

IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

MISC LAND APPLICATION No. 05 OF 2019

(Original from Land Appeal No. 09/2018 High Court of Tanzania at Sumbawanga and Appeal No. 45/2017 District Land and Housing Tribunal for Katavi at Mpanda, original file Land Case No. 53/2015 Katuma Ward Tribunal at Mpanda - Katavi.)

SILVERIUS KOMBA APPLICANT

Versus

LEONARD NKANA RESPONDENT

RULING

W.R. MASHAURI, J.

23/07/2020 & 17/08/2020

On the 10th April, 2020 Applicant filed his application under the provisions of Section 41(2) of the Land Disputes Court Act, 2002 as amended by section 41 (a) and (b) of the written Law (Miscellaneous amendments) (No.2) Act, 2016 pleased the Court to extend time for the applicant to file an appeal out of time against the decision of District Land and Housing Tribunal (**herein referred as DLHT**) for katavi at Mpanda Appeal No. 45/2017. Upon service of summons to respondent, on 23rd April, 2020 counsel Mr. Deogratias Sanga (Advocate) for the Applicant prayed to dispose the matter by way of written submissions, respondent appeared in person and has no objection concerning the prayers. The prayer granted and the schedule of filing was as follows; applicant to file his written submission by 06/05/2020, respondent to file

reply by 20/05/2020, rejoinder if any by 27/05/2020 and mention on 28/05/2020 with a view of setting a date of Ruling.

On 28/05/2020 when the matter came for the view of setting a date of ruling, Mr. Sanga (advocate) submitted that the matter was coming for setting a date of ruling but respondent filed reply yesterday (27/05/2020) instead of 20/05/2020 as ordered by the court, respondent has filed his document without leave of the court, it ought to be expunged from the record and matter be proceed expart. In reply respondent submitted that he got his submission on 20/05/2020 then started looking for one to help in replying, he prayed document to be accepted. Mr. sanga rejoind on his standing and added that if respondent's prayer allowed the leave to file other reply to be granted. Upon submissions of both parties, court allowed the reply and order applicant to be served purposely to file rejoinder if any, the matter was scheduled for mention on 25/06/2020 with a view of setting a date hearing/judgement. Both parties submitted their submissions accordingly.

In submissions, Applicant is represented by Mr. Musa Lwila (Advocate) while Respondent is represented by Mr. Elias Julius Kifunda (Advocate).

In supporting chamber application, Applicant submitted that; he withdrew his filed appeal on 31st March, 2019 and the court pronounced the order for withdrawal on 1st day of April, 2019, following withdrawal

of the appeal, applicant become time barred from filing again fresh appeal hence this application. Applicant pray to adopt the contents of the chamber summons and affidavit sworn by Mathis Budodi which contains grounds for extension of time, applicant added value by submitting as follows; he withdrew the appeal on the ground that applicant filed memorandum of appeal instead of petition of appeal so applicant withdrew the appeal with the intension to re-filing fresh appeal, but after withdrawal of the appeal he found that he was time barred hence make application in this court. Applicant added that, that was a technical delay or technical defect is excusable ground for extending time. He cited the case of **Fortunatus Masha Vs William Shija & another** (1997) TLR 154 CA. furthamore, after withdrawal of an appeal, counsel for applicant was seeking communication from applicant who was not regularly reachable because of communication barrier, advocate was waiting for instruction of the client, after being instructed they discover their appeal was time barred, applicant filed this application for extension of time on 10th April 2020 before this court..

Applicant in addition submits that, judgement of the Trial Tribunal intended to be appealed has an issue of illegality which is the reasonable ground for extension of time. He cited the case of **Principal Secretary of Defence National Service vs Devan Valambhia** (1992) TLR 185 **Frank Ezekiel vs Maliselina Kalyoga** Misc Land Application No.

15/2019. After that, applicant closed his submission by inviting the court to allow the application and grant leave for extension of time.

In reply respondent submit that, he was the appellant in appeal No. 45/2017 in DLHT for Katavi Mpanda, judgement was delivered on 4th April, 2018 in favour of respondent. Applicant being aggrieved on 22nd May, 2018 he filed Land Appeal No. 09/2018 in the High Court of Tanzania at Sumbawanga and counsel for the applicant on 01st April, 2019 prayed his appeal to be withdrawn, the appeal was withdrawn and on 10th April, 2020 the applicant filed this application for extension of time to file an appeal to the High Court. Respondent added that the legal position is couched under provision of S.38 (1) and (2) of the Land Disputes Courts Act, 2002. Respondent closed his submission by praying for dismissal of the application with costs.

