

**IN THE HIGH COURT OF TANZANIA`11`
(LAND DIVISION)**

AT DAR ES SALAAM

LAND APPEAL NO.220 OF 2021

*(Arising from District Land and Housing Tribunal for Kinondoni at
Mwananyamala in Misc. Land Application No.513 of 2021)*

PHILIPO GAWA APPELLANT

VERSUS

FATU SHABANI 1ST RESPONDENT

ANDREW KAYOMBO 2ND RESPONDENT

JUDGMENT

Date of last Order: 27.05.2022

Date of Judgment: 31.05.2022

A.Z.MGEYEKWA, J

The present appeal stems from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 513 of 2021. The material background facts to the dispute are as follows:-
The appellant filed an application for extension of time before the District Land and Housing Tribunal against the decision of the Ward Tribunal of

Makumbusho dated 26th February, 2019. The District Land and Housing Tribunal determined the application and found that the appellant did not account for every day of delay as a result the application was dismissed.

Believing the decision of the District Land and Housing Tribunal for Kinondoni was not correct, the appellant lodged an appeal containing 11 grounds of appeal as follows:-

- 1. That the trial Tribunal erred both in law and fact having failed to exercise its discretionary powers for granting the Appellant with an extension of time to challenge the decision of Makumbusho Ward Tribunal by way of revision while the same adduced sufficient reasons backed with undisputed evidence for such a grant.*
- 2. that the Trial Tribunal erred in law in requiring the Appellant to have firstly obtained consent of a co-owner one **JOACHIM MALALE** who is in abroad for a while so as the appellant to obtain good cause in instituting for an application in defending his interests thereupon.*
- 3. That the trial Tribunal erred in law and fact having considered the counter affidavit of the 1st respondent while the same was drafted and the oath hereafter was administered/attested by the same commissioner for oath who drafted the same hence leading to conflict of interest.*
- 4. That the Hon Tribunal erred to exercise its powers judicially in denying the Appellant the for an extension of time while through her*

counter Affidavit and submission the 1st Respondent admitted the faults on the face of the decision leading to impervious illegally.

5. *That, the trial Tribunal vigorously erred in law by declaring that the time limit for one to file an application for revision against the Ward Tribunal is limited to thirty days.*
6. *That the trial Tribunal vigorously erred both in law and fact having failed to analyze effectively the apparent illegalities on the face of the decision of Makumbusho Ward Tribunal as genuine reasons(s) for an extension of time to file a revision against such a disparate decision.*
7. *That the Hon. Tribunal erred in law and fact having ruled that the 2nd respondent failed to file his counter-affidavit while the Appellant was served with a counter affidavit of the 2nd Respondent received by the Honourable Tribunal on the 24th May 2021 forthwith served to the appellant on the 25th May 2021.*
8. *The Hon. Tribunal erred in law and fact having ruled that, the 2nd respondent is a father to the Appellant and the latter was involved in the cause instituted by the 1st respondent at Makumbusho Ward Tribunal henceforth automatically the Appellant was, therefore, aware with the ongoing.*
9. *That, the Hon. Tribunal erred in law and fact having issued a ruling and an order forthwith bearing desperate dates, form which the ruling is dated the 10th September 2021 while the order is dated the 10th October 2021.*

10. That the Hon. Tribunal erred in law in denying the appellant his constitutional right, categorically the right to be heard and the right of ownership to property after denying for an extension of time to file a revision.

When the matter was called for hearing before this court on 7th March, 2022, the appellant enjoyed the legal service of Mr. Mlyambebele, learned counsel represented the appellant and the respondents appeared in person. 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 25th April, 2022 and the respondent's Advocate filed his reply on 20th May, 2022. The appellant filed his rejoinder on 25th May, 2022.

Mr. Mlyambebele, learned counsel for the appellant started his onslaught by seeking to consolidate the first, fourth, sixth, and tenth grounds of appeal and argue them together and opted to argue the second, third, fifth, seventh, eighth, and eleventh grounds separately.

