

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 16 OF 2012

(From the decision of the District Land and Housing  
Tribunal of Iringa District at Iringa in Land Case Appeal  
No. 19 of 2012 and Original Ward Tribunal  
of Igowole Ward of 2011)

CHRISTINA MBEDULE ----- APPELLANT

VERSUS

ATILIO NZOGORO & OTHERS ----- RESPONDENTS

10/02/2015 & 12/03/2015

**JUDGEMENT**

P. F. KIHWELO, J.

This is an appeal from the decision of the District Land and Housing Tribunal of Iringa (hereinafter referred to as the District Land and Housing Tribunal) delivered on 4<sup>th</sup> May, 2012 Hon. Mapunda rejecting the application for leave filed by the appellant against the respondents which sought, inter alia, the following order;

“That the Honourable Tribunal be pleased to grant an application to file an appeal out of time under the reasons set-forth in the applicant’s affidavit”

The applicant was aggrieved by the ruling of the District Land and Housing Tribunal and lodged this appeal. A three point Memorandum of Appeal was filed.

These grounds are as reproduced below:-

1. The District Land and Housing Tribunal erred in law and facts by not considering the fact that proceedings and judgement of Igowole Ward Tribunal were necessary to the appellant for preparation of sound Petition of Appeal (sic) which were not and is not supplied to the appellant todate.
2. The District Land and Housing Tribunal erred in law and facts by not considering the reasons adduced by the appellant that his health condition was not well though strong evidence to prove that was tendered in the Tribunal.
3. The District Land and Housing Tribunal erred both in law and facts to reject the appellant’s application for leave to appeal out of time on the ground that the intended appeal has overwhelming chances of success.

At the hearing of the appeal, the appellant was represented by Mr. Msegu, learned Advocate while the respondents were represented by Mr. Nyato, learned Advocate. The appeal was argued orally.

Mr. Msegu, learned counsel for the appellant in support of the first ground of appeal he submitted that copies of the proceedings and judgement were crucial to enable the applicant frame a sound memorandum of appeal and he invited this court to refer to the case of **Marry Kimaro V Halfan Mohamed** [1995] TLR 202 and he went on to state that since the two documents were not supplied to the appellant by the trial tribunal the learned Chairman at the District Land and Housing Tribunal erred in rejecting the application.

Mr. Msegu further referred this court to the case of **Foreign Mission Board of the Southern Baptist Convention V Alexander Panomarities** [1884] TLR 146 in which the court had the following to say;

*“Since the inordinate delay in furnishing the certified copy of the proceeding of the High Court can not be blamed on the respondents no cause of action existed on his part to bar him from instituting and prosecuting his appeal.”*

Mr. Msegu therefore strenuously contended that the appellant was not to blame hence the appeal should be allowed.

Submitting on the second ground of appeal Mr. Msegu forcefully submitted that the reasons which were advanced by the appellant before the appellate tribunal seeking extension of time to file the appeal out of the time prescribed by the law were sufficient reasons to warrant the appellate tribunal grant the application. He further referred to Section 20 of the Land Courts Disputes Act, Cap 216 RE 2002 which empowers the District Land and Housing Tribunal to extend the time for filing the appeal upon good and sufficient cause being assigned for such delay. According to Mr. Msegu although the phrase good and sufficient cause has not been defined by law but he thinks sickness of the appellant is one of the good and sufficient cause to warrant extension of time.

As regards the third ground of appeal Mr. Msegu argued that Section 34(1) (b) of the Land Disputes Courts Act, Cap 216 RE 2002 it is allowed to produce additional evidence during the hearing of an appeal and that the law has used the phrase "shall" which makes it mandatory hence according to Mr. Msegu the honourable chairman was not justified to dismiss the application as the appellant had room for producing additional evidence during the appeal.

Based upon the above submissions Mr. Msegu prayed that the appeal be allowed, and ruling of the District Land and Housing Tribunal be set aside with costs.

In reply to the first ground of appeal Mr. Nyato, the learned counsel for the respondents argued that the duty to apply for copies of proceedings and judgement is vested upon the parties and the same must be done by way of a letter and failure to do so it is hard for the court or tribunal to rely upon words of mouth. Mr. Nyato further argued that the applicant also had an opportunity to make physical follow up with the trial tribunal for assistance something which was not done. According to Mr. Nyato the appellant had no intention to appeal and that this came as a mere after thought.

In response to the submission by the appellant's counsel in support of the second ground of appeal Mr. Nyato contended that there was no good reason advanced by the appellants to justify the inordinate and unreasonable delay to lodge the appeal as required by law. Mr. Nyato stressed that, according to the evidence on records the attached medical chits were not authentic and credible for want of official stamp and the signature of the medical Doctor as the same reveals the date of admission only but no discharge date was revealed hence the honourable Chairman was right in disregarding the same.

As regards the third ground of appeal, Mr. Nyato contended that leave to appeal out of time should be accompanied by genuine reasons mere overwhelming chances of success alone is not sufficient reason to warrant extension of time.

As regards to the chance for the appellant to file additional evidence that argument has no basis at all as the appellant had ample opportunity to do so during the trial. Mr. Nyato finally prayed for the court to dismiss the appeal in its entirety.

