

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 191 OF 2022**

(Arising from the decision of Kigamboni District Land and Housing Tribunal for Kinondoni at Kigamboni in Application No. 145 of 2022 dated 31<sup>st</sup> August, 2022 before Hon. Wambili, originating from Land Case No.6 of 2013 before Mji Mwema Ward Tribunal)

**DAVID ROBINSON ..... APPELLANT**

**VERSUS**

**YUSUPH MZEE MGORORO ..... RESPONDENT**

**JUDGMENT**

Date of Last order: 11.11.2022

Date of Judgment: 16.11.2022

**A.Z.MGEYEKWA, J**

The appellant has lodged this appeal against the Ruling of the District Land and Housing of Kigamboni at Kigamboni in Misc. Land Application No.145 of 2022 dated 31<sup>st</sup> August, 2022. The material background facts of the dispute are not difficult to comprehend. I find it fitting to narrate them, albeit briefly. They go thus: the applicant lodged an application for an extension of time to file an appeal out of time against the decision of

the Ward Tribunal in Land Case No. 6 of 2013. The appellant lodged a case at the trial Tribunal for Kinondoni and the matter was decided in favour of the respondent, Yusuf Mzee was declared the lawful owner of the suit land. The applicant filed an application for an extension of time to file an appeal at the District Land and Housing Tribunal after a lapse of 7 years. The respondent opposed the application. The Chairman determined the matter and noted that the applicant did not state sufficient reasons for his delay hence the application was dismissed with costs.

Believing the decision of the District Land and Housing Tribunal for Kigamboni at Kigamboni was not correct, the appellant lodged an appeal containing six grounds of appeal as follows:-

- 1. That the Honourable Chairman erred in law and fact by relying on the duration of time the appellant stayed without appealing without taking into consideration that there was no proper judgment issued in Land Case No. 6 of 2013 in its finality, the advice as issued by Mji Mwema Ward Tribunal cannot be considered as a binding judgment which the parties were required to act upon but merely advice which was neither executable nor appealable.*
- 2. That the Honourable Tribunal Chairman erred in law and fact by failure consider that the Mji Mwema Tribunal declared itself to have no*

*jurisdiction to entertain the matter instead it directed the parties to mediate on their dispute something which was not done. The lapse of seven years without appealing was due to the fact that the appellant became aware of the purported judgment upon learning that there is an application for execution of the Mji Mwema Ward Tribunal before the Tribunal in the year, 2022.*

- 3. That the Honourable Chairman erred in law and fact by not considering the illegality raised by the appellant herein that the land in dispute exceed the Pecuniary jurisdiction of the Mji Mwema Ward Tribunal, something which was proved in the said Mji Mwema Ward Tribunal typed judgment at the last page paragraph three but the Chairman keep on holding that there is no illegality explained by the appellant.*
- 4. That the Honourable Chairman erred in law and fact by not assessing the validity of the purported Judgment but continued to hold and relate the Mji Mwema Ward Tribunal like it was issued ex-parte while all parties were present and advised to settle their matter out of the tribunal as the tribunal lacked Jurisdiction.*
- 5. That the Honourable Tribunal Chairman erred in law and fact by holding that it was the responsibility of the appellant herein to make follow-up on his opened case before Mji Mwema Ward Tribunal without considering the fact that the appellant was aware of the decision which*

*advise the parties to settle their matter out of the tribunal as they have nothing they can do rather than mediation, something which was not accepted by the respondent to the time he fraudulently file the application of execution.*

6. *That the Honourable Tribunal Chairman erred in law and fact by holding that the appellant herein fail to adduce the illegality of the Mji Mwema Ward Tribunal while it is open in the face of the record and purported judgment the Ward Tribunal mention that they do not have jurisdiction and power to determine the case beyond what was asked by the appellant herein which was just for mediation.*

When the matter was called for hearing before this court on 20<sup>th</sup> October, 2022, the appellant enlisted the legal service of Mr. Daniel Magabe, counsel and the respondent had the legal service of Mr. Hans Mrindoko, counsel. Hearing of the appeal took the form of written submissions, preferred consistent with the schedule drawn by the Court whereas, the appellant's Advocate filed his submission in chief on 27<sup>th</sup> October, 2022. The respondent's Advocate filed his reply on 7<sup>th</sup> November, 2022. The appellant's Advocate filed his rejoinder on 11<sup>th</sup> November, 2022.