The counsel for the appellant began by tracing the genesis of the matter which I have already narrated when I was introducing the matter at hand. On his first, fourth, sixth, and tenth grounds, Mr. Mlyambebele submitted the tribunal failed to consider the reasons based on technical delay and

illegalities that stand unopposed by both opponents. He claimed that the reason for illegality was the base for extension of time. Firstly, the illegality was in regard to the right to be heard since the appellant was not a party to the proceedings of Makumbusho Ward Tribunal.

The learned counsel for the appellant argued that the appellant appeared for the first time at the District Land and Housing Tribunal to seek an extension of time to file a revision to challenge the Ward Tribunal decision. It was his submission that this alone as signified under paragraph 3 of the affidavit in support of the application was supposed to accord extension of time to the appellant. To buttress his contention he cited the cases of **The Principal Secretary Ministry of Defence and National Service v Devram Valambhia** [1991] TLR 387 and **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 Court of Appeal of Tanzania (unreported).

The learned counsel contended that the second illegality is with respect to the execution order. He contended that the Ward Tribunal acted as an executing court and ordered the demolition of the house erected on the land in dispute. He contended that the trial tribunal acted illegally since it has no executing powers against the landed property. Mr. Mlyambebele argued that the third illegality is on the value of the subject matter which

is over and above Tshs. 30,000,000/= and the Valuation Report was attached as an annexure under paragraphs 7 and 8 of the affidavit. He insisted that the Ward Tribunal had only jurisdiction to determine a matter which its subject matter is not over Tshs. 3,000,000/=.

The learned counsel for the appellant continued to submit that there was a reason for a technical delay as a base for an extension on time. He submitted that the appellant filed a Misc. Application No. 427 of 2019 against the respondent the same was struck out, hence the appellant filed an application for an extension of time on 21st April, 2021. He went on to submit that the appellant was restless as he was in court corridors. He faulted the Chairman to proclaim that the appellant spend more than two years doing nothing while the time spent on objection proceedings was signified in paragraphs 9 and 10 of the appellant's affidavit. He went on to submit that the issue of technical delay was excusable under the law and cemented in different decisions such as the case of **National Housing Corporation & Another v Jing Lang Li**, Civil Application No. 432/17 of 2017, Court of Appeal of Tanzania (unreported).

Submitting on the second ground, the learned counsel for the appellant contended that the trial tribunal misdirected itself by raising the

assumption that the appellant was first required to obtain the consent of a co-owner one Joachim Malale who is abroad. It was his view that the law permits one of the owners of joint ownership of the property to sue to protect joint interest against third parties. To support his submission he referred this court to the case of **The Registrar Trustees of St. Lucia Trust Fund and Winifrida Mwashala v Karama Care Africa Connect Ltd**, Civil Appeal No. 95 of 2019 CAT at Arusha (unreported).

On the third ground, the learned counsel submitted that Mr. William Anthony Changama, counsel filed the counter affidavit while the same counsel involved himself in attesting the oath administered by the 1st respondent. It was his view that the same is amounting to conflict of interest and means that the respondent did not object to the application.

As to the fifth ground, Mr. Mlyambebele contended that the trial Chairman arrived to a determination of the non-existence law. He went on to argue that the Chairperson held that the time limit for filing a revision is thirty days while the statutory limitation period as per the Law of Limitation Act, Cap. 89 [R.E 2019] item 21 is sixty days.

Submitting on the seventh ground, the learned counsel for the appellant contended that the trial tribunal did not check the records since he ended

up determining that the 2nd respondent failed to file his counter-affidavit which was a wrong conclusion since in record the 2nd respondent filed a counter-affidavit.

On the eighty ground, the learned counsel for the appellant complained that the trial tribunal misdirected itself, the appellant and 2nd respondent's relationship has been stagnation for a very long time. He added that the 2nd respondent could not inform the appellant of what transpired in court thus he faulted the Chairperson to state that the appellant and the 2nd respondent were the same people. It was his view that the denial of awarding extension was based on the staging relationship between the 2nd respondent and the appellant.

