

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 61 OF 2019**

*(From the Decision of the District Land and Housing Tribunal of Kinondoni District at Mwananyamala in Misc. Land Case Application No. 580 of 2017, dated 15<sup>th</sup> February, 2019, by Hon. Mbilinyi Chairperson)*

**HUGH OSWARLD KASEMBE .....1<sup>ST</sup> APPELLANT**  
**DAISY HUGH KASEMBE.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**TEDDY MARTIN.....1<sup>ST</sup> RESPONDENT**  
**AUSTRIDA MAJAILA.....2<sup>ND</sup> RESPONDENT**  
**SADRUDIN PUNJA RATANSI.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

*Date of last order: 15.6.2021*  
*Date of judgement: 15.7.2021*

**OPIYO, J.**

This appeal follows the decision of Kinondoni District Land and Housing Tribunal allowing extension of time, vide Misc. Land Application No. 580 of 2017. It has been shown in the said ruling, dated 15<sup>th</sup> February, 2019, by Hon. Mbilinyi, that, the learned Chairperson extended the time to one Kassim Nuru Mohamed Kassim, the purported legal representative of the 3<sup>rd</sup> respondent, Sadrudin Punja Ratansi, to file an application for setting aside an *ex-parte* judgment dated 23<sup>rd</sup> of November, 2015, in Land Application No. 214 of 2007. The grounds upon which the instant appeal lies are as follows; -

1. That, the trial tribunal erred in law and fact in ordering the re-hearing of the case for the 2<sup>nd</sup> time after the delivery of the *ex-parte* judgment on the 23<sup>rd</sup> October, 2015 as the said tribunal was *functus officio*.
2. That, on the basis of the 1<sup>st</sup> ground, the applicant, 3<sup>rd</sup> respondent was supposed to file an application for leave to set aside the *ex-parte* judgment and decree within 30 or 45 days.
3. That, there is no evidence which supports the disputed house belonged to Sadrudin Punja Ratansi at any point in time, according to the 3<sup>rd</sup> respondent's pleading, especially Annexure SPRI to written Statement of Defence.
4. That, the trial tribunal erred in law and in fact by granting an order to set aside the *ex- parte* judgment delivered on the 23<sup>rd</sup> October 2015, for being filed out of time.
5. That, Kassim Nuru Mohamed Kassim is a stranger to the Land Application No. 214 of 2007 and there was no leave obtained from the tribunal to appoint him as a legal representative.
6. That, the tribunal is not justified in accepting a second thought conflicting evidence from the same institution.

When the appeal was called for hearing, the respondents did not appear in court to defend the case against them, therefore it was heard *ex-parte* against them all. The same was heard through written submissions and Mr. H.H Mtanga, learned Advocate, appeared for the appellants. In his

submissions, Mr. Mtanga consolidated all six grounds and argued them together. He maintained that, it was wrong to allow the application for extension of time, vide Misc. Land Application No. 580 of 2017 due to the fact that, in the main Application, the Land Application No. 214 of 2004, both parties were present and fully aware of the hearing dates and the decision that came after. The trial tribunal then was *functus officio* after delivering the decision on 23<sup>rd</sup> October, 2015. Above all, the Applicant in Misc. Land Application No. 580 of 2017, one Kassim Nuru Mohamed Kassim was a stranger to the main suit and had no sufficient cause warranting his application for extension of time to be allowed.

Having gone through the submissions of the appellants' learned Advocate and the records at hand, my findings short finding is that the appeal before me is not maintainable for the reason to be highlighted shortly. The main reason is that, the same was instituted against wrong respondents. As noted from the records, the appeal at hand originated from Misc. Land Application No. 580 of 2017, which was an application for extension of time before the Kinondoni Land and Housing Tribunal. The parties to the application as per the records were, Kassim Nuru Mohamed Kassim as the applicant and the one whom the impugned decision came in favour. The two appellants together with the 1<sup>st</sup> and 2<sup>nd</sup> respondents hereinabove were joint respondents in the said application. The 3<sup>rd</sup> respondent was not a part to the impugned application. However, the content of the impugned decision show that, the applicant in the said case, Kassim Nuru Mohamed Kassim, was a legal representative of the 3<sup>rd</sup> respondent in this appeal who is now deceased. It is not known why the appeal appears with the names as it is, leaving the proper respondents. Appeal should be against parties to the matter from which it emanates. It

is clear from the records at hand that, the 1<sup>st</sup> and 2<sup>nd</sup> respondents, are in the same position as the appellants as far as the decision issued the Misc. Land Application No. 580 of 2017 is concerned. As for the 3<sup>rd</sup> respondent, the record shows that, Sadrudin Punja Ratansi is no longer alive, and his estate is under administration of someone else. This appeal is against court entertaining the application from alleged total stranger to the Land Application No. No. 214 of 2004, therefore it was expected to make reference to the parties currently, to avoid inclusion of a stranger to the impugned decision. Instead they also opted to commit the same mistake by including Sadrudin Punja Ratansi who is a total stranger to Misc. Land Application No. 580 of 2017. It will be absurd for this court to proceed with determination of the same matter harboring the same mistake it purports to challenge. Therefore, without further ado, the instant appeal is incompetent for the reasons I have taken time to describe above. It is therefore struck out. No order as to costs as the respondents did not defend the appeal.

Ordered accordingly.



A handwritten signature in blue ink, appearing to be "M. P. Opiyo", written over a horizontal line.

**M. P. OPIYO,**  
**JUDGE**  
**15/7/2021**