

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 256 OF 2023**

(From the Judgment and Order of District Land and Housing Tribunal of  
Kinondoni at Mwananyamala in Misc. Application No. 575 of 2022)

**ALLY BARUANI MACHO** (Administrator of the Estate of the Late  
**SADA ALLY BARUANI**.....**APPELLANT**

**VERSUS**

**SHEILA H. KAVIRA**.....**RESPONDENT**

**JUDGMENT**

1<sup>st</sup>-04<sup>th</sup> August, 2023

**E.B. LUVANDA, J**

This appeal was filed under certificate of urgency on 03/07/2023. Essentially the Appellant named above is challenging the decision of the District Land and Housing Tribunal, herein after the Tribunal, refusing to extend time to file an application for revision against the decision of the Ward Tribunal at Kunduchi, Case No. 108/2020. In the said case to wit Case No. 108/2020, the Respondent above mention sought an eviction order against one Musa Juma alleged tenant rented a suit premises from the Appellant. The Kunduchi Ward Tribunal decided in favour of the complainant (Respondent herein), holding the later to had won a case of ownership at Kisutu Resident Magistrates Court Criminal Case No. 119/2013

that the area belong to the late Haidari Nassoro Kavira, whose estate is administered by the Respondent herein. Therefore, Kunduchi Ward Tribunal granted eviction order against the tenant on account that his landlord was jailed in prison. The Appellant appealed to the High Court against conviction and sentence in Criminal Case No. 119/2013 Resident Magistrate Court of Dar es salaam at Kisutu (subject matter for eviction order), the appeal was heard via Extended Criminal Appeal No. 7/2020, where the Appellant was acquitted for the charges of forgery and uttering false document which is a latter of offer No. LD/1503335/1/JKD dated 17/07/1991 alleged issued in favour of the late Hidari N. Kavira in respect of for the suit premises.

After release from prison on 08/02/2021, one months later to wit on 08/03/2021, the Appellant filed an application for stay of execution via Misc. Application No. 346/2021 at the Tribunal, which was withdrawn on 21/02/2022. Thereafter the Appellant filed Objection Proceedings No. 466/2021, against execution of Case No. 108/2020 Kunduchi Ward Tribunal, which application was dismissed on 09/09/2021. Thereafter, the Applicant filed Misc. Application No. 587/2021, which was withdrawn in view of filing a proper application (as pleaded at paragraph nine of affidavit and impliedly acceded at paragraph seven of a counter affidavit). On 12/09/2022, the Applicant filed Misc. Application No. 575/2022, which was

dismissed on 06/06/2023 for the reason that the Appellant (Applicant therein) failed to account on each day of delay. The Appellant raised four grounds of appeal to challenge the said verdict of the Tribunal as follows:-

1. That the learned Chairman erred in law and fact in holding that the Appellant did not account for each day of delay in filing an application for extension of time despite ample evidence on record that the Appellant was pursuing the matter with various applications since he was acquitted in Criminal Appeal case No. 119 of 2013 on 8<sup>th</sup> February, 2021 until when application No. 575 of 2022, the subject matter of this appeal was filed on 12<sup>th</sup> September, 2022.
2. That the learned Chairman erred in law and fact for failure to grant extension of time to file an application for revision despite existence of illegal decision by Kunduchi Ward Tribunal, the decision which condemned the Appellant unheard even after satisfying itself in the decision that the Appellant, the owner of the disputed property, was in jail, as a result of Criminal Case No. 119 of 2013.
3. That the learned Chairman erred in law and fact in failure to grant an application for extension of time as the appellant was not given notice by the Kunduchi Ward Tribunal of the date when judgment was to be pronounced as required by the law, since it was known fact the Appellant was an interested party in the dispute and was jailed.
4. That the learned Chairman erred in law and fact for failure to grant extension of time for the Appellant to file an application for revision despite the fact that the Appellant disclosed sufficient reasons for the Tribunal to grant it.

Mr. Jerome Joseph Msemwa learned Counsel for Appellant argued ground number one and two jointly, to the effects that the decision of Kunduchi Ward Tribunal in Application No. 108/2020 was delivered while the Appellant was in prison. He submitted that after release from prison, the Appellant was attending Application No. 466/2021, that is from 08/03/2021 to 09/09/2021, objecting execution. He submitted that the Appellant also filed an application that is Misc. Application No. 346 of 2021 for stay of execution of Application No. 1021/2020, which was withdrawn on 01/12/2021. The learned Counsel submitted the learned Chairman confirmed that the decision of Kunduchi Ward Tribunal was illegal and therefore ought to have granted the application for extension of time regardless whether the Appellant had accounted for each day of delay. He cited the case of the **Attorney General vs. Emmanuel Maragakisi (As Attorney of Anastansios Anagnostou) & 3 Others**, Civil Application No. 138/2019 C.A.T; **Livingstone Silayo @ Charu vs. Collin Fred Temu**, AR Civil Application No. 3/1995 C.A T. at Arusha. He submitted that the illegality in the decision of Kunduchi Ward Tribunal, is on the face of record on that the decision of ownership of property on plot No. 894 Block "G" Tegeta was made based on Appellant's conviction in Criminal Case No. 113/2013 which was set aside in Extended Criminal Appeal No. 71/2020, which means the Appellant did not forge a letter of offer as charged.

For ground number three and four, the learned Counsel submitted that the Appellant was not a party in Application No. 108/2020 Kunduchi Ward Tribunal, but the decision had direct impact to the Appellant, on the ground that it deprived his property while he was in remand. He submitted that the Ward Tribunal was aware that the Appellant had interest in the property but proceeded to try the case without Appellant involvement or notified as to the date of judgment. He cited the case of **Ajay Han Sray Asher vs. Triump Impex Limited**, Misc. Civil Application No. 212/2022, Hon. Kisanya, J.