On the last ground, the appellant's counsel argued that the position of the trial tribunal is unacceptable since it denies the appellant to justify the real-time on when to appeal against the impugned decision as it creates contradiction on the definite time to appeal.

On the strength of the above submission, the learned counsel for the appellant beckoned upon this court to quash the findings set aside the decision of the District Land and Housing Tribunal. He urged this to court

to grant an extension of time to file a revision against the decision of Makumbusho Ward Tribunal.

In reply, on the first ground, the learned counsel for the applicant argued that it is not true that the appellant was not accorded the right to be heard since the application for revision was dismissed by the trial tribunal since failed to adduce sufficient reason which precluded him to file revision within time. He added that an aggrieved party is required to lodge an application for revision within 60 days. To fortify his submission he cited the cases of **Tanzania Breweries Limited v Herman Bildad Minja**, Civil Application No. 11/18 of 2019 (unreported) and **M.B Business Limited v Amos David Kassanda and 2 others**, Civil Application No. 8/17 of 2018 (unreported).

The learned counsel for the respondent argued that the appellant failed to state sufficient cause for an extension of time to file revision within time. Supporting his stance he referred this court to section 14 of the Law of Limitation Act, Cap.89 [R.E 2019] and the case of **Benedict Mumello v Bank of Tanzania** [2006] E.A 227. He added that sufficient cause has not been defined but it can be determined according to the circumstances of each case by looking whether or not the application has been brought

promptly, the absence of any valid explanation for the delay, and the lack of diligence on the part of the applicant. To buttress his contention he cited the case of **Citibank (TZ) Ltd v TTCL and Others**, Civil Application No.97 of 2003 (unreported).

Regarding the issue of illegality, the learned counsel for the respondent submitted in length that no any illegality warranted the trial tribunal to grant his application for an extension of time. Mr. William submitted that the appellant failed to point out the illegality that occurred during the hearing of the case. He went on to submit that based on the records there was no any application for execution before the Ward Tribunal, he added that there was an application for execution before the District Land and Housing Tribunal which was challenged by the appellant through objection proceedings and the same was dismissed.

Submitting on the ground of pecuniary jurisdiction, Mr. William argued that the position of the law which warranty the pecuniary jurisdiction of the Ward Tribunal was repealed after the amendment of the Land Disputes Courts Act Cap. 216 vide the Written Laws (Miscellaneous Amendments) No.3 Act, 2021 whereby the provision of section 15 and 16 of the Principal

Act was repealed through the provision of section 46 of the Written Laws (Miscellaneous Amendments) No.3 Act of 2021.

Submitting on the third ground, Mr. William argued that the appellant had an opportunity to raise a preliminary objection during the hearing and the appellant was present in court thus he ought to have raised the said objection. He added that otherwise, their complaints cannot be qualified to be a ground of appeal. Supporting his submission he cited the case of **Sudy Mashamba v Director of Public Prosecution**, Criminal Application No. 2/09 of 2018 (unreported).

As to the fifth ground, Mr. William repeatedly argued that the limitation to file an application for revision is sixty days. He submitted that the decision of the trial tribunal was delivered on 26th February, 2019 and the application for extension of time was filed on 21st April, 2021 which is beyond the time limit as set under the Law of Limitation Act.

On the seventh and eighth grounds, Mr. William argued that these grounds are afterthoughts since the appellant failed to prove his assertion since there was no proof of service tendered before the tribunal, he added that there is no record that shows that 2nd respondent had a tendency to appear not only before the tribunal unless the appellant shall be put in

strictly to prove his assertion as per the requirement of section 110 of the Law of Evidence Act, Cap.6. He added that in absence of proof of service from the second respondent that he served the appellant with a counter affidavit before the trial tribunal this assertion at this stage is an afterthought.

As to the eighty ground, the learned counsel for the respondent submitted that the trial tribunal findings are correct and the action taken by the appellant is an abuse of the court process by delaying justice.

