDGE

24/6/2014