

THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 11 OF 2022

(Originating from Misc. Land Application 816 of 2021 of the District Land and Housing Tribunal of Kinondoni at Mwananyamala before Hon. Wambili, Chairman)

PIDAS GILBERT NDALIBANYE APPELLANT

VERSUS

ABDALLAH NDEMBO RESPONDENT

JUDGMENT

Date of last Order 07.03.2022

Date of Judgment 31.03.2022

A.Z.MGEYEKWA, J

This appeal originates from the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Misc. Land Application No. 816 of 2021.

The records herein reveal that the appellant had instituted a suit against the respondent in Wazo Ward Tribunal Case No. 181/2019, whereas after evaluating the evidence the Wazo Ward Tribunal decided in favor of the respondent.

Dissatisfied with the decision of the Ward Tribunal, the appellant lodged to the District Land and Housing Tribunal a Misc. Land Application No. 816 of 2021 applying for an extension of time to challenge the Ward Tribunal decision out of time, in which the application was also dismissed by the District Land and Housing Tribunal, for the appellant's failure to provide sufficient good cause for the delay to lodge the appeal on time to challenge the Ward Tribunal Decision in the DLHT.

Believing the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala was not correct, the appellant lodged this appeal on four grounds of complaint seeking to assail the decision of this appellate tribunal. The grounds are as follows:-

- 1. That the District land and Housing Tribunal erred in law and fact on its failure to not that a prayer for extension of time was obvious basing on that fact that the decision of the Ward Tribunal that is to be appealed against is tainted with serious illegality for being delivered by the Ward Tribunal that had no Jurisdiction*
- 2. That the District Land and Housing Tribunal erred in law and fact on failure to extend time for appealing out of time despite the fact that the Judgment to be appealed against which is in court's records states clearly that the appellant bought the disputed plot on*

10.03.2015 where the respondent was given the same on 14.06.2015.

3. That the District Land and Housing Tribunal erred in law and in fact failure to address and evaluate properly the documents tendered by the appellant before it resulting in denial of the prayer for extension of time.

With leave and order of this court on 07th March, 2022 parties agreed to argue the appeal by way of written submissions. The appellant appeared in person unrepresented and the respondent enlisted the legal service of Mr. Rashid Kiliza Advocate.

It was the appellant who started to kick the ball rolling. In his written submission, he argued that the Ward Tribunal erred in law and fact on its failure to note that prayer for extension of time was based on the fact that the decision of the Ward Tribunal was tainted with serious illegality since the Ward Tribunal had no pecuniary Jurisdiction to determine the matter.

He went on to submit that the suit property is located in the prime area in which the value of the same is Tshs. Six Million which is beyond the Jurisdiction of the Ward Tribunal as per section 15 of the Land Disputes Courts Act Cap 216 [R.E. 2019].

To fortify his submission, the appellant attached the valuation report dated March, 2022 to prove the value of the subject matter. He further submitted that the issue of illegality in itself is sufficient good ground for extension of time. To buttress his contention, he cited the cases of **Kalunga & Company Advocates vs National Microfinance Bank** 2006 TLR 235 and **VIP Engineering and Marketing Limited & 2 Others v Citibank Tanzania Limited** the Consolidated, Civil References No. 6,7 and 8 of 2006, CAT (unreported) whereas Hon. Rutakangwa, J at page 22 held that:-

"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes sufficient reason to extend time."

In his further submission, the appellant opted to consolidate the 2nd and 3rd grounds of appeal because they are intertwined. He argued that the appellant was the first one to acquire the suit land on 10th March, 2015 while the respondent alleged to have acquired the disputed land on 14th June, 2015. It was his view that thus, it is obvious that the first buyer must have a good title than the second buyer.

In conclusion, the appellant urged this court to allow the appeal.

In response, Mr. Rashid, learned Advocate for the respondent submitted that the appeal is against Misc. Land Application No.816 of 2021 which was about an extension of time. He contended that the appellant's application failed in the District Land and Housing Tribunal for the appellant's failure to state sufficient good reason for his delay to lodge the appeal against the Ward Tribunal within time.

Mr. Rashid further submitted that the reasons advanced before the District Land and Housing Tribunal was not sufficient to move the tribunal to grant the appellant's application for extension of time. Mr. Rashid contended that there was no proof as to when the appellant was supplied with the said Ward Tribunal decision after it was delivered on 1st October, 2020. He added that the appellant failed to prove such delay until 27th May, 2021 when the application was lodged to the tribunal.

Regarding the issue of jurisdiction of the Ward Tribunal and the alleged illegality, Mr. Rashid contended that the issue of jurisdiction is afterthought as it was not raised by the appellant at the Ward Tribunal. He went on to submit that despite the fact that it was not an issue at the District Land and Housing Tribunal, yet the appellant under section 123 of the Law of Evidence Act, Cap.6 [R.E. 2019] is restricted from departing from his own evidence given before the Ward Tribunal in which the

appellant testified to the effect that in 2015, he bought the suit property at the tune of Tzs 900,000/- whereas the respondent had proved to have purchased the same at the tune of Tzs 500,000/-, hence that the respondent is surprised to see the appellant challenging the jurisdiction of the Ward Tribunal at this juncture while it was the appellant who instituted the suit against the respondent at Ward Tribunal.

