

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

AT DAR ES SALAAM

MISC. LAND CASE APPEAL NO 74 OF 2017

*(Originating from the decision of the District Land and Housing Tribunal for
KILOMBERO/ULANGA District at IFAKARA) in Land Appeal No. 24 of 2016 and Utengule
Ward Tribunal in Land case No. 425 of 2014.*

ELIAS JOSEPH KIVAMBE.....APPELLANT

VERSUS

STEPHANIA LIGANGA.....RESPONDENT

Date of last Order: 8/6/2018

Date of Judgment: 3/8/2018

J U D G M E N T

MGONYA, J.

This is an Appeal arising from the decision of the District Land and Housing Tribunal for Kilombero/Ulanga District at Ifakara in which the Appellant sought the leave to Appeal out of time against the decision of the Ward Tribunal of Utengule Ward in Land Case No. 425 of 2014. The reason for delay was that the Respondent instituted a case without the Appellant knowledge as he was not served summons to appear, it was heard and determined exparte. The same came to his knowledge when the Respondent during Execution process.

The Appellant was not satisfied by the decision of the Ward Tribunal and hence appealed to the District Land and Housing Tribunal for Kilombero /Ulanga District at Ifakara in which the decision of the Utengule Ward Tribunal was upheld. Again the Appellant was aggrieved by the Appellate Tribunal's decision dated 6th April, 2017 of District Land and Housing Tribunal for Kilombero/Ulanga District at Ifakara. He now appealed before this Court on the following grounds:-

- 1. That, the District Land and Housing Tribunal erred in law and in fact for prematurely, determining the Application basing on merits of the disputed without considering the basis of the Application for extension of time itself.***
- 2. That the District Land and Housing Tribunal erred in law and in fact for ignoring the grounds and reasons supporting the Application for extension of time to file on Appeal.***

Wherefore, the Appellant prayed that:-

- 1. The decision of District Land and Housing Tribunal be quashed and set aside;***
- 2. The Appellant be afforded extension of time to file Appeal out of time; and***

3. Any other relief(s) that this Court may deems fit to grant.

While both parties are unrepresented, this Court ordered that the Appeal be argued by way of written submissions.

Arguing in support of grounds of Appeal, the Appellant, adopted the contents of his Petition of Appeal and wishes to argued the grounds altogether. The Appellant brought to the Court's attention the decision of the Court of Appeal in the case of ***MWANTANDU ELIAH VS. THE REPUBLIC, CRIMINAL APPEAL NO. 477 OF 2007 (Unreported)***; where it was held that, the Court may take into consideration the chances of Appeal succeeding however discouraged; and that Pre-determination of issues without affording parties the right to be heard is drying them their fundamental and constitutional rights.

The Appellant further cited a case of ***ALISON XEROX SILA VS. TANZANIA HARBOURS AUTHORITY***, Civil Reference No. 14 of 1998 Court of Appeal of Tanzania at Page 5 of the typed Judgment, the Court observed:-

" Where an extension of time is sought consequent to a delay the cardinal question is whether sufficient reason is shown for the delay, other consideration, such as the merits of the intend appeal would come in after the applicant has

satisfied the court that the delay was for sufficient cause”.

The Appellant being guided by the two decisions above, submitted that, the only issue that was supposed to be considered at the first appellate Tribunal was whether or not the Appellant had furnished sufficient cause to be granted extension of time to appeal out of time. However, the Chairman of the first Appellate Tribunal erred and misdirected himself by treating the Application as an Appeal by going into the records and Judgment and dwelling on the matter that were not in issues at that stage; that was both premature and a pre determination of issues which was fundamentally not allowed at the stage. He averred that, the matter was on the respective parties’ rights to be heard fairly; in which the same denied.

Further, the Appellant drew attention of the court in the case of ***HUSNA HASSAN VS. ABDALLAH SHABAN MUNGA (2016) TLR LR 266*** that:-

“The power to allow extension of time is discretionally. In exercising such powers no hard and fast rules have been set. However, the powers have to be exercised judicially.”

The Appellant contended that such powers were not exercised judicially and remedy was jeopardized.