Mr. Privaty Patiensi Rugambwa learned Counsel for Respondent opposed the appeal, submitted that the Appellant wasted nine months in prosecuting untanable Application No. 346/2021, for stay of execution. He submitted that the Appellant filed Objection Proceedings No. 466/2021 against execution of the decision in Application No. 108/2020, which was dismissed on 09/09/2021. He submitted that the acts of withdrawal and or failure of applications cannot be attributed to reasons constituting delay while the Appellant was represented. He submitted that the Appellant filed the application Misc. Application No. 575 of 2022 for extension after elapse of 635 days from the date he was released from prison. He cited the case of **Adrofu Fulgence Mfuya vs. Juma Herere & 2 Others**, Civil Application No. 33/2021 C.A.T at Kigoma, for a proposition that the ignorance of court

procedures for an advocate cannot be a reasonable ground for an application of time to be granted.

For ground number two, the learned Counsel submitted that a mere fact that there is an allegation of illegality does not constitute sufficient cause, because such allegation must be on the face of the record, such as the question of jurisdiction and not to be discovered by long drawn argument or process. He cited the case of **Tanzania Harbours Authority vs. Mohamed R. Mohamed** (2003) TLR 76; **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2/2010 C.A.T. Dar es Salaam.

For ground number three and four, the learned Counsel submitted that the Appellant was not a party to the case and the Tribunal was not obliged by any law or procedure to issue any notice with regard to the pronouncement of the judgment or to call the Appellant. He submitted that the Chairman was justified to rule that the Appellant failed to account for each day of delay and failed to show sufficient cause.

On my part, I will start with ground number two and three. Going through the records of Kunduchi Ward Tribunal in Case No. 108/2020, indicate that a claim thereat was for eviction of one Musa Juma alleged tenant of the Appellant at the suit premises. In granting the order for eviction, the Ward

Tribunal pegged its verdict on Criminal Case No. 119/2013 at Kisutu alleging that it was decided in favour of the Respondent herein, that the area Plot No. 894 Block "C" belong to the late Haidari Nasoro Kavira whose estate is administered by the Respondent herein. However, in Criminal Case No. 119/2013, it was in respect of charges of forgery and uttering false document as aforesaid, meaning that the issue of ownership was not determined by the alleged Criminal Court. Indeed a conviction in Criminal Case No. 119/2013 was quashed via Extended Criminal Appeal No. 7/2020. At pages 6 and 7 of the impugned decision, the learned Chairman technically noded in agreement with the argument of the learned Counsel for Applicant therein, in a sense that the decision of Kunduchi Ward Tribunal is tainted with illegality, however declined to extend time on explanation that the Applicant (Appellant herein) ought to account on each day of delay. It is settled rule that when illegality are notable on the face of record, that alone can constitute granting extension of time without recourse to accounting each day of delay. In the case of **Marangikis** (supra), at page 18, the apex Court cited the case of **VIP Engineering and Marketing Limited & Three Others vs. Citibank Tanzania Limited**, consolidated Civil Reference No. 6, 7 and 8 of 2006 held that,

*"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 (now rule 10) regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay"*

Herein, the records vindicate that the decision in Criminal Case No. 119/2013 was abrogated via Extended Criminal Appeal No. 7/2020 as aforesaid. The decision of Kunduchi Ward Tribunal in case No. 108/2020 adjudicated the subject matter where the Appellant has interest and was not given a right to be heard for reason that he was jailed. To my view, the above illegalities are notable on the face of record, does not require long drawing argument as suggested by the learned Counsel for Respondent. For ground number one and four. It is common ground that when the decision of Case No. 108/2020 at Kunduchi Ward Tribunal was delivered on 16/12/2020, the Appellant herein was in prison. After release from prison on 08/02/2021, execution of a decision in a Case No. 108/2020, was under way via Misc. Application No. 1020/2020. The Appellant made several applications to challenge the said execution including; Misc. Application No. 346/2021 for stay of execution which was filed on 08/03/2021 one month from release in prison. But this application was withdrawn on 21/02/2022



as per the Tribunal records in the case file. The Appellant filed Objection Proceedings No. 466/2021, which was dismissed on 09/09/2021. Thereafter the Appellant filed Misc. Application No. 587/2021, which was later withdrawn in view of filing a proper application. Arguably, lodging applications with ultimate results of withdrawal and refusal or failure applications, cannot constitute reasons for delay to lodge an appropriate matter in the court, as submitted by the learned Counsel for Respondent. However, to my view when some one is prosecuting other applications on good faith as a recourse to the situation, in particular herein where the Appellant was in jail and upon release from prison, was confronted with a decision of Case No. 108/2020 which the Respondent was at the verge of executing it via Misc. Application No. 1020/2020, to my view, the Appellant ought to be accommodated for delay attributed to technical delay.

My undertaking is grounded on a fact that the Appellant made a serious of these applications without inordinate delay. This can be evidenced by the first application Misc. Application No. 346/2021, which was filed on 08/03/2021 just one month counting from the date of release from prison on 08/02/2021.

In view of the above, this appeal is merited. The decision of the Tribunal is set aside. The Appellant is granted an extension of fourteen (14) days to file the intended revision.

The appeal is allowed. I make no order for costs.

E.B. LUVANDA  
**JUDGE**  
04/08/2023

**Court:** Judgment delivered in the presence of Ms. Salha Mlilima Advocate for Appellant and the Respondent in person.



E.B. LUVANDA  
**JUDGE**  
04/08/2023