

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

MISC. LAND APPEAL NO. 50 OF 2021

*(From Appeal Judgment of District Land and Housing
Tribunal for Ilala, in Land Case Appeal No.673 of 2020, originating from the
Ward Tribunal of Buyuni Ward, in Application No.156 of 2020)*

ISSA JUMA.....APPELLANT

VERSUS

MOHAMED ABDULKARIM SHAKUR.....RESPONDENT

J U D G M E N T

Date of Last Order: 01.12.2021

Date of Judgment: 28.02.2022

T. N. MWENEGOHA, J.

Before me are four grounds of appeal, in need of determination from Issa Juma, the appellant here in above as follows; -

1. That, the honorable chairperson grossly erred in law and fact, that appellant didn't state sufficient cause for delay yet the appellant anchored his application on there being illegalities and irregularities in the face of record in the impugned decision of the Buyuni Ward Tribunal in respect of Land Case No 156 of 2020, dated 13/8/2020;
2. That, the honourable chairperson grossly misdirected herself on point of law and mis-construed facts to arrive at a conclusion that, there was no any illegalities and irregulates on the face of records in the impugned decision of the Buyuni Ward Tribunal in respect of Land Case No 156 of 2020, dated 13/8/2020.

3. That, the honorable tribunal chairperson grossly misdirected herself on point of law by assuming the role of appellate court when it discussed and determined the merits of the alleged illegalities and irregularities in the impugned decision of the Buyuni Ward Tribunal in respect of Land Case No 156 of 2020, dated 13/8/2020;
4. That, the decision and order of the District Land and Housing Tribunal in Misc. Application No. 673 of 2020 by Hon. Mgulambwa, chairperson dated 22nd day of April, 2021 is illegal as it emanated from improperly constituted tribunal.

In order to understand this appeal, it is befitting that I start by giving a background on the matter before discussing the grounds of the appeal. As per the records, the dispute originates from Buyuni Ward Tribunal. At the said Tribunal, the respondent lodged a complaint against the appellant, vide Mgogoro wa Ardhi No. 156 of 2020. He claimed that, the appellant trespassed and constructed a foundation and further erected a two bedrooms house in the respondent's land. After a full trial, the Ward Tribunal reached a decision in favour of the respondent, thus, declaring him the rightful owner of the land in question.

The appellant herein being aggrieved with the said decision did not react within time, hence when he decided to challenge the said decision, he was time barred. He applied before the Ilala District Land and Housing Tribunal (herein after the trial Tribunal), to extend time so as to file an appeal out of time. His application was denied for want of sufficient reasons for the delay. Aggrieved again by the decision of the trial Tribunal, the appellant preferred the appeal at hand.

The appeal was heard by written submissions; Mr. Daniel Odour appeared for the appellant while the respondent enjoyed the legal services of Mr. Mutakyamirwa. The appellant advanced 4 grounds of appeal, however in his written submissions he abandoned the 4th ground of appeal and remained with three grounds only.

Submitting on the 1st and 2nd grounds together, the counsel for the appellant was of the view that, in his application for extension of time, the appellant gave reasons that the judgment of the Ward Tribunal of Buyuni contains illegalities and irregularities that needs to be corrected on appeal. He insisted that, it has already been settled in number of cases that where there is an allegation of illegalities apparent on the face of records in an impugned decision to be challenged, the court or tribunal has to give an opportunity to put the records clear. Since illegalities are points of law, they are sufficient to constitute reason for extension of time. This was decided among others, in **Principal Secretary Ministry of defense and National Service vs. Devram Valambia (1992), TLR 182 also in Samuel Munsiro vs. Chacha Mwikabe, Civil Application no. 539 of 2019 (unreported)**, that:-

"Where the point of law at issue is an allegation of illegalities apparent on the face of record in the judgment being challenged, the court has always granted the applicant an extension of time to give the applicant and the appellate court or tribunal an opportunity to put the record clear, since that is a point of law of sufficient importance to constitute sufficient reason".

The appellant counsel mentioned the illegalities to include among others the fact that the respondent had no *locus standi* to sue the appellant at the Ward Tribunal and that, the appellant was not afforded the right to be heard.

On the 3rd ground it was argued that, it was wrong for the chairperson to assume the role of appellate court when discussing and determining the application for extension of time before it. This led to the chairman of the Tribunal to reach a wrong conclusion that, the appellant was the one who ignored his right to be heard as well as that, the power of attorney was rightly issued. These were issues to be determined by the appellate court.

In reply, the respondent's counsel consolidated all three grounds of appeal and argued them together. In his arguments he insisted that allowing an application for extension of time is a discretion of court that has to be exercised judiciously. He cited the case of **Tanzania Electric Supply Company Limited & 3 Others vs. Independent Power Tanzania Limited, Court of Appeal of Tanzania at Dar Es Salaam, Consolidated Civil Appeals No. 19 and 27 of 1999 (2000), TLR 324 at page 337**, where it was decided that:-

"Grant of extension of time is a discretion of the court. Such discretion is judicious and is to be exercised with regard to particular case but upon established principles... Discretion must be exercised according to the common sense and according to justice".

He went on to argue that, the grounds of appeal by the appellant are baseless and devoid of merits. There was no illegality or irregularity on the decision of the Ward Tribunal. The trial tribunal correctly decided the case before it as it pointed out clearly that the law allows any relative or

member of the household to appear on behalf of the complainant in the Ward Tribunal as per Section 18(1) the Land Disputes Courts Act, Cap 216 R. E. 2019. Also, the issue of Power of Attorney didn't exist before the Ward Tribunal and that even the records are silent on that issue. That above all the appellant was given the opportunity to be heard but didn't appear for reasons only known to him. He insisted that, this appeal has to be dismissed as it lacks merits.

In his rejoinder, the appellant's counsel reiterated his submissions in chief.

Having gone through the submissions of both parties and the records at hand, the issue for determination is whether the appeal has merit. In my discussion I will consolidate all three grounds of appeal and answer them in unison.

The point of contention in this appeal is based on the findings of the trial Tribunal with regard to Misc. Land Application No. 673 of 2017. The trial chairperson of the Tribunal, dismissed the application before him for reasons that, the applicant, (now the appellant) did not provide any sufficient reasons for his application to be allowed. This fact has been supported by the respondent's counsel in his submissions against this appeal. The appellant on the other hand, insisted that, his reason for applying for extension of time to appeal is the existence of illegalities and irregularities in the decision of Buyuni Ward Tribunal.

Indeed, I agree with the appellant in his arguments that, an allegation of illegalities apparent on the face of records in the impugned decision constitutes sufficient reason for the court to allow an application of extension of time, see **Principal Secretary Ministry of Defense and National Service vs. Devram Valambia** (supra). The court used the

word "apparent", which plainly means the said illegalities should be clearly visible as they are points of law. In the case of **Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women Christians Association of Tanzania, Civil Appeal No. 2 of 2010 (Unreported)**, the court gave detailed account of what a point of law is, where it observed that:

"A point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process".

The appellant had pointed out the existence of irregularity on the power of attorney on the records. It was also his argument that the Hon. Chairman should not have gone to the merit of that irregularity to determine whether the argument will stand on appeal.

I agree that the irregularity has to be apparent on the face of record. The facts alleged that the power of attorney was offered on 21st of August while the case was conducted on 13 of August it is evident that there is an apparent issue that the court needs to address and set record right. This is also emphasized in **Valambhia's Case (Supra)**.

In the event, this appeal is allowed, No order as to costs.

It is so ordered.

Dated at Dar es salaam this **28th** day of **February, 2022**




T. N. MWENEGOHA
JUDGE