In reply to the Appellant's submission, the Respondent submitted that, he differs with the Appellant submissions; where he submitted that, the Court acted *suo motto* to determine whether the Appeal to be preferred was logical, hence the Court found it to be illogical since the Appellant had no such remedy to the effect the case was decided *Exparte*; hence the Appellant could not proceed with the remedy which is not available for him instead to pursue proper remedy and to save time of the Tribunal.

Basing on the position above, Respondent referred this Court to the case of ***PATEL TRADING CO. (1961) LIMITED AND FREIGHT FORWARDER TANZANIA VS. BAKARI OMAR WEMA T/A & SISI PANEL BEATING ENTERPRISES LTD (CA) Civil Application No. 14 of 2014.*** In this case the Applicant filed a case of stay of Execution. In so deciding and for the purpose of avoiding errors, the Court went further to examine whether, the decree was executable, the court found that, the decree was unexecutable hence, the Application for stay of execution was dismissed.

Further, the Respondent submitted that the reason upon which the Appellant raised and which made him fail to file an appeal in time was that, the case was decided *Exparte* and that he had no knowledge of existence of the said case until when matter was called for execution, he knew the existence of the said case.

The Respondent submitted that, basing on the reason raised, the Chairman had to go to the roots of the case to see whether, the Appellant was not served with the copy of summons; and found that the Appellant was served but neglected to appear and defend; hence no fault on its decisions.

The Respondent finally prayed the Appellant's appeal be dismissed with costs for lack of the merit.

I have gone through the grounds of Appeal and the entire records of the case before me. From the same, I don't hesitate to state that, upon perusal of the records, there is nowhere and in any how the Appellant's right to be heard was denied. The records shows that on **19th day of January, 2015** the Appellant himself denied his right to be heard. According to the evidence from the Ward Tribunal record on the above date, it is unblemish evidence that the Appellant himself denied his right to be heard. The record reveals that the Appellant refused summons to enter appearance.

The record of hand writing proceedings of the Ward Tribunal on that date shows that, and I quote:

"Kwa kuwa mshitakiwa amekaidi wito wa baraza tena kwa kukataa samansi ya shitaka linalomkabiri la kuvamia shamba la Stephania Liganga, Baraza limeamua kusikiliza shauri hilo kwa kupata maelezo ya mshtakiwa pamoja na shahidi wake"

Hence he, (the Appellant) cannot now come and claim his right. On this you may wish to refer to the case of ***R.B. POLICIES AT LLOYD VS. BUTLER (1950) 1 KB 76 AT PAGE 76 AND 81 OR (1949) 2 ALL E.R 226*** at Page 229-230.

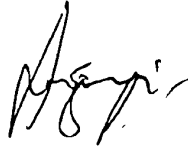
“Those who go to sleep on their claims should not be assisted by the court in recovery their property, there shall be an end of matter filed in court and there shall be protection against stale demands.”

In the instant case, neither is there any circumstances which shows that the Chairman of the first Appellate Tribunal prematurely determined the issues without affording parties the right to be heard. I concede with the decision of the Court of Appeal in the case cited by the respondent ***PATEL TRADING CO. (1961) LIMITED AND FREIGHT FORWARDER TANZANIA VS. BAKARI OMAR WEMA T/A & SISI PANEL BEATING ENTERPRISES LTD (CA) Civil Application No. 14 of 2014.***

From the above and especially from the records, I am satisfied with the lower Tribunals findings, and, therefore, I proceed to uphold the decision of both Lower Tribunals, that is for the District Land and Housing Tribunal for KILOMBERO/ULANGA District at IFAKARA) in **Land Appeal No. 24 of 2016** and Utengule Ward Tribunal in **Land case No. 425 of 2014** and **dismissed the**

appeal without costs; as the Appellant is getting assistance of legal aid from Legal and Human Right Centre.

Right of appeal is explained.

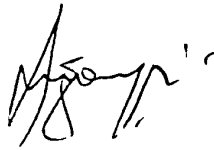


L. E. MGONYA

JUDGE

03/08/2018

COURT: Judgment delivered before Hon. A. Teye, Deputy Registrar in the presence of both parties and Ms. Emmy RMA on 3rd day of August, 2018 in chamber No. 17.



L. E. MGONYA

JUDGE

03/08/2018