Mr. Rashid contended that is surprised to see the attached valuation report which was conducted in 2022, few days before the appellant filed his submission in chief, hence the valuation report is useless as there was no court order to tender the same and it was not used to prove the matter that was already in court since 2019. To buttress his contention, Mr. Rashid cited the case of **Omary C. Chamshama v Fatuma A. Tunu**, Revision No. 38 of 2020, High Court Land Division at Dar es Salaam this court held that:-

"He who comes for justice must come with clean hands"

Applying the above authority, Mr. Rashid contended that the appellant has no clean hands as seems to preempt something. He added that the appellant is with no clean hands before this court since the value of the subject matter was established in the Ward Tribunal and it was not ground

for extension of time in the District Land and Housing Tribunal in seeking extension of time then that this appeal be dismissed.

In his rejoinder, the appellant reiterated his submission in chief and added that the estimated value cannot supersede the actual value of any property.

Having carefully considered the submissions made by the appellant and the counsel for the respondent and after I have examined the record before me and in particular the impugned decision, the issue for our determination is *whether the appeal is meritorious*.

In my determination, I am going to combine the first and second grounds of appeal because they are intertwined and the third ground will be determined separately. In regard to the first and second grounds, the issues for determination are whether illegality was one of the grounds in the District Land and Housing Tribunal and whether such alleged illegality existed in the trial Ward Tribunal.

The records reveal that the appellant submitted two reasons in his application for extension of time. One, being the existence of Criminal case No.1616 of 2019 between the same parties and the 2nd reason was the appellant failed to obtain copies of the Ward Tribunal decision on time.

The record reveals that the said criminal case was between the same parties as they appear in Misc. Land Application No. 816 which was also lodged by the appellant himself before the District Land and Housing Tribunal. Both parties were capable of attending to both cases. The reason was denied by the District Land and Housing Tribunal and I find no reason to differ with the findings of the tribunal since it was a separate proceeding and the same was delivered on 11th September, 2020 and the Ward Tribunal decision was delivered on 1st October, 2020 therefore as correctly observed by the appellate tribunal the criminal case was not an obstacle for lodging the appeal within time.

On the 2nd reason, in regard to obtaining copies of the impugned judgment, the records reveal that the appellant failed to prove whether there was a delay to obtain copies of the judgment. And if that was the case he failed to establish when the appellant obtained the copy of the Ward Tribunal Judgment that resulted in such delay. Hence the reason was denied and the application was dismissed. In my considered view, I find that the appellant did not disclose when he obtained the copies of the District Land and Housing Tribunal to enable the court to account for the days of delay. Therefore, I cannot fault the tribunal decision based on this ground.

Regarding the issue of illegality, it is clear that the appellant at this juncture has raised the issue of illegality that the Ward Tribunal decision was tainted with illegality. He is trying to challenge the jurisdiction of the trial tribunal. I understand that illegality is a sufficient good cause for an extension of time as it was held in the cases of **Kalunga & Company Advocates v National Microfinance Bank** 2006 TLR 235 and **VIP Engineering and Marketing Limited & 2 Others v Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7, and 8 of 2006 CAT (unreported) it was held that:-

"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes sufficient reason to extend time."

However, the same is not applicable in the matter at hand. I think the appellant must be aware that the raised illegality must be proved for it to become a sufficient good cause for an extension of time. I have scrutinized the records of the District Land and Housing Tribunal for Kinondoni at Mwananyamala, it appears that it is the appellant who after being satisfied with the value of the subject of the suit property on 1st November, 2019, instituted a suit at Wazo Ward Tribunal, against the respondent. Additionally, the appellant paid a fee at the tune of Tzs

10,000/- which was registered as SHAURI NA. 181/2019. Unfortunately, the appellant lost the case.

Moreover, the records reveal that the appellant did not raise any ground of illegality in his affidavit and even in his written submission, thus, illegality was not a ground for extension of time. The document titled No. 2 tendered by the appellant at the trial tribunal shows that the appellant Ndalibanya Gilbert purchased the suit land from Hassan Abdallah at the tune of Tsh.700, 000/- on 10th March, 2015 as it was submitted by the appellant himself at page 2 and 3 of his submission in chief. This clearly shows that there was no illegality on matters relating to the jurisdiction of the trial Ward tribunal.

Expounding on the District Land and Housing Tribunal record, I have noted that this is a new ground, it was not raised in Misc. Land Application No. 816 of 2021 as one of the reasons for the extension of time.

In the case of **Godfrey Wilson v The Republic Criminal Appeal No. 168 of 2018** Court of Appeal observed that:

"Points/grounds not raised in the 1st appellate cannot be entertained because we cannot know where the 1st appellate goes wrong or right".

Applying the above holding, it is clear that the issue of illegality fails for two reasons; one, it was not raised at the trial tribunal. Two, there is no proof of the existence of the purported illegality.

Concerning the third ground that the tribunal failed to evaluate the documents tendered by the appellant. The appellant in his written submission dated 5th October, 2021 before the District Land and Housing Tribunal did not attached any document to support his application for extension of time. The appellant did not submit in detail as to which document was not considered by the tribunal. Therefore, this ground cannot hold water.

For the foregoing reasons, I dismiss the appeal without costs.

Order accordingly.

Dated at Dar es Salaam this date 31st March, 2022.

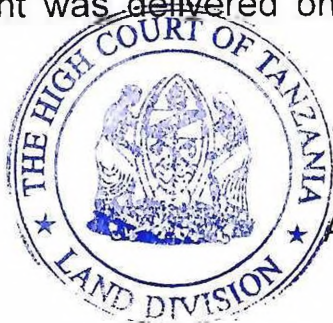


A.Z.MGEYEKWA

JUDGE

31.03.2022

Judgment was delivered on 31st March, 2022 in the presence of both parties.



A.Z.MGEYEKWA

JUDGE

31.03.2022

Right of Appeal fully explained.