

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 163 OF 2018.

*(Arising from the Ruling of the District Land and Housing Tribunal of for Kibaha at Kibaha in
Misc. Application No.30 of 2018)*

EMMANUEL MKENGA.....APPELLANT

VERSUS

MWAMVITA MWAMBA.....RESPONDENT

JUDGEMENT

I. MAIGE, J

This is appeal is against the decision of District Land and Housing Tribunal for Kibaha (Hon. Njiwa, Chairperson) refusing to extend time within which to appeal against a decision of ward tribunal. In accordance of the petition of appeal, the decision under scrutiny is faulted on two accounts. First, for failure to take into account that the appellant was a layperson and that all what happened was due to procedural technicalities. Two, for failure to consider the fact that the delay to appeal was caused by a court clerk.

The appellant personally prosecuted the appeal and was not represented. The respondent was represented by Dickson Sanga,

learned advocate. With Court direction, the appeal was argued by the way of written submissions.

In his submissions, the appellant in the first place, blames the chairperson in not taking into account the fact that the appellant is a layperson and the delay was occasioned by the negligence of the Tribunal clerk. In his opinion, if the chairperson had made a proper inquiry into the issue, he would have not doubted the claim by the appellant for mere reason that he did not produce a supplementary affidavit of the tribunal's clerk.

He further urges the Court to, in its decision, not be tired up by procedural technicalities at the expense of substantive justice. He places reliance on the authority in **GITHERE V KIMUNGA (1979-1985)1 EA 101** where the Court of Appeal of Kenya held that;

“That the relation of rules of practice to the administration of justice is intended to be that of handmaiden rather than mistress, and that the court should not be so bound and tied up by the rules , which are intended as a general rules of procedure , as to be compelled to do that which will cause injustice in a particular case, and this is a principle which a court must remember when judicially exercising its discretionary power. “

On his part, Mr. Dickson Sanga is of the view that, the appellant was not entitled extension of time because he did not establish that he was prevented by sufficient cause to file his appeal timely. Ignorance, submits the counsel, has never been an excuse in law. He

cited the case of **HADIJA ADAMU V GODBLESS TUMBA, CIVIL APPLICATION NO. 14 OF 2013(UNREPORTED)**.

In conclusion therefore, Mr. Dickson Sanga submits that the chairperson rightly and properly directed his mind in holding that sufficient cause for extension of time was not established.

On the second ground, it was the counsel's submissions that, without the name of the said clerk being mentioned, the appellant would have not established the connection between his delay and negligence of the said clerk. The court was referred to the authority in **DAVID MWAKIKUGA V MZUMBE UNIVERSITY (SUCCESSOR IN TITLE OF IDM MZUMBE) CIVIL REFERENCE NO 12 OF 2004** where it was held as follows:-

“Before us when we enquire from the applicant why he handed over all the copies to the Registry, he said he was directed so by a clerk. He could not produce any affidavit from the said clerk the same later he said he did so because he thought that was the correct procedure”.

He therefore urges the Court to dismiss the appeal with costs.

After having gone through the rival submissions, the issue that I have to resolve is whether the DLHT was right in refusing to grant an extension of time to appeal.

In the first ground, the chairperson is faulted in not considering that the appellant was a layman and all what happened were mere technicality. I agree with Mr. Sanga that, being a layman is not by itself a ground for extension of time. For, it is an established rule of law that ignorance of the law is not an excuse. I will also not agree with the appellant that, delay to file an appeal was caused by procedural technicalities because there was not deposed, in the affidavit, sufficient facts to establish the claim. As rightly observed by the chairperson, while the appellant blamed a court clerk for refusing to accept the petition of appeal because it was on public holiday, he did not, in the affidavit, disclose the name of the clerk. Besides, the affidavit, as rightly of observed by the chairperson, does not indicate the date of filing the initial appeal. In the absence of that, the chairperson would not have factual materials on the basis of which to establish connection between the negligence of the clerk and delay to pursue an appeal.

On that account therefore, I find this appeal without merit. It is accordingly dismissed. The decision of the DLHT is henceforth upheld.

Dated at Dar es Salaam on 18th day of September 2020.


J. Maige.

JUDGE.
18/9/2020
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Date: 18/09/2020

Coram: Hon. S.H. Simfukwe - DR

For the Appellant: Present in person

For the Respondent: Absent

RMA: Bukuku

COURT:

Judgment delivered this 18th day of September, 2020.



S.H. Simfukwe

DEPUTY REGISTRAR

18/09/2020