In support of the appeal, the appellant's counsel opted to combine the 1<sup>st</sup> and 4<sup>th</sup> grounds. He also combined the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, and 6<sup>th</sup> grounds because they are intertwined. Submitting on the 1<sup>st</sup> and fourth grounds,

Mr. Magabe contended that in 1984 the appellant bought land from Mji Mwema Village Government and he was issued with payment receipts and ownership documents witnessed by neighbors and an authorized representative of the Village Government.

The learned counsel asserted that the suit land was identified by the Ministry of Land as Plot No. 618 Block 'G' Magogoni, Kigamboni within Dar es Salaam. The counsel submitted that for 23 years between 1984 and 2007, the appellant and his family lived and developed the suit land without any disturbance and in 1991 they applied for titles whereas, in April, 2007 the Ministry of Land and Human Settlements Development issued a Letter of Right of Occupancy to Rith David Robinson.

Mr. Magabe continued to argue that in 2013 confusion, misunderstanding, and conflict between Ngororo family and the Robinson family regarding Plot No. 618 arose they were living as good neighbours, and David Robinson was not the owner of the suit plot. The counsel went on to submit that the matter was before the Mji Mwema Ward Tribunal for settlement without success. He went on to submit that the Ward Tribunal did not deliver any Judgment which enabled the parties to act upon therefore, in their view this was a sufficient cause to move the District Land and Housing Tribunal to consider and grant an extension of time for the

appellant to challenge the purported Judgment. To buttress his contention he cited the case of **Michael Lessani Kweka v John Eliafye** [1997] TLR 152. The counsel submitted that the Ward Tribunal ruling was to inform parties that the tribunal has no jurisdiction as well as an advisory decision insisting the parties meet and settle their dispute.

The appellant's counsel continued to submit that in 2021, Ruth David Robinson received her building permit from the Kigamboni District Authorities to build a perimeter wall around her plot No. 618, and in 2022, she received a Certificate of Occupancy for Plot No. 618, Block 'G'. He added that on 27<sup>th</sup> February, 2022 they were shocked to receive a summons from the District Land and Housing Tribunal for Kigamboni and realized that the Tribunal in January, 2022 heard the matter *ex parte* against him and the respondent was declared the lawful owner of Plot No. 618 Block 'G' Magogoni which was owned by Ruth David Robinson.

The counsel went on to assert that in the circumstances of the case at hand, the matter is looked at and considered as unique circumstances from the person to account for days of delay. To support his submission he cited the case of **William Malaba Butabutemi v The Republic**, Criminal Application No. 5 of 2005 (unreported) the Court of Appeal cited with approval the case of **CITIBANK (Tanzania) Ltd v TTCL TRA &**

**Others**, Civil Application No. 97 of 2003 (unreported). He valiantly argued that the matter at the trial tribunal for just for mediation and any interested party was to file a new case before the Court with competent jurisdiction to try the matter as it exceeded the pecuniary jurisdiction of the Ward Tribunal. The counsel added that neither party lodged a case nor the respondent stopped to disturb the appellant's family thus they found there was no need to lodge a case.

Mr. Magabe further submitted that it was not proper for the District Land and Housing Tribunal to find that the appellant was duty-bound to account for the days of delay without taking into consideration that there was no binding Judgment and the appellant was challenging the legality of the purported Judgment. Instead, the Chairman rejected the application and uphold that the trial Tribunal issued a binding Judgment while it was not.

On the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> grounds, the counsel for the appellant contended that according to land value figures from the Ministry of Land and Land Evaluation Report in Plot No. 618, the disputed land valued at Tshs. 105,000,000/= in 2012, and in the year 2022, the market value was Tshs. 375,000,000/=.

Mr. Magabe went on to argue that the question of jurisdiction is fundamental and any trial conducted by Court with no jurisdiction to try the

same declared a nullity on appeal or revision. To bolster his submission he cited the case of **Melisho Sindiko v Julius Kaaya** (1977) LTR, **Sospeter Kahindi v Mbeshani**, Civil Appeal No. 56 of 2017, and **The Principal Secretary, Ministry of Defense and National Service v Devram Valambhia** (1992) TLR 182.. Stressing on the point of jurisdiction, Mr. Magabe stated that the question of jurisdiction is a point of law and it arose from the pleadings where even the Ward Tribunal acknowledge it in its ruling.

