

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

MISC. LAND APPEAL NO. 37 OF 2023

(Originating from the decision of Ward Tribunal of Tumbi in Land Case No. 98 of 2021 and District Land & Housing Tribunal for Kibaha in Misc. Land Application No. 190 of 2022)

KISAGHU RENGETA APPELLANT

VERSUS

KATALA MATOVOLWA RESPONDENT

Date of Last Order: 28/08/2023

Date of Judgment: 05/10/2023

JUDGMENT

I. ARUFANI, J

The appellant KISAGHU RENGETA is appealing against the Ruling of Kibaha District Land and Housing Tribunal (the District Tribunal) in Misc. Land Application No. 190 of 2022. The grounds of appeal are as follows: -

- 1. That the honourable Chairperson of the District Land and Housing Tribunal at Kibaha erred in law and fact for ignoring a reasonable cause raised and addressed by the appellant during hearing of Misc. Land Application No. 190 of 2022 for extension of time to appeal, while on the face of the Ward Tribunal the records show that the said matter was entertained with a irregularity and illegality for lack of jurisdiction as the suit land was a surveyed land.*

2. That the honourable chairperson of the District Land and Housing Tribunal at Kibaha erred in law and facts for dismissing the application contrary to the well-established laws and principle on the duty of the court to extend time wherever apparent irregularity is alleged.

The appeal was argued by way of written submissions and while Mr. Mbwana Ally Chipaso, learned advocate drew and filed in the court the submissions on behalf of the appellant the respondent's submission was drawn and filed in the court by Mr. Alphonse Katemi, learned advocate.

In arguing the first ground of appeal the counsel for the appellant submitted that, there is an issue of illegality of the decision of the Ward Tribunal of Tumbi (the **Ward Tribunal**) that it had no jurisdiction to determine the matter. He said the land in dispute is a surveyed land and it is registered as Plot No. 201 "C", Area, Mpakani within Kibaha (the **suit land**). He said since there was a Certificate of Title then an order for revocation ought to have been directed to the Commissioner for Land and Registrar of Titles together with the Attorney General as required by the law governing land matters.

He stated the Ward Tribunal ordered the parties to give way by two feet from the southern beacon something which need to be informed to the Commissioner for Lands who has the mandate and power to allocate

land. He said the decision of the Tribunal has the direct effect to the Commissioner for Lands as the allocating Authority. He cited in his submission the case of **Yasint Geho V. Invyolata Geho**, Land Appeal No. 03 of 2020, HC at Songea, (unreported) where the court relied on the case of **Shelina Midas Hander & Others V. Nyakutonya NPF Co. Limited**, Civil Application No. 186 of 2020 (CAT-Mwanza) (unreported) to granted extension of time after seeing the allegation of the impugned decision contained illegality relating to jurisdiction of the Ward Tribunal to entertain the matter.

He said there was sufficient cause for the District Tribunal to grant the appellant leave to appeal out of time so that the District Tribunal can look at the alleged illegality and if established to put the records of the Ward Tribunal right. He said there are a lot of cases which cement the requirement of granting extension of time when an issue of jurisdiction is raised. He said the Chairperson of the District Tribunal misdirected herself as she failed to know that the question of jurisdiction is fundamental.

As for the second ground of appeal the counsel for the appellant said it was held in the case of **Lyamuya Construction Company Limited V. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010 (CAT-Arusha)

(unreported) that illegality of the decision sought was, among other things, considered as a good cause for granting extension of time.

He also relied on the cases of **Sabena Technics Dar Limited V. Michael J. Luwunzu**, Civil Application No. 451/18 of 2020, CAT at DSM (unreported) and **TanESCO V. Mufungo Leonard Majura & 15 Others**, Civil Application No. 94 of 2016, CAT at DSM (unreported). He stated the position of the law laid in the foregoing cited cases is that where there is allegation of illegality which is apparent on the fact of the record, then the District Tribunal is required to take it as a sufficient cause for granting extension of time for the appellant to lodge his appeal in the court or tribunal out of time. He prayed the court to allow the appeal and grant the appellant an order for extension of time to file his appeal in the District Tribunal out of time.

