

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL CASE NO. 264 OF 2022

(From the Decision of District of Land and Housing Tribunal of TEMEKĒ)

SOFIA TWAHILI.....APPELLANT

VERSUS

SALMA OMARI NGUBIAGI.....RESPONDENT

JUDGMENT

13th & 28th February 2023

L. HEMED, J.

The matter at hand commenced at the ward tribunal for Toangoma in SHAURI NA. 172/2021. At the Ward Tribunal SALMA OMARI NGUBIAGI, the respondent herein, successful sued SOFIA TWAHIRI the appellant herein demanding removal of the coconut tree which was found to be close to his house threatening the well being of her house. The Ward Tribunal directed removal of the said coconut tree.

SOFIA TWAHIRI (The appellant) was aggrieved by the said decision which was delivered on 30th November 2021. She could not however, lodge anything in time to challenge the said decision of the Ward Tribunal until on 13th May 2022 when she presented before the District Land and Housing Tribunal (DLHT) for Temeke, an application for extension of time within

which to appeal. Nonetheless, in its ruling delivered on 13/10/2022, the DLHT for Temeke (K.A. Sosthenes – Chairman) dismissed the application on the ground that no good cause had been shown by the present appellant, hence this appeal on the ground that:

"1.....Baraza la Ardhi na Nyumba la Wilaya ya Temeke limekosea kisheria na Kimantiki kwa kutamka ya kwamba kwa kukataa maombi ya mleta Rufaa nje ya muda dhidi ya Hukumu ya Baraza la Kata ya Toangoma katika shauri No. 172 la mwaka 2021" (sic).

In the above ground of appeal the appellant is challenging the decision of the DLHT – Temeke, dismissing her application for leave to appeal against the decision of the Ward Tribunal for Toangoma out of time. The matter was heard orally. Both parties were unrepresented. During hearing they appeared in person.

Upon being invited to argue the appeal, the appellant could not direct herself to assert why she thinks the DLHT – Temeke erred to dismiss her application for extension of time. She submitted as if she was challenging the decision of the Ward Tribunal. She contended that the coconut tree which the Ward Tribunal ordered to be removed is her property. The respondent, also being a lay person reciprocated in the same way where she stated that the coconut tree is not the property of the appellant.

I think it was the duty of the appellant to point out the errors committed by the DLHT – Temeke when dismissing the application for extension of time. I have decided to examine the records of the District

Land and Housing Tribunal for Temeke to find out if the appeal has merits. The impugned ruling of the DLHT for Temeke was on the application for extension of time for the appellant herein to file her appeal against the decision of the Ward Tribunal for Toangoma. The guiding provision in applications for extension of time to appeal against the decision of Ward Tribunals to the District Land and Housing Tribunal, is section 20 (2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019] which provides thus:

"Notwithstanding the provisions of subsection (1), the District Land and Housing Tribunal may for good and sufficient cause extend the time for filing an appeal either before or after the expiration of forty five days."

According to the above cited provision, the applicant was bound to show good and sufficient cause for the District Land and Housing Tribunal to exercise its discretion powers. In the case of **Lyamuya construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal of Tanzania set the guidelines to be considered by the Court when determining good and sufficient cause for extension of time. The Court had this to say:

*"The following guidelines may be formulated:-
(a) The applicant must account for all the period of delay (b) The delay should not be inordinate*

(c) The applicant must show diligence, and not apathy negligence or sloppiness in the prosecution of the action that he intends to take."

The question is whether the appellant's application before the DLHT for Temeke met the above guideline set by the Court of Appeal of Tanzania. This prompted me to go through the affidavit which was deponed to support the application before the lower tribunal (the DLHT – Temeke). I have observed that the Judgement of the Ward Tribunal for Toangoma was delivered on 30/11/2021 while the application for extension of time was filed in the District Land and Housing Tribunal for Temeke on 13th May 2022 at least after five (5) months. This was indeed an inordinate delay!

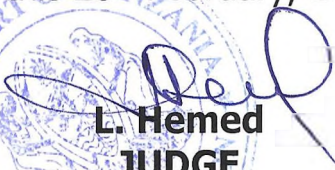
According to paragraph 15 of the affidavit deponed by the applicant, she started the process of appealing against the impugned decision of the Ward Tribunal for Taoangoma on 28/04/2022, almost after (5) months. This demonstrates the sloppiness of the highest degree on the part of the Applicant. The applicant did not also account for the delay from the 30th November 2021 to 28th April 2022. Failure to account for each day of delay implies negligence on the part of the present appellant in challenging the impugned decision of the Ward Tribunal. The importance of accounting for each day of delay was also echoed in the case of **Elius Mwakalinga vs Domina Kagaruki and 5 others**, Civil Application No. 120/12 of 2018, where the Court of Appeal of Tanzania had this to say:

"a delay of even a single day has to be accounted for otherwise there should be no point of

having rules prescribing periods within which certain steps have to be taken.”

I have also gone through the ruling of the DLHT – Temeke, I could find no error to fault. Indeed, the learned chairman of the District Land and Housing Tribunal was justified to dismiss the application as no good and sufficient cause had been demonstrated by the present appellant. From the foregoing, I find no merits on the appeal. I do hereby dismiss it. The fact that the appellant was under legal aid, each party to bear its own costs. I order so.

Dated at Dar es Salaam this 28th February, 2023.


L. Hemed
JUDGE

COURT: Judgment is delivered this 28th February 2023 in the presence of both parties appearing in person. Right of appeal explained.


L. Hemed
JUDGE
28/02/2023