Mr. Magabe contended that when an issue of illegality is raised the court has a duty bound to extend the time to challenge the same. Fortifying his submission he cited the case of *Amour Habib Salum v Hussein Bafagi*, Civil Application No. 52 of 2009 (unreported). The learned counsel for the appellant insisted that the appellant and his family is still owning the suit land thus they want to challenge the execution of the Ward Tribunal decision.

In conclusion, the learned counsel for the appellant beckoned upon this court to allow the appeal.

In reply, the respondents' confutation was strenuous. The respondents came out forcefully and defended the trial tribunal's decisions as sound and reasoned. Mr. Mbuga began to narrate the genesis of the sag which



I am not going to reproduce as part of his submission. Mr. Mbuga also opted to consolidate the second, third, fifth, and sixth grounds. He submitted that generally, illegality touching on jurisdiction is a good ground to extend time, however not all times the Court can rely on the raised ground of jurisdiction to extend time.

The counsel for the respondent went on to assert that in the circumstances at hand the claimed jurisdiction is that the lower tribunal had no jurisdiction as the suit plot had more than what the trial tribunal was allowed to entertain, it was his submission that firstly, the said issue had not been raised anywhere in the trial tribunal it was first raised at the District Land and Housing Tribunal. Secondly, there is no evidence to establish the said figures and thirdly, it was the appellant himself who instituted the matter at the trial tribunal after assuring himself of its power thereto. Thus, in his firm view, the issue of illegality cannot stand. To buttress his contention he cited the cases of **Sospeter Kihindi** (supra) **Pidas Ndalibanye v Abdallah Ndembo**, Land Appeal No.11 of 2022.

Mr. Mbuga continued to submit that on the premises that the appellant only went to the Ward Tribunal for negotiation is a lie and doesn't associate with this application. To support his submission, the counsel referred this Court to the Ward Tribunal Judgment. He contended that the appellant

and respondent testified and called witnesses to testify in their favour. He added that the appellant was given the right to cross-examine, thus it is not true that he only went to mediate at the Ward Tribunal rather he lodged his claims which were determined.

Mr. Mbuga went on to submit that the appellant also states that there is no any existing judgment and that the decision relied upon is not a judgment of the Ward Tribunal. He argued that the said assertion is not correct. To support his stance he referred this Court to the tribunal's judgment and stated that the same is titled Judgment and the Chairman discussed all issues including evidence tendered and testimony thereto, analysis of what has been presented, and lastly it rendered its decision. The learned counsel for the respondent contended that although while determining the same the Ward Tribunal had opened up for negotiation which is normal even to this Court. However, the tribunal rendered it final decision. To bolster his submission he referred this Court to the last paragraph of the decision dated 10<sup>th</sup> July, 2015.

It was his further submission that the appellant had a duty to account each day from the date of judgment to the date of filing of the application in the lower Tribunal. He insisted that looking at his application the applicant has not adduced sufficient reasons from 24<sup>th</sup> August, 2015 to 27<sup>th</sup> March,

2022. He stressed that from 27<sup>th</sup> March, 2022 after being served the applicant had no any sufficient reasons in his affidavit to show what precluded him from filing this application to 12<sup>th</sup> April, 2022 is more than 15 days. The learned counsel stressed that it was the applicant's sloppiness and lack of diligence, to file his application within time. Fortifying his submission he cited the case of **Patrick John Butabile v Bakhresa Food Products Ltd**, Civil Appeal No. 61 of 2019, the Court held that:-

*"The position of this Court has consistently been to the effect that in an application for extension of time, the application has to account for every day to the delay."*

On the strength of the above submission, the learned counsel for the respondent urged this court to dismiss the appeal with costs.

In his rejoinder, the learned counsel for the appellant reiterated his submission in chief and rejoined further by addressing, the issue of illegality; because the parties after the mediation was marked failed would open another case and be determined on merit. Ending, the counsel for the appellant cemented that the grounds of appeal are meritorious. He urged this Court to allow the appeal.

After a careful perusal of the submission made for the appeal by the appellant and the respondent and after having gone through the court records, I have come to the following firm conclusions. In determining this appeal the main issue calling for determination is ***whether the appeal is meritorious***. I have opted to combine the first, fourth, and fifth grounds because they are intertwined. Equally related are the second, third and sixth.

