

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPEAL NO. 8 OF 2022**

*(Arising from District Land and Housing Tribunal for Kibaha at Kibaha in Misc.
Land Application No. 262 of 2020 Originating from Ward Tribunal of Pangani
in Land Cause No. 59 of 2020)*

HELENA DISMAS MSOFE APPELLANT

VERSUS

ROZI CHIRA RESPONDENT

JUDGMENT

Date of last Order: 07.03.2023

Date of Judgment: 09.03.2023

A.Z.MGEYEKWA, J

The appellant has lodged this appeal against the Ruling of the District Land and Housing of Kibaha in Misc. Land Application No.262 of 2020 dated 28th October, 2022. The material background facts of the dispute are not difficult to comprehend. They go thus: the applicant lodged an application for an extension of time to file an appeal out of time. The

applicant in his affidavit claimed that she was aggrieved by the decision of the trial tribunal. She claimed that the trial tribunal delayed to supply her with copies of the Judgment and proceedings. She also claimed that his counsel did not file his appeal after a lapse of 70 days. The respondent opposed the application for the main reason that the appellant failed to account for each day of delay. The District Land and Housing Tribunal ended up dismissing the application with costs.

Believing the decision of the District Land and Housing Tribunal for Kibaha was not correct, the appellant lodged an appeal containing one ground of appeal as follows:-

- 1. That, the trial Chairman erred in law and fact for not considering all the reasons that were made before the court as to why the appellant delayed filing an appeal.*

When the matter was called for hearing before this court on 7th March, 2023, the appellant and the respondent appeared in person. Hearing of the appeal took the form of oral submissions.

The appellant began by tracing the genesis of the matter which I am not going to reproduce in this appeal. She claimed that she lodged the instant appeal because she was dissatisfied with the decision of the appellate

and trial tribunals. The appellant contended that she was unable to file an appeal within time because she could not afford to engage an advocate. She claimed that many Advocates were demanding a lot of money which she could not afford. The appellant went on to submit that the trial tribunal of Pangani delivered its judgment without considering his evidence and she was not ordered to call witnesses. She argued that the record reflects different evidence and that the trial tribunal changed the witnesses. She complained that the appellate tribunal did not consider her grounds of appeal for the reasons that her grounds were insufficient.

In reply, the respondent contended that at the trial tribunal, the appellant was not a part but she appeared as a witness. The respondent spiritedly contended that the appellant sold the respondent's piece of land to different women and the trial tribunal decided the matter in the favour of the respondent. She went on to argue that the two women wanted the appellant to refund their money hence the appellant opted to file a case. Against the respondent claiming that the respondent has trespassed into the suit land. She further submitted that the trial tribunal visited *locus in quo* and noted that the trial tribunal had already determined a dispute involving the same subject matter, therefore, her claims were dismissed. The respondent continued to submit that the appellant unsuccessful filed

an application for an extension of time at the District Land and Housing Tribunal for Kibaha, she was not pleased by the tribunal decision hence this appeal.

In her short rejoinder, the appellant stressed that she was dissatisfied with the decision of the District Land and Housing Tribunal for Kibaha, thus, she decided to file the instant appeal. Ending she claimed that she is a widow therefore, she was financially unfit which is why she found herself out of time to file an 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*.

The appellant raised a single ground of appeal faulting the District land and Housing Tribunal for failure to consider her reasons for the extension of time. I had to peruse the proceedings of the District Land and Housing Tribunal in Land Application No. 262 of 2020 to find out whether the appellant adduced sufficient reasons for his delay to file an appeal.

The records show that the impugned Judgment of the Ward Tribunal for Pangani was delivered on 3rd September, 2020 and the applicant filed the application for an extension of time before the District Land and Housing Tribunal for Kibaha on 14th December, 2020. It is undisputable fact that the appellant was out of time to lodge an appeal and the applicant main reasons as stated in her affidavit and written submission is because she delayed obtaining the copies of the impugned decision. She claimed that she made several follow-ups without success, however, she did not support her allegation with any cogent document such as a letter for request of copies and proceedings. Again, her claims that she was unable to engage an advocate to file her appeal within time are mere words.

It is trite law that in an application for extension of time the applicant must account for each day of delay, consistent with the position of the Court of Appeal in the cases of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported) which was delivered in May, 2019 and the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), the Court held that:-

“Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay.”

Therefore, I fully subscribe to the submission made by the appellant and the holding of the District land and Housing Tribunal that the appellant failed to account for each day of delay.

In the instant appeal, the appellant in her submission in chief came up and contended that the trial Chairman did not allow her to call witnesses. This is a new ground that was raised for the first time before this court. It is not proper to raise a new ground in a higher court based on facts that were not canvassed in the lower courts. It is settled position of law that issues not raised and canvassed by the appellate court or tribunal cannot be considered by the second appellate court. The Court of Appeal of Tanzania in the case of **Farida & Another v Domina Kagaruki**, Civil Appeal No. 136 of 2006 (unreported) the Court of Appeal of Tanzania held that:-

" It is the general principle that the appellate court cannot consider or deal with issues that were not canvassed, pleaded, and not raised at the lower court."

Applying the above authority in the instant appeal, it is clear that the appellant's submission is an afterthought and the same cannot be regarded by the appellate court.

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 Kbaha. I proceed to dismiss this appeal without costs.

Order accordingly.

Dated at Dar es Salaam this date 9th March, 2023.




A.Z.MGEYEKWA

JUDGE

09.03.2023

Judgment delivered on 9th March, 2023 via video conferencing whereas the appellant and respondent were remotely present.




A.Z.MGEYEKWA

JUDGE

09.03.2023

Right to appeal fully explained.