

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

Land Revision No. 19 of 2018

*(Originates from Land Appeal No.43 of 2017 of District Land and Housing
Tribunal for Temeke at Temeke)*

TUMAINI E.MNYONE APPLICANT

VERSUS

BAKARI MWAWA MAGEUZA RESPONDENT

RULING

13/12/2019 & 20 /1/2020

BAHATI,J.

The applicant herein has filed this application praying among other things for the following orders:

- 1. That this Honourable Court be pleased to call records of the District Land and Housing Tribunal for Temeke in Land Appeal No. 43 of 2017 and revise its orders overruling the preliminary objections on the point of law dated June,2018 for purpose of satisfying itself as to the correctness, legality or appropriate of the said records and orders.*

2. *This Honorable Court be pleased to determine the matter in the manner it considers appropriate.*
3. *Cost of the application.*
4. *Any other orders as the Honorable Court may deem necessary and fit to grant.*

The application was made under Section 43(1) (a) and (b) of the Land Disputes Courts Act, Cap.216. Section 79(1) b and c and Section 95 of the Civil Procedure Code, Cap. 33. The application was made by way of Chamber Summons and supported by an Affidavit sworn by the applicant. The applicant, Tumaini Mnyone was represented by Harry Mwakalasya advocate, while the Respondent ,Bakari Mwawa Mageuza was represented by Nyanda Mabuga, advocate.

Arguing in support of the application, the Counsel for the applicant submitted that the cause of this application is due to an order issued by Hon. Chairman Chenya ignoring the requirement of the law relating to limitation of time to file land appeal in the District Land and Housing Tribunal. The charge on conducting hearing of the matter termed as Miscellaneous Application No.125 of 2017 where the respondent successfully moved the Tribunal to grant him an extension of time to file an appeal against Kisarawe Ward Tribunal in Civil Case No.25/2016. The Chairman granted a favour to him and extended a time so that appeal be filed within 45 days from date of order which was 11th August, 2017.

It was submitted that despite the abundant days granted, the respondent went on waiving his rights granted by order of Chairman because no appeal was filed within such time until 12th October, 2017. It appeared to be very strange situation for its admission. It was too late contrary to drawn order on which according to ordinary calendar, it prescribed the appeal to be filed on or before 22nd September, 2017. But it was admitted and signed by Tribunal clerk with backdated receiving date.

It was also submitted that the applicant became aware of that situation after being served with summons related to that appeal, the summons was drawn on 13th October, 2017. The applicant thereafter decided to conduct a perusal on the court file to acquire proper records, contained therein by paying necessary fee through receipt No.99888519244 where he found irregularities contained which intended to surpass the drawn order of Hon. Chairman delivered on 11th August, 2017.

Further, the applicant submitted that the findings on the court file after perusal acquainted him with the facts that, the filing of the appeal was on 12th October, 2017 which was almost about 20 days delay, obtained from the exchequer receipt No.99000491189 with payment control No.991170380580 paid by the respondent for purpose of filing such appeal. Therefore, for purposes of notifying the Tribunal over such irregularity, he filed a notice of preliminary objection on 19th October, 2017.

The applicant submitted that, the hearing of the preliminary objection was disposed of by way of written submissions and the ruling was delivered by overruling the preliminary objection raised by the applicant while the reasons given therein has not grounded by any set of existing law or principle.

The Applicant also submitted that, within the said time before 22nd September,2017 to date of 12th October,2017, he was continuously working as an advocate doing payments transactions as part of his activities and have been witnessing other people responding to various District Land and Housing Tribunal in Dar es salaam doing the same without any technical problem which is said by the respondent.

In connection to that appeal which he expected on or before 22nd September,2017, he was making follow up at Temeke Tribunal registry office to find out if was already lodged to no avail, until 17th October,2017 when he was served with a summons and that the attached affidavit being part of the counter affidavit purported to be sworn by the Tribunal clerk is intending to deceive, it is not corroborated with a copy of the registry's register book showing series of registered cases filed on the dates before 22nd September,2017 to 12th October,2017 with a view of establishing a belief that no cases filed in the whole time if at all no cases registered thereto.

Further, the applicant submitted that the respondent did not make it known to the court why he did not file his appeal since 11th August, 2017 or any days soonest as possible rather the very late days and come excuses and shifting blame to government payment system.

The applicant submitted that there was no technical problems in about twenty days which the respondents is intending the court to believe, all what was done was material irregularities acted by the Tribunal bias against the applicant, it must also be noted that technical problems in government payment system do not occur to only one person for almost 20 days , the court was not supposed to be moved by lies, the alleged irregularities touches jurisdiction of the court to revise the whole proceedings and determine in a manner it is required.

The applicant further cited the case of **REGIONAL MANAGER TANROADS KAGERA v RUAHA CONCRETE COMPANY LIMITED (Civil Application No. 96 of 2007, COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM)** where the court held that,

“What constitutes sufficient reason cannot be laid down by any hard and fast rules. This is determined by reference to all the circumstances of each particular case.”