Starting with the first, fourth, and fifth grounds, the appellant claims that the Ward Tribunal in Land Case No.6 of 2013 did not determine the matter to its finality. The appellant's counsel in his submission claims that the trial tribunal's order to mediate the parties was not conclusive. I have perused the Ward Tribunal Judgment and noted that the matter was conducted as a normal suit whereas each party testified in Court. In his testimony, David Robinson claimed that he is the lawful owner of the suit land since 1984. He alleged that the respondent has invaded his land and to prove his case, he summoned two witnesses.

On his side, the respondent denied the allegation, and to prove his ownership he called three witnesses. The trial Tribunal determined the matter and decided that the respondent is the lawful owner of the suit land. Therefore, saying that the matter before the trial tribunal was for mediation

is unfounded because the trial tribunal determined the matter to its finality. I am saying this because the Ward Tribunal in its decision stressed that since the appellant prayed for mediation the tribunal suggested the parties sit and resolve their dispute. For clarity purposes, I reproduce part of the Chairman's holding as hereunder:-

*“ Kwahiyo, kuwa shauri hili liliombwa na mdai liendeshwe kisuluhu, Baraza linapendekeza kuwa mdai na mdaiwa wakae wakubaliane ni namna gani waumalize mgogoro.”*

Reading the above excerpt, it is clear that the Ward Tribunal apart from its findings left the matter in the hands of the parties. However, the conclusive remark was that the respondent is the lawful owner of the suit land. Had it been that the Ward Tribunal ended to mediate the parties then the appellant's grounds could have merit. Therefore, these grounds are disregarded.

On the second, third, and sixth grounds, the appellant's counsel is faulting the Chairman for failure to find that there was an issue of jurisdiction to entertain the matter since it direct the parties to mediate. The appellant's counsel also claimed that the trial tribunal had no pecuniary jurisdiction to determine the matter. Reading the trial tribunal proceedings it is clear that the appellant is the one who lodged the matter at the Ward Tribunal.

Therefore, I am in accord with the counsel for the respondent that the appellant is the one who lodged the suit at the trial tribunal, then he was aware of the value of the suit. In case the value was above Tshs. 3,000,000/- then the appellant was in a position to inform the trial tribunal but he kept quiet. I fully subscribe to the submission of the learned counsel for the respondent that the holding in the case of **Pida** (supra) squarely applies in the matter at hand.

Expounding on the ground of illegality, the counsel for the appellant insisted that the appellant raised a ground of illegality for an extension of time, I am in accord with the counsel for the appellant's submission that illegality is a good ground for an extension of time, however, the alleged illegality cannot be used as a shield to hide against inaction on part of the applicant. See the case of **William Kasian Nchimbi as Legal Personal Representative of Kasian Kizito Nchimbi (deceased) & 3 Others v Abas Faume Sekapala & 3 Others**, Civil Application No. 144 of 2015 No. 2 of 2015. In the case of **William Kasian Nchimbi** (supra), the Court of Appeal of Tanzania held that:-

*“ We entirely agree with the single Justice that, in the special circumstances of this case the issue of illegality is inapplicable. The*

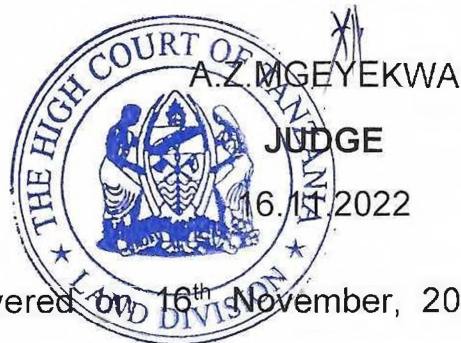
*delay to take action by the applicants has been inordinately long as shown herein above.”*

As elaborated in the above authorities, the ground of illegality cannot hold water as the issue of jurisdiction was in the knowledge of the appellant because he is the one who lodged a suit at the trial tribunal. Therefore, the appellant cannot have his cake and eat it. In my considered view, the ground of jurisdiction and pecuniary jurisdiction are unfounded.

That said and done, I hold that in instant appeal there are no extraordinary circumstances that require me to interfere with the findings of the District Land and Housing Tribunal for Temeke. Therefore, I proceed to dismiss the appeal without costs.

Order accordingly.

Dated at Dar es Salaam this date 16<sup>th</sup> November, 2022.



Judgment delivered on 16<sup>th</sup> November, 2022 via video conferencing whereas both counsels were remotely present.



Right to appeal fully explained.