In his reply the counsel for the respondent submitted in relation to the first ground of appeal that, the claims by the appellant are baseless because there was no decision on ownership made by the Ward Tribunal neither was there an issue of revocation. He further pointed out that there is no Certificate of Title tendered before the Ward Tribunal and the District Tribunal. He said the order of the Ward Tribunal was for the parties to make their demarcation clear and to maintain peace.

He went on saying that the allegations of illegality and jurisdiction of the Ward Tribunal to entertain the matter are unfounded because it was the appellant who filed the case at the Ward Tribunal and further that looking at the record of the matter there is no information that the suit land is a registered land with a Certificate of Title. He said even when making the application for extension of time there was no such evidence produced in District Tribunal to substantiate the alleged illegality. He said the cases cited to support the appellant's case are not relevant to the matter at hand because in those cases the Ward Tribunals deliberated on the issues of ownership and certificates of title were tendered.

As for the second ground he said extension of time is the discretion of the court and it has to be exercised judiciously and though there is no hard and fast rule, the guiding principle is sufficient cause or reasonable ground. He said in the application filed at the District Tribunal and in the appeal filed in this court the appellant has not accounted for the inordinate delay to file his appeal in the District Tribunal within the time prescribed by the law.

He said although there is allegation of illegality but the same has not been substantiated as he has not said when he discovered the alleged illegality. He said there are procedures required to be followed and the appellant cannot decide for himself when to appeal. He said the District

Tribunal was therefore justified to refuse to extend time to appeal. He concluded by submitting that the appeal has no merits and it should be dismissed with costs.

In his rejoinder the counsel for the appellant reiterated what he stated in his submission in chief. He emphasized that the appellant gave evidence that the land was surveyed and this was not objected by the respondent. He thus insisted that there was illegality in the decision of the Ward Tribunal as it had no jurisdiction to entertain the matter. At the end he reiterated his prayer for the appeal to be allowed.

Having considered the rival submissions from the counsels for the parties the court has found the main issue for determination in this appeal is whether this appeal has merit. In determine the stated issue the two grounds of appeal brought to this court by the appellant will be considered together because both of them are based on allegation that the decision of the Ward Tribunal is tainted with illegality.

The court has found the appellant is claiming the District Tribunal erred in refusing to grant him extension of time to file appeal in the District Tribunal out of time while there is illegality in the decision of the Ward Tribunal. He stated the illegality contained in the decision of the Ward Tribunal is that the Ward Tribunal entertained a matter which it

had no jurisdiction to entertain the same as the suit land is a registered land.

On the other hand, the counsel for the respondent submits that the decision of the District Tribunal was proper as there was no evidence to prove that the land was a registered land to enable the Ward Tribunal and District Tribunal to determine the issue of jurisdiction of the Ward Tribunal to entertain the matter as alleged by the appellant. He argued further that the Ward Tribunal did not determine the issue of ownership of the suit land but the issue of demarcation of the boundary and ordered the parties to maintain peace.

The position of the law as stated in number of cases is settled that, to refuse or grant extension of time is in the discretion of the court or tribunal and the stated discretion is supposed to be exercised judiciously. The stated position of the law can be seen in the case of **Yusuf Same and Another V. Khadija Yusuf**, Civil Appeal No. 1 of 2002 (unreported), where the Court of Appeal stated that: -

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judiciously and the overriding consideration is that there must be sufficient cause for so doing."

The court has also found the factors or principles governing the court in exercising the above stated discretion have been stated in number of cases and one of them is the case of **Lyamuya Construction Company Ltd** (supra) which states in determining application for extension of time the court is required to consider the factors listed hereunder: -

- (a) The applicant must account for 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.*
- (d) If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

The court has found the record of the District Tribunal shows it is true as rightly found by the Chairman of the District Tribunal that the appellant did not say anything being in his affidavit or submission, he filed in the tribunal as to why he delayed to lodge his appeal in the District Tribunal within the time prescribed by the law. The court has found the record of the District Tribunal shows the decision of the Ward Tribunal was delivered on 9th November, 2021 but the application for extension of time was filed in the District Tribunal on 31st October, 2022 which is after elapse of about one year.

