

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 28 OF 2012

(From the decision of the District Land and Housing Tribunal of Njombe District at Njombe in Land Case Appeal No.19 of 2011 and Original Ward Tribunal of Ruhuhu Ward in Application No.3 of 2011)

EMMA JACOB HAULE APPELLANT

VERSUS

MARTIN LAMBILEKI RESPONDENT

19/8/2014 & 10/10/2014

JUDGEMENT

MADAM SHANGALI, J.

This appeal originates from the decision of the Ruhuhu Ward tribunal in Land Civil Case No. 3 of 2011 where the present respondent MARTIN LAMBILEKI sued the present appellant EMMA J. HAULE on trespass and occupation of his piece of land situated at Ilela village. Having heard the evidence from both sides the trial Ruhuhu Ward Tribunal deliberated unanimously in favour of the present respondent in its decision dated 19/9/2011.

It appears that the appellant Emma Jacob Haule was not satisfied with that decision of the trial Ward Tribunal but when she decided to appeal she realized that she was already out of time. As a result she filed an application before the Njombe District Land and Housing Tribunal seeking for enlargement of time to file his belated appeal out of time. On 19/7/2012, the District Land and Housing Tribunal ruled against the appellant on ground that the appellant had failed to show any sufficient reasons to warrant extension of time. The application was dismissed with costs.

Still disgruntled with that decision the appellant has filed this appeal intending to challenge the decision of the District Land and Housing Tribunal. The appellant filed two grounds of appeal namely;

1. That, the learned Chairperson of the District Land and Housing Tribunal erred in fact and law in misapplying the law by failing to hold that the circumstances that caused the delay in filing an appeal were falling under the ambit of Section 21 of the Law of Limitation Act, Cap. 89 R.E. 2002.
2. That, the learned Chairperson of the District Land and Housing Tribunal erred in fact and law in

holding that even granting the extension would be pointless as the intended appeal will eventually fail, while there are apparent errors on the part of trial Ward Tribunal, the errors which were pinpointed in the submission in support of the application.

In this appeal, just like before the District Land and Housing Tribunal the appellant was represented by Mr. Ngafumika, learned advocate while the respondent appeared in person and unrepresented. With a leave of this court this appeal was argued by way of written submissions.

In his written submission the appellant's advocate claimed that upon being dissatisfied by the decision of the trial Ward Tribunal and being a lay person, the appellant sought legal assistance and accordingly advised to procure copies of the record of proceedings and judgment from the trial Ward Tribunal or framing grounds of appeal. He complained that the sought copies were not easily supplied to the appellant until when she approached the Government Officials for assistance and eventually supplied on 23/11/2011 after expiration of 65 days. He further argued that it was impossible for the appellant to file her grounds of appeal without being supplied with the requisite copies. Mr. Ngafumika, contended that the reason for the appellant delay was not caused by her fault or negligence but failure by the trial Ward Tribunal to supply her with the necessary copies in time.

The appellant's advocate also stated that the District Land and Housing Tribunal was wrong to hold that there is no chance of success of the intended appeal while there is apparent errors on the record of proceedings. Mr. Ngafumika prayed for the appeal to be allowed so that the appeal may be filed and determined.

In response, the respondent supported the decision of the District Land and Housing Tribunal that there was no sufficient reason for the delay to warrant the grant of extension of time. He stated that the appellant's main reason for the delay was that after the delivery of the judgement of the trial Ward Tribunal, the appellant being a layperson went looking for legal assistance but yet elected to follow wrong routes through the Government Officials to obtain the copies of judgement and proceedings from the trial Ward Tribunal. The respondent argued that ignorance of law is not an excuse nor a good reason to grant extension of time. He cited the case of **Anna Haule Vs. Salum Ally, Misc. Application No. 250 of 2004**. He further contended that there is no evidence, whatsoever to establish the alleged efforts made by the appellant to obtain the said copies from the trial Ward Tribunal for the appeal purposes.

It must be noted that in such applications the applicant's main duty is to show sufficient reason as to why he/she should be given more time for enlargement of time and in doing so he/she must convince the court that the delay was not caused or