

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO.216 OF 2020

(Arising from the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Consolidated Misc. Land Application No. 877 and Misc. Land Application No.872 of 2017)

SALIM MBAROUK APPELLANT

VERSUS

MARIA MOMBA RESPONDENT

JUDGMENT

Date of last Order: 08.06.2022

Date of Judgment: 17.06.2022

A.Z.MGEYEKWA, J

The present appeal stems from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala with respect to Consolidated Application Misc. Application No. 871 of 2017 and Misc. Application No. 872 of 2017. The material background facts to the dispute are not difficult to comprehend. They go thus; the appellant filed an application for a stay of execution and an extension of time to file an

appeal out of time. In regard to the application for an extension of time, the applicant stated that he was unable to file the appeal within time because the matter was decided in his absence thus he was not aware of the trial tribunal proceedings and its judgment. The applicant asserted that he became aware of the trial tribunal judgment after being served with the Application for execution on 18th December, 2017.

On his party, the respondent contended that the appellant was served to appear before the Ward Tribunal once the matter was scheduled for a hearing but the appellant decided not to attend. She claimed that the appellant has built a wall and had blocked the pathway thus she has no entry to her plot. The District Land and Housing Tribunal determined the application and found that the appellant has not stated good reasons for the extension of time hence the application was dismissed.

Believing the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala was not correct, the appellant lodged an appeal containing 3 grounds of appeal which can be crystalize as follows:-

- 1. That the Honourable Chairperson erred in law to hold that the appellant was aware of the trial tribunal proceedings in absence of any proof of service to substantiate that the applicant was properly been served.*

2. *That the Honourable Chairperson erred in law for failure to consider that the tribunal did not notify the appellant the date of judgment.*
3. *That the Honourable Chairperson erred in law and fact for taking into consideration the illegalities alleged in the decision of the Ward Tribunal as a ground for extension of time.*

When the matter was called for hearing before this court on 08th June, 2022, the appellant enjoyed the legal service of Mr. Bernard Masimba, learned counsel, and the respondents appeared in person.

On the first ground, the counsel for the appellant submitted that the litigant was required to be notified and summoned to appear in court to argue his case. The learned counsel for the appellant went on to submit that the appellant wanted to appeal but found himself out of time. Mr. Bernard submitted that the appellant had to file two applications for stay of execution and extension of time whereas the two applications were consolidated. He further contended that the appellant raised good reasons for extension of time and claimed that he was not notified on the date of judgment but the District Land and Housing Tribunal did not consider his reasons for extension of time and hence disregarded both prayers.

Arguing for the second ground, Mr. Bernard was brief and straight to the point. He argued that the District Land and Housing Tribunal did not consider

or recognize that the appellant was not notified of the date when the judgment will be delivered. He claimed that the appellant was required to be notified to acquaint him with the District Land and Housing Tribunal orders. The applicant invokes the Court of Appeal of Tanzania jurisprudence in the case of **Cosmas Construction Ltd Arrow Garments Ltd** [1992] TLR 27. He stated that the appellant appeared at the tribunal only once.

With respect to the third ground, Mr. Bernard argued that the District Land and Housing Tribunal erred in law for failure to consider the issue of illegalities. He believed that failure to notify the appellant to appear in tribunal on the date of the ruling is a ground of illegality. Mr. Bernard went on to submit that the ground of illegality is a sufficient ground to move the court to grant extension of time. Supporting his stance he cited the case of **The Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185.

On the strength of the above submission, the learned counsel for the appellant beckoned upon this court to quash and set aside the decision of the District Land and Housing Tribunal and grant the applicant's application.

In reply, the respondent submitted generally. She submitted that the trial tribunal issued summons twice but the appellant did not show appearance.

It was her submission that the Ward Tribunal visited locus in quo issued an order to restrain the respondent to block the pathway but the respondent did not obey the tribunal order. The respondent went on to submit that the District Land and Housing Tribunal decision was correct and sound since the appellant appeared once at the Ward Tribunal which means he was aware about the matter. She added that for those reasons, the appellant cannot claim that he was not summoned to appear at the trial tribunal. She prayed for this court to order the respondent to pave a way so that she can pass by.

In his rejoinder, the appellant's counsel reiterated his submission in chief. He stressed that the appellant was not summoned and the records are silent, there is no any proof that the respondent was summoned to appear at the trial tribunal.

I have opted to combine the first and the second grounds of appeal. The main complaint of the appellant is that he was not summoned to appear in court. In my view, this is a good ground for appeal in a situation where the appellant is not out of time. The proof of not being served to appear on the date when the Ruling or Judgment was delivered is a good ground for setting aside the exparte Judgment. In a situation where the appellant realized that he was out of time then he had to state good reasons for extension of time by accounting for each day of delay or raising a ground

of illegality which is on the face of the record. Therefore this ground cannot hold water.

Furthermore, I am in accord with the respondent's submission that since the appellant appeared in court once means he was aware that there was a matter pending before the tribunal. Therefore the appellant's claims that he was not summoned to appear on the date when the judgment was delivered cannot hold water. Therefore, these ground are disregarded.

Concerning the third ground, in Application No. 872 of 2017, I have read the appellant's affidavit and noted that the appellant did not raise any ground of illegality in his affidavit. In chronological order, he narrated how the matter commenced at the trial tribunal and he claimed that he did not receive any summons. The learned counsel in his submission stated that the appellant was not summoned to appear at the tribunal on the date when the Judgment was delivered, thus, in his view, this was a ground of illegality. With due respect first of all the counsel for the appellant has raised the ground of illegality from the bar because the same is not featured in the appellant's affidavit. Therefore, Mr. Bernard cannot say that illegality was pleaded as a ground.

Secondly, the purported ground of illegality does not constitute a good cause for an extension of time. In the case of **Principal Secretary,**

Ministry of Defence and National Service v Devram Valambhia [1992]

TLR 185, the Court of Appeal of Tanzania at page 89 held that:-

*"In our view, when the point at issue is one alleging illegality of the decision being challenged, **the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record straight.**" [Emphasis added].*

Similarly, in the case of **Arunaben Chaggan Mistry v Naushad & others**, Civil Application No. 6 of 2006 CAT at Arusha (unreported), the Court emphasized the ground of illegality must be such a point of law that is of sufficient importance and apparent on the face of the record, such as the question of jurisdiction.

In sum, based on the foregoing analysis I hold that the appellant has failed to convince the District Land and Housing Tribunal as well as this court that he had adduced sufficient reasons for extension of time. Thus, it is evident that the present appeal is devoid of merit.

In the event, I am satisfied that the District Land and Housing Tribunal for Kinondoni at Mwananyamala has properly analyzed the evidence availed before him and reached an appropriate conclusion hence there is

no justification to interfere with his decision. The appeal is dismissed with costs.

Order accordingly.

Dated at Dar es Salaam on this date 17th June, 2022.



Z.MGEYEKWA

JUDGE

17.06.2022

Judgment delivered on 17th June, 2022 in the presence the respondent.



Z.MGEYEKWA

JUDGE

17.06.2022