That shows the appellant did not say anything to meet the first three factors required to be considered in granting extension of time laid in the case of **Lyamuya Construction Company Ltd** (supra). However, the court has found the appellant based his application on the fourth factor laid in the foregoing cited case which states the court can grant extension of time if there is a point of law of sufficient importance in a decision intended to be challenged which need to be put right.

The court has found the ruling of the District Tribunal shows the Chairman of the District Tribunal did not say anything in the ruling of the District Tribunal in relation to the factor of illegality used by the appellant to seek for extension of time to appeal out of time. Although the Chairman of the District Tribunal did not say anything in relation to the alleged illegality but this court being the first appellate court has a duty and power as stated in the case of **BAKWATA Mugango V. Mafuru Kiraka**, [2012] TLR 114 to step into the shoes of the Chairman of the District Tribunal to determine whether the alleged illegality is in existence and is a point of sufficient importance to grant the order the appellant was seeking from the District Tribunal.

The position of the law as stated in number of cases, one of them being the case of **Shelina Midas Jahander & Others** (supra) cited in the submission of the applicant is that illegality which relates to

jurisdiction of the ward tribunal to entertain a matter is a good cause for granting extension of time if it is properly established. The question to ask here is whether the alleged illegality of jurisdiction of the Ward Tribunal to entertain the appellant dispute was established to the extent of moving the court to find the District Tribunal was required to grant the appellant the order of extension of time he was seeking from the District Tribunal.

The court has found that, although the appellant deposed in the affidavit which he filed in the District Tribunal that the land in dispute is a surveyed land and it is Plot No. 201 "C" Area, Mpakani, Kibaha but there is no Certificate of Title which was produced in the Ward Tribunal or District Tribunal to establish the land in dispute is a registered land. To the contrary the court has found the only evidence annexed in the affidavit filed in the District Tribunal to prove the land in dispute is a registered land is a building permit issued to the appellant.

It is also the finding of this court that, as rightly argued by the counsel for the respondent there is nowhere in the decision of the Ward Tribunal annexed in the affidavit filed in the District Tribunal stated the Ward Tribunal revoked the ownership granted to the appellant so that it could have been said the Commissioner for Land, Registrar of Titles and the Attorney General were required to be joined in the matter under the

capacity of being necessary parties in determine the ownership of a registered land as argued by the counsel for the appellant.

From the above stated reason, the court has found that, although it is a position of the law that allegation of illegality in an impugned decision is a good cause for granting extension of time even where the period of delay has not been accounted for, but in order for the court to grant extension of time basing on allegation of existence of illegality in the decision to be challenged it must be established the alleged illegality is of sufficient importance to grant the sought extension of time. The above stated view of this court is being fortified by the decision made by the Court of Appeal in case of **Lyamuya Construction Company Limited & Another Vs. T. C. C. L. & Others**, Civil Application No. 97 of 2003 (unreported) where it was held that: -

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, said that in Valambia's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. **The court there emphasized that such point of law must be that of sufficient importance.**"*[Emphasis added].

Since the matter which the appellant is submitting was entertained by Ward Tribunal without having jurisdiction to entertain the same was

filed in the tribunal by the appellant himself, the court has failed to see importance of granting him extension of time to challenge the decision of the Ward Tribunal on ground that there is illegality in the decision of the Ward Tribunal which need to be put right.

In the premises the court has found that, although the Chairman of the District Tribunal did not consider the stated ground of illegality raised in the application of the appellant but still the court cannot allow the appeal of the appellant as the alleged illegality was not established as a good cause for granting him extension of time which he was seeking from the District Tribunal.

Consequently, the court has found the appeal filed in the court by the appellant is devoid of merit and it cannot be granted. In the upshot the appeal is hereby dismissed in its entirety for being devoid of merit and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 05th day of October, 2023



I. Arufani

JUDGE

05/10/2023

Court:

Judgment delivered today 05th day of October, 2023 in the presence of Mr. Mbwana Ally Chipaso, learned advocate for the appellant and in

the presence of Mr. Alphonse Katemi, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani
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JUDGE
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