

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND APPEAL NO.316 OF 2022**

(Arising from Land Application No. 210 of 2021 at the District Land and Housing Tribunal for Kibaha at Kibaha, originating from Misugusugu Ward Tribunal in Case No.09 of 2019)

KOSHUMA MTENGETI APPELLANT

VERSUS

HUSSEIN FIKIRINI TANGANYIKA RESPONDENT

JUDGMENT

Date of last Order: 13.03.2023

Date of Judgment: 17.03.2023

A.Z.MGEYEKWA, J

The appellant has lodged this appeal against the Ruling of the District Land and Housing for Kibaha in Misc. Land Application No.210 of 2021 dated 16th November, 2022. The material background facts to the dispute are not difficult to comprehend. They go thus: the appellant filed an application for extension of time at the District in Misc. Land Application No. 210 of 2021, concerning

the issuance of summons to the appellant once a suit was instituted and the trial tribunal ordered that the trial proceeded *ex parte* against the appellant. The applicant alleged he was not aware of the *ex parte* Judgment delivered by the tribunal until the date when he was informed that there was an Application for Execution. The respondent in his counter affidavit opposed the Application and claimed that the appellant has failed to adduce sufficient reasons for extension of time. The District Land and Housing Tribunal for Kibaha determined the application and found that the appellant has failed to adduce sufficient reasons to move the tribunal to extend time.

The appellant was not happy with the decision of the District Land ad Housing Tribunal. Hence, he preferred this appeal on two grounds of grievance; namely:-

1. That, *learned Chairperson, erred in law and fact by failing to deliberate or ignoring crucial evidence that the Appellant had not been aware of the existence of the case instituted at the Ward Tribunal.*
2. *That the learned Chairperson erred in law and fact by refusing to extend time within to file a revision while there was a reasonable justification from the appellant.*

On the material date, the appellant had the legal service of Mr. Deogratius Mwarabu, learned counsel and the respondent appeared in person, unrepresented. By the Court's consent the appeal was argued by the way of written submission whereas both parties complied with the Court order save for the appellant who waived his right to file a rejoinder.

Getting off the ground, Mr. Deogratius started to narrate the genesis of the matter which I am not going to produce in this appeal. Submitting on the first ground, Mr. Deogratius was brief and focused. He submitted that the Chairperson failed to consider the facts and evidence as a result the Chairperson made an injustice decision. He contended that the Chairperson failed to analyse properly the evidence. To support his submission, he referred this Court to page 3 of the impugned Ruling. He went on to submit that the appellant in paragraph 4 of his affidavit explained in detail that he had no information of the pendency of the case at the Ward Tribunal.

The learned counsel continued to argue that there is no proof of service, the respondent did not attach any proof of service in his counter affidavit. The learned counsel for the appellant forcefully argued that it is awkward how the respondent quickly located the applicant and served him with a copy of execution. He claimed that the trial Tribunal was required to satisfy itself that

the appellant was nowhere to be found before proceedings *ex parte* against the appellant. To bolster his argumentation Mr. Deogratius cited section 12 of the Ward Tribunal Act, Cap. 206 [R.E 2019]. He stated that the particulars of the appellant was at the police station.

Mr. Deogratius continued to submit that proof of service in litigation is vital. To support his submission he referred this Court to Order V Rule 8 of the Civil Procedure Code Cap.33 [R.E 2019]. He insisted that the whole process of conducting and procuring *ex parte* judgment was tainted by evil motive to deprive the appellant's right to defend himself.

On the second ground, the learned counsel for the appellant submitted that in numerous case laws, the court has set what should be considered in granting extension of time. To fortify his submission he cited the cases of **Chawe Transport Import & Export Co. Ltd v Pan Construction Co. Ltd**, Civil Application No. 146 of 2005 (unreported) the Court quoted with approval the case of **Tanga Cement Company Ltd v Jumanne D. Massangwa & Amos A. Mwalwanda**, Civil Application No. 6 of 2001 and **Benedict Mumello v Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported). He insisted that the appellant accounted for the delay from July, 2018 as per paragraph 4 of his Application.

In conclusion, the learned counsel for the appellant beckoned upon this Court to quash and set aside the order of the District Land and Housing Tribunal for Kibaha and allow the appeal with costs.

