

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

LAND APPEAL CASE NO. 248 OF 2023

Originating from Miscellaneous Land Application No. 111/2022 in the District Land and Housing Tribunal at Mkuranga before Hon. Mwakibuja, Chairperson, arising from Land Appeal no 39/2021 in the District Land and Housing Tribunal before Honourable Mwakibija, Chairperson)

**YAHYA NASSORO HAMAD & ANOTHER1ST APPELLANT
RASHID ABDURAHMAN NJENGE..... 2ND APPELLANT**

VERSUS

GOODCHANCE GODWIN MSANGIRESPONDENT

JUDGMENT

24th October 2023 & 10th November 2023

MWAIPOPO, J

This appeal traces its origin from Land case no 024/2021 filed before the Ward Tribunal at Vikundu, within Mkuranga District. The matter was filed by the Respondent Goodchance Godwin Msangi who had a claim on trespass to land against the Appellants in the instant case. The matter ended in favour of Goodchance, the current Respondent. Dissatisfied with the matter, the Appellants herein filed an appeal no. 39/2021 before the District Land and Housing Tribunal form at Mkuranga Within Mkuranga District (DLHT). On 19th of May 2022 when the case was called for mention before the DLHT, the Tribunal ordered the parties to proceed by way of written submissions whereby/ the Appellants were to file their submissions in chief on or before 2nd June 2022, the Respondent's Reply on or before 16th of June 2022 and Rejoinder if any was to be filed on or before 23rd June 2022. The case was then set for mention on 14th July 2022.

On the 7th of June 2022, following the expiration of their date for filing their written submissions, the Appellants wrote to the Tribunal praying to depart from the order of filling their written submissions as well as withdrawing their appeal with leave to refile and file supplementary grounds of appeal. On 14th July 2022, when the matter was fixed before the Court Hon. Mwakibuja dismissed the appeal with costs for want of prosecution, after they had failed to comply with the schedule of filing their written submissions on 2nd June 2022. Following the dismissal of their appeal, for want of prosecution, the Appellants herein filed Misc. Land Application no 111/2022 before the DLHT by way of chamber summons supported by an affidavit of both appellants. The said application was filed on the 20th of September 2022 whereby the Applicants prayed before the Court to one, extend time for Appellants, then (Applicants) to file their Application for setting aside a dismissal order of this Court dated 14th July 2022 in respect of Land Appeal No. 39/2021, two, to set aside the dismissal order and allow application for restoration of Land Appeal no. 39/2021, three, costs of the case and for any other orders, the Hon. Court would deem fit and proper to grant in the circumstances of the Application.

Pursuant to the order of the Court dated 1st February 2023, the Parties were ordered to argue the Application by way of written submissions. On 23rd May 2023, the DLHT through Hon. Chairman Mwakibuja, delivered its decision in favour of the Respondent, ruling that, the Applicants had not provided sufficient reasons to enable them to be granted extension of time. Aggrieved by the decision of Hon. Mwakibuje, the appellants have now preferred their Petition of Appeal before this Honourable Court, setting forth five (5) grounds of Appeal as follows;

1. The tribunal Chairperson erred in law and fact by delivering a decision without considering the heavy, reliable and compelling evidence adduced in the affidavit of the appellant showing good cause for delay.
2. The tribunal Chairperson erred in law and fact by wrongly exercising its unfettered discretion by delivering a decision detrimental to the appellants.
3. The tribunal Chairperson erred in law and fact by miscalculating the period of time of delay for wrongly counting from the date of decision of dismissal of appeal to the date of filing the application of extension of time instead of rightly counting from the date of expiry of time to file application for restoration to the date of filing.
4. The tribunal Chairperson erred in law and in facts by delivering its decision without considering that both the appellants and their previous Advocate were bereaved and travelled outside of Dar es Salaam for burial services.
5. The tribunal Chairperson erred in law and fact by holding that appellants had no good cause for delay without considering that the decision that dismissed the appeal No. 39 of 2021 was tainted with illegalities as the tribunal did not consider the written prayer through a letter dated 07th June, 2022 for filing supplementary grounds of appeal.

Following the filing of the Petition of Appeal, the High Court fixed the date of oral hearing on 24th October 2023.