In reply, the respondent strongly asserted that, he did not waive his right of appeal granted by Hon.Chairman. He filed his appeal on the 22nd September, 2017 within time and the same was admitted and endorsed by

the Tribunal's clerk. The respondent submitted that due to the payment technical problem he faced he was told by the Tribunal's clerk to effect payment soon on dates when the system was tolerable, hence on 12th October, 2017 he made payment, and however the appeal was filed on the 22nd September, 2017 within time.

Further the respondent submitted that upon effecting payment on the following dates when the system was acceptable and upon serving the applicant with an appeal, the applicant raised preliminary objection claiming that the appeal was filed out of time as extended by the court, however the said objection was overruled by the Tribunal. The Tribunal ruling explained that it was their fault, to the extent that they were experiencing payment system problems on the whole week and it was an order to receive and endorse all the documents from the clients upon submissions.

The respondent also submitted that the affidavit of Rose Musoma, Court Clerk evidenced that the Tribunal for almost 2 weeks encountered technical difficulties. This fact was also appreciated by the Tribunal itself through the ruling by Hon. Chenya.

The respondent on his rejoinder submission submitted that the application for revision to revise the order on preliminary objection by the Tribunal was an interlocutory order and the order by Hon.Chenya being an order for Preliminary Objection cannot be subject for revision by this court, because it did not determine the matter to its finality.

Further the respondent submitted that the question of Preliminary Objection should be purely on point of law that is by itself should not attract any evidence whether to prove or disprove. This principle was laid down in the case of **Mukisa Biscuits Manufacturing Co. LTD V West End Distributors [1969] E.A at pg. 701.**

Both parties have filed lengthy submissions which is appreciated, however, the crucial issues before this Court will be on two aspects, **one** whether payment of the filing fee was necessary at the time of filing the appeal and **two** whether the Preliminary Objection raised was on point of law or fact.

After going through the parties' submissions, the grounds on affidavits and counter affidavits, I have established that on **the first issue** whether payment of the filing fee was necessary at the time of filing the appeal.

In principle, under Section 20(1) the Land Disputes Courts Act, Cap.216 provides that;

“Every appeal to a district land and housing tribunal shall be filed in the District within forty five days after the date of the decision or order against which the appeal is brought.”

Hence, from the records of the Tribunal, the appeal was not properly filed on time before the expire of the time which is provided under the law. Although the Chairman extended a time to appeal be filed within 45 days from date of order which was 11th August, 2017 the respondent filed the appeal on 12th October, 2017 instead of on or before 22nd September, 2017,

the respondent filed 20 days later as established in the exchequer receipt No. 99000491189 with payment control No. 9911700380580.

These were anomalies which need to be revised, because the procedures and orders of the tribunal were not properly followed. The reasons which the respondent is trying to raise to this court are not justifiable that they were experiencing payment system problem on the whole week and it was an order to receive and endorse all the documents from the clients upon submission. This fact cannot be agreed at all of which I differ with the Tribunal through its ruling at page 3 where he stated that and I quote,

“I am aware that, filing means payment of fees, however this tribunal is aware that; the procedure of payment of fees has been changed. Now the government revenues are being collected and paid through electronic system. At the introduction of this system some technical difficulties occurred. We at our tribunal resolved that whoever faces such technical difficulties; his documents should be received and processed. The appellant (Mwawamageuza was among the person who faced the same situation and he could not pay court fees on the date when his petition of appeal was received and admitted.”

The Tribunal is supposed to provide any Government Circular to that effect to support this position, if there is no , the law stands as it is that , date of filing is confirmed upon payment receipt. This principle is provided under

the Land Disputes Courts (The District Land and Housing Tribunal) Government Notice.No. 174, the Regulation under section 3(1) where,

“Any proceedings before the tribunal shall commence by an application filled by an applicant or his representative or payment of appropriate fees prescribed in the First Schedule to these Regulation.”

On the **second issue on Preliminary Objection**. The Court by considering at the Preliminary Objection which is the foundation of this application, it cannot by itself be determined without a call of evidence whether to prove or disprove. This principle was laid down in the **Mukisa Biscuits Manufacturing Co. LTD V West End Distributors [1969] E.A at pg 701**.whereby the Court of Appeal held that,

“Preliminary Objection should be purely on point of law, that is by itself should not attract any evidence whether to prove or disprove”.

I do not also support the respondent’s submission that, the order by the District Land and Housing Tribunal, being an order for preliminary objection it cannot be subject to revision by court because it did not determine the matter to its finality.That the Preliminary Objection was not on point of law. In the case of **Mukisa Biscuit Manufacturing Co Ltd v. West End Distributors Ltd [1969] EA 696** it was held that,

“...a preliminary objection consists of a point of law which has been pleaded or which arises by clear implications out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the

jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

In this case, I would say, that the issue of limitation falls under this case. This is another clear indication that the appellant’s Preliminary Objection was on the point of law because of the time of filing the application. The Tribunal was required to stand on the provision of the order and not rely on the hearsay evidence which affected its credibility.

In view of the above, I am persuaded to grant this application as I find there is merit. Costs to follow the event.

It is so ordered.

Right of Appeal Explained



A.A BAHATI

JUDGE