On the last ground, Mr. William argued that it is indisputable fact that the ruling in respect of Misc. Application No. 513 of 2021 delivered on 10th September, 2021, and order dated 10th October, 2021 is a minor error resulting from the slip of pen which does not prejudice the right of parties to appeal but rather an error that is curable and rectified under the spirit of the provision of section 96 of the Civil Procedure Code Cap. 33.

On the strength of the above submission, Mr. William urged this court to dismiss the appeal in its entirety with costs.

In his rejoinder, the appellant's counsel reiterated his submission in chief. He stressed that the trial tribunal entitled itself to executing power.

To support his submission he referred this court to the last paragraph of the trial tribunal's judgment which reads:-

“Hukumu hii imetolewa leo tarehe 26.02.2019 na nyumba iliyojengwa kwenye kiwanja hicho ivunjwe ndani ya siku 45 tangu tarehe ya hukumu hii.”

I have opted to combine the. Starting with the first I wish to begin with the first, fourth, and sixth grounds because they are intertwined and in my view, if decided in the positive, is sufficient to dispose of the entire appeal for reasons which will unfold in the course. The appellant's counsel is faulting the decision of the District Land and Housing Tribunal for Kinondoni for not granting the extension of time to challenge the decision of the Ward Tribunal by way of revision while the appellant adduced sufficient reasons for extension of time.

I have keenly followed the submissions of both learned counsels and the applicant's affidavit dated 19th April, 2021. The appellant's counsel had shown the path navigated by the appellant in his affidavit. The applicant in his affidavit raised two main limbs for his delay, technical delay, and illegality. I have opted to address the second limb. The applicant in

paragraphs 11, 12, and 13 alleges the decision of the Makumbusho Ward Tribunal.

The illegality is alleged to reside in the powers exercised by the Ward Tribunal decision that the trial tribunal had no jurisdiction and executed its own decree. I have perused the proceedings in Misc. Land Application No.513 of 2021 whereas Mr. Ndomba, learned counsel for the applicant in his submission elaborated that there is an issue of illegality. He argued that the decision of the Ward Tribunal of Makumbusho contains the execution of the matter while there was no any application for execution and claimed that the appellant was not a party to the proceedings. The learned counsel for the applicant also submitted that the Ward Tribunal had jurisdiction to determine the matter since the subject matter value of the suit land is more than Tshs. 3,000,000/= . He also claimed that the applicant has an interest in the suit land.

The learned counsel for the respondent opposed this ground on account that there was no any illegality committed by the trial court. Although as rightly stated by the learned counsel for the appellant that at the District Land and Housing Tribunal the 1st respondent did not file any counter-affidavit. Therefore the same is presumed that she did not object the

application. Also in her testimony, she did not submit anything in regard to the grounds of the applicant.

It is settled law that a claim of the illegality of the impugned decision constitutes good cause for an extension of time regardless of whether or not a reasonable explanation has been given by the applicants to account for the delay. As it was held in the cases of **Victoria Real Estate Development Limited v Tanzania Investment Bank and Others**, Civil Application No. 225 of 2014, and **Andrew Athuman Ntandu** (supra). In the case of **Andrew Athuman Ntandu and Another v Dustan Peter, administrator of the estate of the late Peter John Rima**, Civil Application No. 551 /01 of 2019 (unreported), the Court of Appeal held that:-

" Moreover, it is settled law that a claim of the illegality of the impugned decision constitutes good cause for an extension of time regardless of whether or not reasonable explanation has been given by the applicant to account for the delay."

Being guided by the principle law and authorities discussed above and having considered the circumstances of this appeal, I am satisfied that the appellant was able to show good cause to warrant this court to grant his appeal. Therefore, I proceed to set aside the decision of the District Land

and Housing Tribunal for Kinondoni at Mwananyamala. The appellant is allowed to file his application for revision at the District Land and Housing Tribunal. The appeal is allowed with no order as to the costs.

Order accordingly.

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




A.Z. MGEYEKWA

JUDGE

31.05.2022

Judgment delivered on 31st May, 2022 in the presence of Mr. Mlyambebele, counsel for the appellant and the respondent.




Z. MGEYEKWA

JUDGE

31.05.2022