

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

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 54 OF 2019

ZAINAB MKAMA PETRO

.....

APPELLANT

VERSUS

LEVERI ELINAZA

.....

RESPONDENT

(Arising from the decision of The District Land and Housing Tribunal for Kinondoni in Appeal No. 531 of 2016, originated from the Decision of Mbezi Ward Tribunal in Land Case No. 07 of 2016)

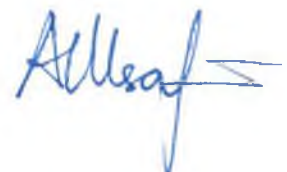
EXPARTE JUDGEMENT

A. MSAFIRI, J.

In this appeal, Zainab Mkama Petro, the appellant, is aggrieved by the decision of District Land and Housing Tribunal for Kinondoni in Misc. Land Application No. 53 of 2018 dated 9th January, 2019, where she made an application for extension of time to appeal out of time against the decision of Mbezi Ward Tribunal in Land Case No. 07 of 2016. Her application was dismissed for want of merit.

Through the petition of appeal, she filed three grounds of appeal, claiming that;

- 1. That, the Chairman of the District Land and Housing Tribunal erred grossly both in law and in fact by not considering the applicant's reasons for delay to have been sufficient cause to***



warrant extension hence reaching to unfair and unjust decision.


2. That, the Chairperson erred in law and fact by holding that there was no likelihood for the applicant to succeed in the intended appeal as the suit land was legally sold to the respondent by the applicant in 2008 without there being sufficient evidence to that effect.

3. That the Chairperson erred in law and fact by prematurely determining the issue of appeal that had never been tabled before him.

Therefore, the Appellant prays before this Court for the judgement and decree to the effect that;

- a. The Applicant be allowed to file her appeal against the decision of Mbezi Ward Tribunal out of time,*
- b. The decision of the District Land and Housing Tribunal dated 9th January 2019 be quashed.*
- c. Cost of this appeal be borne by the Respondent.*

The appeal was heard *ex parte* against the respondent after several attempts of this Court to summon him to oppose the appeal proved futile. The appeal by consent of the appellant, was argued by way of written submissions. The appellant obtained the service of Mr. Silvanus Nyamikindo. No submissions for respondent have been filed as I indicated earlier that, the matter proceeded *ex parte* against him for non-appearance.




In his submission, Mr. Nyamikindo said that, the delay to file appeal on time was technical one as the Ward Tribunal could not avail the appellant with the certified copy of Judgement on time for the purpose of appeal. That the decision was delivered on 31st March 2016 and she obtained the copy of the requested judgment on August 2016 after extra effort.

He went on submitting that, the respondent went further and instituted a criminal suit No.806 of 2016 on the same cause of action against the applicant and the said suit consumed time as the result the applicant failed to pursue the institution of appeal on time as she was arrested and kept on remand custody for almost two weeks pending bail application. Being out of time, the applicant filed the application for extension of time before the District Land and Housing Tribunal for Kinondoni, the Misc. Application No. 53 of 2019 which is subject to this appeal after being dismissed. According to Mr. Nyamikindo, the applicant supplied the sufficient reasons for her to be granted with an order of extension of time by the District Land and Housing Tribunal and given the fact that she is a layperson.

The counsel further argued that the applicant acted diligently to make follow up of the copies of Judgement and decree from trial Tribunal but the same was delayed. He is in opinion that the applicant did not sleep on her right but she made follow-up of her case. He cemented his reasons by citing the Court of Appeal decision in the case of ***Emmanuel R. Maira vs. The District Executive Director, Bunda District Council, Civil Application No. 66 of 2010.***

Having examined the petition of this appeal, submissions of the learned counsel for appellant and the records of the Ward Tribunal and District



Land and Housing Tribunal, the issue for my determination is whether the appellant has demonstrated good and sufficient cause on standard required to warrant extension of time according to Section 20 (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019, before the District Land and Housing Tribunal in Misc. Land Application No. 53 of 2018. To answer all this question, I feel duty bound to re-examine the records of the said Application and the reasons for the Chairman's findings and decision.

