

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

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 27 OF 2021

(Arising from the decision of District Land and Housing Tribunal for Kinondoni at Mwananyamala in Misc. Land Application No. 646 of 2019 Delivered on 01/02/2021 originated from Wazo Ward Tribunal in Civil Case No. 53 of 2018)

KHALID HASSAN **1ST APPELLANT**

CORNEL USHAKI **2ND APPELLANT**

VERSUS

JULIUS CHAKI **1ST RESPONDENT**

FORESTER AUCTIONEERS & GENERAL TRADERS..... **2ND RESPONDENT**

JUDGMENT ON APPEAL

Date of Last Order: 21/09/2021 &

Date of Ruling: 29/10/2021

A. MSAFIRI, J

The Appellants herein filed the Misc. Land Application No. 646 of 2019, seeking before the District Tribunal for an order of extension of time upon which they can apply for Review of the Land Appeal No. 53 of 2018. Unfortunately to them, the District Tribunal dismissed the Application for want of sufficient cause. Being aggrieved by the said dismissal, the appellants has filed the Petition of Appeal to this Court based on four grounds stated as follows;

1. *THAT, the Honourable Chairman erred in law and fact to dismiss the Miscellaneous Application No. 646 of 2019 in total disregarding (sic) of the allegation of illegality as a* *Allo.*

ground for the extension of time as advanced by the appellants.

- 2. THAT, the Honourable Chairman erred in law and facts by dismissing the Miscellaneous Application No. 646 of 2019 on the grounds that 7 months was unexplainably long time to have waited to file the Application for review while the appellants advanced the reasonable grounds for delay.*
- 3. THAT, the Honourable Court erred in law and facts by dismissing the Miscellaneous Application No. 646 of 2019 while the decision made by District Land and Housing Tribunal in Appeal No 53/2018 after being notified by appellants on the existing decision on Land Case No. 296 of 2013 via letter ia (sic) superfluous and abusive of the Court process.*
- 4. That, the Honourable Chairman erred in law and facts by dismissing the Miscellaneous Application No. 646 of 2019 based on the grounds that the properties in dispute are not theirs while the Appellants are affected by illegal decision made in the Appeal Case No. 53/2018 and the current application knowingly the both (sic) appellants and the 1st Respondent has no locus standi.*

Wherefore the appellants prays for the following orders against the District Tribunal decisions that; one, the appeal be allowed with costs; two, the Court be pleased to quash and set aside the Ruling and order of the District Land and Housing Tribunal for Kinondoni at Mwananyamala; three, the Appeal No. 646 of 2019 be restored and determined on merits.

Alls.

On the scheduled date, it was agreed by the parties and ordered by the Court that, the Appeal be argued by way of written submissions. On the date of filing submissions, Ms. Regina Herman, learned advocate appeared and argued the appeal on behalf of the appellants, while Ms. Theresia Simon, learned advocate appeared for the 1st respondent. Despite the effort to serve the 2nd respondent, he failed to enter appearance therefore it was ordered that the hearing to proceed ex-parte against him.

Ms. Regina submitted on the 1st ground of appeal that, the Tribunal erred by disregarding the issue of illegality in refusing to allow the application for extension of time since the decision intended to be reviewed against had irregularities which amount to grave illegalities.


That, the District Tribunal's Chairman disregarded the pleadings of the applicants in Misc. 296 of 2013 before the Land Appeal No. 53 of 2018 that there are two conflicting judgments which grant ownership over the same disputed land to two different persons which led to abuse of Court process. Also, the Appellate Tribunal erroneously upheld the decision of the Ward Tribunal without considering that the Ward Tribunal lacked pecuniary jurisdiction to entertain the matter since the value of the land in dispute exceeded Tshs. 3 million. She urged the court to see these points of illegalities as sufficient reasons for granting extension.

For the 2nd ground, she submitted that, the 7 (seven) months' delay was technical one and not due to negligence. The District Tribunal was required to consider it as sufficient cause for granting extension on the sense that, the time has lapsed because the appellants were diligent in

Alls.

seeking other judicial remedies to other Court with regards to the same decision which includes seeking to appeal.