Submitting on the grounds of appeal, the Counsel for the Appellant consolidated ground 1, 2 and 4 and stated before the Court that the Chairman erred in law for not considering evidence of the Appellants after

they had filed their application for extension of time to set aside the dismissal order delivered on 14th July 2022 by DLHT(Hon. Mwakibuja). Following the decision, they had 30 days up to 13th of August 2022 within which to file an application for setting aside the dismissal order. However, on the 10th of August, the appellants were bereaved with their close relative and hence had to travel till 22nd of August 2022. When they came back on 24th August 2022, they instructed an advocate to represent them. However, on 24th of August the Advocate was also bereaved and so he left for Mwanza to attend the burial ceremony of his aunt. The Advocate came back on 14th September 2022 while the appellants were also looking for other Advocates. Hence their Advocate Mkungano instructed another Advocate to assist them with the matter and on 17th of September 2022, the Appellants filed their application for extension of time. It was the submission of the Counsel for the Appellants that the Tribunal never directed itself properly since there was an Affidavit to the effect that their Advocate was bereaved and all the travel tickets were admitted in Court as Exhibits but they were never used by the Court in arriving at its decision. It was his contention that Appellants showed good cause for delay but they were never given a chance to salvage their case.

With regard to ground number 3 and 5, he submitted that the Tribunal miscalculated the period of delay and asserted that the Appellants delayed for 25 days. He submitted that it was not true that the Appellants delayed for such days. The Tribunal wrongly calculated the days from the date of decision to the time they were bereaved. However, the Applicants were of the submissions that days should have been counted from the date when the Advocate came back from the funerals on 24th of September 2022 and the date when they filed their Application, which

was a period of three days. Thus, the Appellants managed to establish a period of delay for three (3) days. He landed his submissions by praying to the Court to allow an appeal with costs.

In rebuttal, the Counsel for the Respondents began by submitting that the Appeal lacks merit and it should be dismissed in its entirety for the reasons that would be submitted. He craved to begin by giving first the historical background of the matter. He stated before the Court that the Appellants filed Miscellaneous Land Application No. 111/2022 before the DLHT for Mkuranga which was an omnibus application, whereby they prayed for two prayers. The first prayer was to the effect that, the Tribunal should set aside the dismissal order arising from appeal no. 39/2021. They also prayed for an extension of time for them to be allowed to set aside dismissal order arising from Land Appeal no 39/2021. Thus, it was his submission that although this Hon. Court has discretion to grant this application it must be guided on whether the tribunal exercised its discretion properly or not.

Objecting to the counsel for the Appellant's submissions on ground 1, 2 and 4, i.e. the Tribunal failed to consider evidence filed in support of the Application, the Counsel for the respondent submitted that as per section 14(1) of the Law of Limitation Act Cap 89 RE 2019, the trial Tribunal can grant extension of time to set aside dismissal order, however the applicant has to assign good cause which prevented them from filing the application within time set by the law. Similarly, to assign good cause which prevented them from filing their written submissions as per the order of the Court, which led to the Court to dismiss their case. The reasons can be discerned from the former Affidavit of the Appellant in

their former Application. That looking at the application, the same was omnibus containing two prayers. Further, in the Appellant's Affidavit there is no where they disclosed reasons as to why the Appellants failed to file their written submissions in support of the Appeal which led to their appeal being dismissed.

With regard to the prayer for extension of time, it is submitted that, one of the requirements of the law is to account for each day of delay from the date when the decision was delivered to the date when the appellants filed their application before the DLHT. Looking at the appellants' affidavit, the evidence available is not enough to account for days of delays, which could have assisted them to get the decision in their favour. That going by the trend of events, the decision which was dismissed in Land appeal no. 39/2021 was delivered on the 14th of July 2022, hence their Application had to be filed within 30 days of delivery, i.e. on or before 13th of August 2022. In their Application, the Appellants began adducing reasons from the 10th of August 2022, which were also contradictory. He went on citing the dates between 22nd of August and 16th September 2022, where there is also a big contention between them since the appellants never adduced sufficient evidence to substantiate their case. Based on their Affidavit, they stated that they engaged the services of Advocate Edward Mkunganya who was also bereaved and had to travel to Mwanza and came back on the 12th of September 2022. However, there was no any evidence to show that they engaged the said Advocate, secondly, in their Affidavit there is no evidence to show that the said Advocate travelled to Mwanza, thirdly, there was no any Affidavit filed by said Advocate Edward Mkungano to support these details. It is trite law that, when one is mentioned in the Affidavit, he must also swear

an Affidavit. This position is provided in the case of **NBC versus Superdol, CAT case**. The case states further that if the person does not swear an Affidavit, whatever it is said on his behalf or for him, will remain to be hearsay. Based on these reasons he found that the Tribunal was correct in dismissing the Application and the grounds adduced or submitted by the Applicants were not enough to support the Application.