In his brief rejoinder submission, Mr. Msegu contended that the counsel for the respondents have not provided any law that elaborates the procedure on how to apply for copies of judgement and proceedings hence the appellant was justified for the cause taken.

Otherwise he contended that the appellant sought the assistance of the tribunal by filing the Application No. 19 of 2012 and that the reasons advanced are sufficient enough to warrant the extension of time.

Finally Mr. Msegu in seeking to cement further his submission he invited this court to the case of **Ramadhan Nyoni V M/S. Haule**

**& Advocate** [1996] TLR 71 and argued that; the appellant being a lay person unaware of the process of the court hence procedures should not be allowed to defect justice. He therefore insisted that the appeal should be allowed with costs.

Having considered the submissions made by both counsels the central issue for determination is whether the Honourable Chairman of the appellate tribunal was justified in denying the application for extension of time.

In my attempt to answer the above issue I will not deal with each ground of appeal separately. This is for the sake of preciseness and clarity as stated in the case of **Melita Naikiminjal & Loishilaari Naikiminjal V Sailevo Loibaguti** [1998] TLR 120 at 130 where the Court of Appeal of Tanzania Nyalali C.J (as he then was) had the following to say;

*"We are however, of the considered opinion that an appellate court, so long as it grasps the essence of the case before it has the discretion to summarize the case and the grounds of appeal for purposes of conciseness and clarity. It does not need deal with them separately and with seriatim."*

It is on record that the Igowole Ward Tribunal delivered judgement on 29<sup>th</sup> December, 2011 and it was not until 5<sup>th</sup> March, 2012 when the appellant filed an application before the District Land and Housing Tribunal seeking for extension of time to file an appeal and among the reasons advanced were failure to be supplied with copies of judgements and proceedings as well sickness of the appellant. The District Land and Housing Tribunal in its decision found out that the above were not good and sufficient to warrant grant of extension and consequently the application was dismissed.

I have given deep and anxious consideration to the submissions by both counsels and I agree that the case of **Marry Kimaro V Halfan Mohamed** is of immense importance when it comes to the need for one to be supplied with copies of judgement and proceedings to enable him/her frame a sound Memorandum of Appeal and that, it is from the supply of the above documents that the limitation of time starts to run. However, the submission by the counsel for the appellant is self defeating because it ignores and overlooks the fact that in order to rely on that the aggrieved party must have taken some essential steps for preparing the appeal against the alleged decision in this particular case the ruling. The position has been stated clearly in the case of **Hussein Chota V Mufindi District Council and Another**, Miscellaneous Land



Application No. 4 of 2013, High Court of Tanzania at Iringa (unreported), this court Hon. Shangali J. stated inter alia;

*“It is settled that an aggrieved party, soon upon delivery of the judgement or ruling which is the subject of an intended appeal or application must take some crucial steps for appealing against the said judgement. The steps must include lodging a letter to the particular court or tribunal , registry for copies of judgement/ruling, proceedings, decree or order. Such a letter should be seen in the record of the trial court or tribunal proceedings and the applicant must attach a copy of it to the affidavit in support of the application.”*

As the appellant did not take the essential steps as indicated above the appellant can not rely on the case of **Marry Kimaro**.

Turning to the question of illness as a factor that prevented the applicant to file the appeal in time, I wish to point out that in the first place the attached chits are not free from criticism as rightly pointed out by the counsel for the respondents Mr. Nyato. But even if the same were not questionable, records reveal that the appellant started to attend treatment on 2/02/2012 more than 32 days from the delivery of the judgement by the Ward Tribunal hence

the appellant had more than a month to file the appeal but he did not therefore he can not be heard to claim today that sickness is good and sufficient ground to warrant him extension of time. In the case of **Charles Mkoloma V The Minister for Labour and 3 Others**, Civil Reference No. 19 of 2004, Court of Appeal of Tanzania (unreported) Munuo J.A (as she then was) had the following to say;

*“We agree with Kaji, J.A that as an out patient, the applicant could, if he had exercised due diligence, have processed the application for extension of time. Under the circumstances, illness was not sufficient cause for extending time.”*

In the same reasoning I am of the considered opinion that as the applicant had more than 30 days as an outpatient before the expiry of the 45 days he could, if he had exercised due diligence, have processed the appeal in time hence as rightly found by the Honourable Chairman, illness was not a sufficient cause for extending time.

In fine, I find that this appeal has no merit. I accordingly dismiss it with costs.

P. F. KIHWELO

JUDGE

12/03/2015

Right of Appeal is fully explained.

P. F. KIHWELO

JUDGE

12/03/2015

Date : 12/3/2015  
Coram : Hon. P.F. Kihwelo,J  
For Appellant : Nyato, holding brief for Msegu  
For Respondents : Eric Nyato, Advocate  
Court Clerk : Glory Makundi

Mr. Nyato, Advocate:

This matter is coming for judgement and we are ready for it.

Court:

The Judgement is delivered in the presence of Mr. Eric Nyato learned Advocate for the Respondents and holding brief for Mr. Msegu learned counsel for the Appellant.

P.F. KIHWELO

JUDGE

12/03/2015