Applicant in rejoinder submit that, the judgement of DLHT tainted with illegality which are 1st. failure to accommodate legally assessor's opinion as to Regulation 19(2) of Land Disputes Courts (DLHT) Regulations, 2003. 2nd. applicant was not afforded fair trial which is mandatory as to Article 13(6)(a) of the Constitution of United Republic of Tanzania of 1977. 3rd. trial tribunal erred in law and facts to hold respondent as rightful owner of the plot, 4th. trial tribunal erred in law by considering wrong document to allow appeal. That was it.

After considering the submissions of both parties, this court look cautiously in the submission of respondent concerning the point of law; the application was prepared under S. 41 (2) of the Land Disputes Courts Act Act, 2002, amended by written laws (miscellaneous Amendments) No. 2 Act, 2016. This provision straight applied to the matter in which DLHT entertained in original jurisdiction and not otherwise, the provision stats:

*"Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceedings from or in respect of any proceeding in a **District Land and Housing Tribunal in the exercise of its original jurisdiction** shall be heard by the High Court (Land Division". (Emphasize is mine)*

The only question is whether the matter was entertained by DLHT in its original or appellate jurisdiction? When tracing the historical locus on the face of records, chamber summons itself is exhaustive, it demonstrates that the matter originates at Katuma Ward Tribunal at Katavi-Mpanda by Land Case No. 53/2015, respondent (herein) appealed to DHLT for Katavi at Mpanda by Land appeal No. 45/2017 and applicant (herein) lodged appeal to High Court of Tanzania at Sumbawanga as Land Appeal No. 09/2018.

The projected appeal shall come from Land Appeal No. 45/2017 (DLHT – Mpanda) it is health to say that, the DLHT did not accommodate the matter in its original jurisdiction except as appellate body, moreover it was registered as Land Appeal and not the contrary. Being so, the only applicable provision as to this application is S. 38(1) of the Land Disputes Courts Act which it reads:-

*"Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal **in the exercise of its appellate or revisional jurisdiction**, may within sixty days after the date of the decision or order, **appeal to the High Court (Land Division)**"* (highlight is mine)

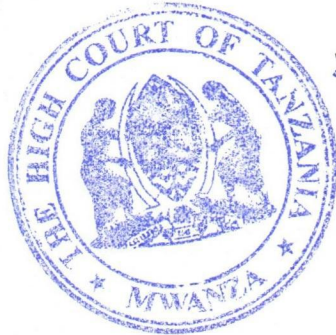
It's my attitude that applicant quoted wrong citation, as to the fact that the matter originated from ward tribunal hence S. 38(1) of the Land Disputes Courts Act, ought to be appropriate to move the court in extension of time to file appeal. Therefore this application is improperly, yet to be moved. In the case of **African Banking Corporation (T) LTD Vs George Williamson Limited** Civil Application No. 67/2017 CAT Dsm June 2018 has this to say:-


"the position of law regarding wrong citation or non-citation of the provision of law enabling the court to grant a sought relief is that, the anomaly renders the

application to be improperly before the Court. What the court has to do with such an application is to strike it out"

In the circumstance, I find myself constrained to join hands with Mr Kifunda in upholding the prevalent position of law, that, an incompetent application has to be struck out. I accordingly strike it out with no order as to costs.

Order accordingly.




W.R. MASHAURI
JUDGE
17/08/2020

Date: 24/8/2020

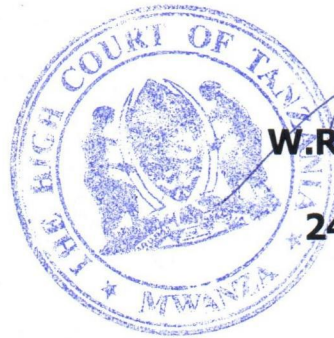
Coram: Hon. W. R. Mashauri, J

Applicant: Absent

Respondent: Present

B/c; Felister Mlolwa, RMA

Court: Ruling delivered in court video conference this 24/8/2020.
Applicant to be informed of the outcome and explained his right to appeal.



W.R. Mashauri
W.R. MASHAURI
JUDGE
24/08/2020