With regard to ground 3 and 5 of the Application, the Counsel went on to submit that he supported the decision of the Tribunal that they counted the 25 days correctly in arriving at their decision. He reiterated that the Respondent's concern also was on 22nd of August 2022 to 16th September 2022 whereby the Appellants failed to account for the delay occasioned. He stated that if one computes the days will find that they make 25 days hence the two grounds of appeal have no merit. He thus prayed for the appeal to be dismissed with costs.

Having heard the submissions from both sides, this Court will proceed to analyse the merit of the appeal as presented before the Court. In determining this appeal, the Court is alive to the fact that, this Appeal is based on the dismissal of the Appellant's Application no. 111/2022 for extension of time to set aside, the decision in Land Appeal No. 39/2022. As adumbrated above, the appellants, after they had failed to file their submissions in case no. 39/2022, the Court, dismissed their appeal for want of prosecution. The Appellants filed an application for extension of time to restore the matter, however the same was also dismissed by DLHT. They have now come to appeal before this Court against the decision, which denied them extension of time to set aside the dismissal order.

According to section 41(1) and (2) of the Land Disputes Courts Act CAP 216 RE 2019, the person who is aggrieved by the decision of the DLHT can file an appeal to the High Court within 45 days from the date when the decision was given. The decision which is being appealed against is in relation to the decision of the DLHT which dismissed the application for extension of time by the Appellants so that they could to restore their application or set aside the dismissal order of DLHT in their Misc. Land Appeal No. 39/2022.

With regard, to ground no, 1, 2 and 4, the Counsel for the Appellant submitted before the Court that the Chairman erred in law for not considering the heavy and reliable evidence of the Appellants after they had filed their application for extension of time to set aside the dismissal order delivered on 14th July 2022 by DLHT (Hon. Mwakibuja). That they adduced good cause for the delay by counting the dates or showing how the same were not wasted by them, from the time they were bereaved on the 10th of August 2022 to the time when they had to engage an advocate to represent them. They also stated that they filed their tickets as evidence which were admitted in court, but were never given any weight. The Counsel for the respondent on his part vehemently objected to these submissions. He began by citing section 14 of the Law of Limitation Act cap 89 RE 2019 which grants power to the court to extend time upon sufficient cause being shown by the applicant. He challenged the manner in which days were counted by the appellants while signifying their negligence. He asserted that the Appellants did not fulfill their duty properly before the Tribunal.

In response to his submissions and being mindful of the fact that this is the first appellate Court, I have perused the records of the Tribunal in the course of reflecting on these three combined grounds of appeal in order to analyze them and satisfy my self as to whether the evidence adduced by the Appellants before the Tribunal was indeed ignored or given less weight by the Court. I have read the Judgment in Land Appeal No. 39/2021 and satisfied myself that, the appellants never adduced sufficient reasons for the delay in filing their application for extension of time. As per Regulation 11 of the Regulations of the Land Disputes Courts (DLHT) Regulations, 2003, GN No. 174, a person whose case has been dismissed is supposed to file an application for setting aside the dismissal order within 30 days of the decision. However, looking at the decision of the DLHT in Land Appeal no. 39/21, one will note that it was delivered on 14.7.2022 in their presence and knowledge. The Applicants then filed an application for restoration on 20th of September 2022 more than two months later. In their submissions before the DLHT, the appellants stated that, they travelled to Mafia to attend burial ceremony on 10th August 2022 when they received a notification letter from the Mkuranga Village Council Office informing them to go and collect summons in respect of execution of Land Appeal No. 39/2021.