In the said Application, the applicant gave the reasons for delay shown in paragraphs 7, 9, and 10 of her affidavit whereby she contended that, the Ward Tribunal changed the date of delivering the Judgement without notifying her on the said change. As the result, she lost track of the case until she was informed on 3rd June 2016 that the judgement was delivered on 31st March 2016. That she immediately started to make follow up for copies of judgment and proceedings for appeal purposes but unfortunately it took her more than three months to obtain the same. That she obtained the said copies at the end of August 2016 and she was already out of time. She stated further that another reason for her delay was that, while she was waiting to be supplied with necessary copies, the respondent filed a criminal charge against her in criminal case No. 806/2016 whereby she was arrested and incarcerated for two weeks, and later she had to attend to Kimara Primary Court for criminal charges.

However, while going through the Ruling of the District Land and Housing Tribunal of Kinondoni, I have noted that despite the ruling citing the grounds for the application as per the applicant's affidavit, the Hon. Chairman did not give analysis or examine the reasons for the delay adduced by the applicant but rather gave a general comment that the grounds stated by the applicant are not sufficient. He did not give the



reason for his findings as he was supposed to. I wish to quote page 5 of the said Ruling;

"..... in my view the grounds stated by the Applicant cannot amount to sufficient cause for this Tribunal to grant the sought order. On top of that, there is no likelihood for the applicant to succeed in the intended appeal as the suit land was legally sold to the Respondent by the Applicant in 2008".

I am aware that, it is the discretion of the Chairman to grant application for extension of time, however the said discretion is subject to proper reasoning derived from the pleading of the parties. The Chairman need to evaluate the said reasons stated in the affidavit and its annexures if any and not otherwise.

Having said all that, now I am forced to do what the Chairman has avoided to do and as shown herein above, I have re-examined the affidavit of the applicant and other evidence on record including the impugned decision of the Ward. It is my opinion that the appellant has established sufficient reasons to be warranted with the prayer for extension of time to file her appeal, and did not sleep on her right to appeal. I say so because it is evident from the Ward Tribunal decision at page 7 that when it was delivered the appellant was absent as it stated "MLALAMIKIWA HAYUPO", to me this prove that the appellant was not aware of the said judgement, also the fact that she was later faced with criminal charges by the respondent, it clearly prove that the criminal case also delayed the appellant. All this amount to sufficient reasons and which was beyond the appellant's control. In fairness, I think the appellant took all the necessary steps with reasonable diligence soon after becoming



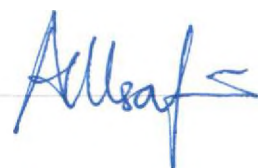
aware of what had transpired in Ward Tribunal so, sufficient cause has been shown for the delay.

For the above reason, I hereby invoke Section 43(1)(b) of the Land Disputes Act Cap. 216 R.E 2019 which give me the power to re examine the records and proceedings of District Land and Housing Tribunal;

"43.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

*(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, **if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.**"(emphasis mine).*

Using the said powers, I hereby find that the Hon. Chairman erred in his findings when he determined and dismissed the application No. 53 of 2018. I agree with the appellant's grounds of appeal that the trial Tribunal failed to consider the applicant's reasons for the delay and prematurely determined the intended appeal by finding that the appeal has no chances of success.



Furthermore, on the legal technicality aspect, Article 107A (2) (e) of the Constitution of the United Republic of Tanzania 1977 as amended from time to time provides that;

107A. (2); *"In delivering decisions in matters of civil and criminal nature in accordance with the laws, the court shall observe the following principles, that is to say;*

(e) to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice. "

Therefore, I invoke the principle of overriding objective which spares the applicant from unnecessary legal technicalities so as to open the door to file her appeal to District and Housing Tribunal for Kinondoni against the decision of Mbezi Ward Tribunal in Land Case No.07 of 2016.

I therefore allow the appeal and set aside the decision of the District Land and Housing Tribunal in Misc. Land Application No. 53 of 2018, dated 09th January 2019. The appellant is ordered to file an appeal out of time to the District Tribunal against the decision of Mbezi Ward Tribunal in Land Case No. 07 of 2016 within 21 days from the date of delivery of this exparte judgment.

It is so ordered.

Dated at Dar es Salaam this 09^h Day of September 2021.



A handwritten signature in blue ink, appearing to read "A. Msafiri", is written over a horizontal dotted line.

A. MSAFIRI
JUDGE