In reply, the respondent began to narrate the genesis of the matter which I am not going to reproduce in this appeal. The respondent opted to combine the two grounds of appeal and submit them generally. He contended that the matter started at Misugusugu Ward Tribunal in Land Case No. 9 of 2019 and the trial tribunal issued a summons to the appellant but the appellant opted not to appear at the trial tribunal. The respondent went on to submit that the trial tribunal issued other summonses still the appellant did not show appearance, hence on 26th July, 2028, the trial tribunal delivered its judgment. He continued to submit that on 16th October, 2020, the respondent filed an application for execution and the appellant was served with an application for execution, thus, the appellant became aware that there was an *ex parte* Judgment against him.

The respondent defended the District land and Housing Tribunal's decision as sound and reasoned. He valiantly argued that the appellant's evidence was insufficient. The respondent contended that the appellant after being dissatisfied with the decision of the appellate tribunal was required to file an

appeal before this Court instead of filing incompetent applications, as a result, Application No. 171 of 2020 was dismissed. He added that the appellant filed an application for extension of time which was *res judicata*. To support his submission he cited the cases of **Melisho Sinndiko v Julius Kaare (1977)** LRT No.18. He strenuously argued that the appeal before this court is baseless and defended the Chairman's decision of striking out the Misc. Application No. 21 of 2021. The respondent stressed that the appellant has no sufficient cause for his delay.

On the strength of the above submission, the respondent beckoned upon this court to dismiss the appeal with costs.

Having heard the counsels' contending arguments, the Court's duty is determined as to *whether the appeal is meritorious*. I will address the grounds separately because they are not intertwined.

Starting with the second ground of appeal, the appellant is faulting the District Land and Housing Tribunal for refusing to extend time to file a Revision while the appellant believes that he adduced sufficient reasons for his delay. From the outset, I want to make it clear that this ground is devoid of merit. Reading the record it is clear that after the issuance of the *ex parte* Judgment, the appellant filed a Misc. Land Revision No. 171 of 2020. The said Revision

was struck out as being time-barred. The appellant did not want to give up. He applied for extension of time at the District Land and Housing Tribunal Ruling in Misc. Application No. 210 of 2021 and in his affidavit specifically paragraphs 6 and 7, the applicant admitted that he lodged Application No. 171 of 2020 for Revision. His application for extension of time to file a Revision was also thrown overboard by Hon. Mbuga, Chairperson. Now, the Appellant has filed an appeal against the Ruling of the District Land and Housing Tribunal for Kibaha.

After scrutinizing the records, I find the appellant was barred to lodge an application for extension of time for the many reasons that his previous application for Revision was struck out for being time barred. Therefore, in my view, the tribunal was correct to dismiss the application because the intended Revision was timeliness.

It is noteworthy that a Court cannot have jurisdiction to entertain an appeal or revision which is time barred and no extension of time has been sought and granted before striking out the said Revision. The issue of the time limit goes against the determination of the Application for the extension of time which was before the District Land and Housing Tribunal. In the first place, the tribunal was supposed not to entertain the application for an extension of time,

because the intended Revision was struck out and as long as the application was filed after the period of limitation the consequence was dismissal. In such circumstances, the applicant was barred from filing a similar application and its consequence is the same as stated under section 3 of the Law of Limitation Act Cap. 89 [R.E 2019]. In the case of **North Mara Gold Mine Ltd v Sinda Nyam Boge Ntora**, Civil Appeal No. 457 of 2020, the Court of Appeal of Tanzania cited with approval the case of **The Director General NSSF v. Consolata Mwakisu**, Civil Application No. 329/01 of 2017 and it was held that: -

"It is important to state here that; the Court considered the effect of the application filed out of time in the High Court and its consequence under S. 3 of the Law of Limitation Act..."

See also the case of **Hezron M. Nyachia v. Tanzania Union of Industrial and Commercial Workers & Another**, Civil Appeal No. 79 of 2001 (unreported). Therefore even if the application at the tribunal was struck out the consequence is the same as dismissing the application for being time barred.


Applying the above authority in the matter at hand it is clear that this appeal is ill-conceived because it touches on the timeliness of the Revision.

Under the circumstances, I see no need to determine other alleged contentious matters raised by Mr. Deogratus on this ground, and I find no need to deal with the first ground of appeal doing so will be an academic exercise.

That said and done, I hold that in the instant appeal there are no extraordinary circumstances that require me to interfere with the findings of the District Land and Housing Tribunal for Kibaha. Therefore, I proceed to dismiss the appeal with costs.

Order accordingly.

Dated at Dar es Salaam this date 17th March, 2023.


A Z MGEYEKWA
JUDGE
17.03.2023

Judgment delivered on 17th March, 2023 in the presence of the respondent.


A Z MGEYEKWA
JUDGE
17.03.2023