Submitting on the 3rd ground, she stated that, the trial Chairman erred in denying the appellant with extension of time on baseless reasons that the appellants are not owners of the property in dispute and have no right of action. The Chairman overlooked the fact that the respondents are also not true owners of disputed property hence there was requirement of proper determination on the matter. She concluded by praying for the Court to consider the prayers with the above pointed out illegality and reward the appellants with extension of time so that the said decision can be reviewed.

On reply to the submission above, Ms. Theresia objected the appeal and pray for the dismissal of the same that, the Chairman evaluated correctly the evidence placed before him and found out there is no sufficient reason to grant the Application. The District Tribunal Chairman did not error in the said decision. She submitted that if there is an issue of illegality, it should have been raised during appeal and not wait to raise it during Application for extension of time. Furthermore, the appellants failed to account for each day of delay for 7 (seven) months' delay in the Application for extension of time. Among others she cited the decision of Court of Appeal in **The Attorney General Vs. Twiga Paper Products Limited**, Civil Application No. 108 of 2008 and **Murtaza Mohamed Raza Viran vs. Mehboob Hassanali Versi**, Misc. Civil Application No. 160 of 2014 High Court Commercial Division at Dar es Salaam. 

Having appropriately considered the rival submissions and examined the ruling and proceedings of the District Tribunal, it is suitable that I determine the merit or otherwise of the appeal. I understand that the appeal at hand arises from a decision of refusing extension of time which is within the discretion of the District Tribunal to grant. While I am aware that, a lower court enjoys a wider jurisdiction to grant or not an extension of time, it is my understanding of the law that, for a decision arising there to be valid, the discretion must have been exercised reasonably, judiciously and on sound legal principles.

Therefore, although as a general rule, an appellate court would not interfere with the discretion of the lower court, where the discretion is exercised in violation of the principle above mentioned, the appellate court may intervene where the result of that decision thereof leads to miscarriage of justice. There are many decisions supporting this view. For instance, in **Swabaha Mohamed Shosi vs. Saburina Mohamed Shosi**, Civil Appeal No. 98 of 2018 Court of Appeal of Tanzania (unreported), it was held that, an appellate court can interfere with the discretion of the lower court if, among others, the lower Court has acted on matter that it should have not acted or it has failed to take into consideration that which it should have taken and, as a result, it has arrived at a wrong conclusion.

From the affidavit and submissions in support of the Application at the District Tribunal, it is apparent that, the appellants' main justification for the delay was bonafide prosecution of Land Appeal No. 53 of 2018 which he claimed to have been tainted with illegality. Going through the affidavit on records in Misc. Land Application No. 646 of 2019, I do agree with the learned Chairman that the applicant's affidavit is silent on



providing for reasons for delay to be warranted with the order of extension of time. It is on the affidavit where sufficient reasons are supposed to be found and if there is evidence to prove those reasons, those evidence must be expressed in the affidavit or annexed to the affidavit. However just like the affidavit, there is also no annexures in the Application proving the seven (7) months delay. Furthermore, there is nothing in affidavit to the said Application where the applicants has accounted for each day of delay in 7(seven) months. On that basis, it is the opinion of this Court that the applicants have failed to furnish good causes for the delay to file the Review within time. And they have failed to account for each day delayed to file Review on time.

In the foregoing, it is my view that, there is no need for this Court to invoke section 43 of the Land Disputes Court Act to alter the decision of the District Tribunal in determination of the Application of Extension of Time in Misc. Land Application No. 646 of 2019. The matter is hereby dismissed accordingly. Each party to bear its own costs.

It is so ordered.

Dated at Dar es Salaam this 29th of October 2021



A handwritten signature in black ink, appearing to read "A. Msafiri". The signature is written in a cursive style and is positioned above a horizontal dotted line.

A. MSAFIRI

JUDGE