Then they had to look for an advocate to prepare their case. Refer to page 2 of the DLHT decision. However, the same advocate was also bereaved and had to travel to Mwanza to burry a close relative. He came back to Dar es Salaam on 12th September 2022, at that time they already started to look for another Advocate to assist them. I have also perused the Affidavit in support of their application for extension of time and noted that they attached some tickets to prove their trip to Mafia, i.e.

they travelled on the 10th of August 2022 and came back on 22nd of August 2022. My concern is on the fact their Affidavit did not state any reasons for delay from 14th of July 2022 when their decision was given to 10th of August 2022 when they travelled whether they were taking any steps to pursue the said application. I agree with the tribunal and the counsel for the appellant that there is a gap on their explanations for delay or there is an unexplained delay of 25 days which have not been accounted for (See also page 4 of the Decision) where the tribunal states and I quote;

"Waombaji wanadai kuwa wanaomba maombi haya yaraulusiwe kwasababu walipata msiba baada ya kusomewa uamuzi wa Baraza hili. Kumbukumbu za Baraza zinaonyesha kuwa tarehe 14.7.2022 rufaa ya waombaji ilifutwa wakiwepo Barazani na sababu ya kufutwa ni kushindwa kuwasilisha hoja zao za maandishi kama ilivyoamriwa na Baraza. Kulingana na Hati yao ya kiapo na maelezo yao ya ufafanuzi ni kwamba walifiwa na kwenda mazishini tarehe 10.8.2022. Waombaji hawajaeleza kwa kipindi cha zaidi ya siku 25 tangu uamuzi ulipotoka hadi walipofiwa kwanini walishindwa kuwasilisha maombi ya kurejesha kesi iliyofutwa".

Further, in the Affidavit, the Appellants also stated facts indicating that they were bereaved, however, they attached travel tickets indicating their travel dates and nothing was attached to prove the death of the deceased or that the Appellants were indeed bereaved. The attached tickets, to say the least did not have any evidential value. They could have been related

to any other trip so to speak. They needed to be corroborated further. On page 4 of the decision, the Tribunal stated;

"Pamoja na hayo waombaji wameshindwa kulishawishi Baraza kwa kushindwa kuthibitisha kuhusu safari yao ya kwenda mazishi au kufiwa na ndugu wa karibu".

The same case for the advocate, the Appellants stated in their Affidavit that their Advocates was bereaved. However, there was nothing to prove that he was indeed bereaved and had to travel. I agree with the submissions of the counsel for the respondent that, the Appellants never even attached an affidavit of the said Advocate to prove their assertions. This is contrary to section 110 and 111 of the Evidence Act, Cap. 6 RE 2019, which requires a person who asserts anything in court to prove it, so that he or she can get a decision in his favour. Indeed, whatever was stated in their Affidavit, remains to be hearsay. I have also perused the verification clause of their Affidavit and found that it verifies paragraph 10 (which sets out facts relating to the Advocate's bereavement) to be true according to the knowledge of the appellants, something which is also not correct. Those are matters that came to their knowledge based on information from their Advocate. The Affidavit was incompetent in that regard and hence rendered their case to stand not proved before the DLHT. Indeed, as submitted by the counsel for the respondent herein, whenever one is mentioned in the Affidavit, he must also swear an Affidavit otherwise the facts will remain to be hearsay. (See the case of **NBC versus Superdol, Trailer manufacturing Co. Ltd, Civil Application No. 13/2002, CAT**) cited by the Counsel for the Respondent. This case was also cited with approval in the case of

Sabena Technics Ltd vs Michael J Luwunzu , Civil Application No. 451/18 of 2020 CAT DSM.

See also page 5 of the impugned decision, where the Tribunal states;
Pia hakuna uthibitisho kuwa Wakili wao wa awali Mr. Mkungano Edward nae alipata msiba na kusafiri.

Further, while citing with approval the case of **Lyamuya Construction co. Ltd**, the Tribunal ruled out that; Appellant's application for extension of time was dismissed with costs for want of sufficient reasons. The Tribunal further stated that; the Appellants were just playing more delaying tactics and could not benefit from their own wrongs. (See the case of **Shabir Tayabal Esaji Vs. Farida Seifuddin Tayabali Essaji, Civil Application No. 206/06 of 2020, CAT** (unreported). The Tribunal further dismissed their case with costs. I thus cannot agree more with this finding of the Tribunal. That the appellants violated the principles set forth in the case of **Lyamuya Construction Ltd (supra)**. That the Tribunal was correct in not granting them extension of time, as there was no sufficient material placed before it for consideration. Extension of time is not granted like a birthday present. It is supposed to be earned by way of points developed through various case laws such as **Lyamuya's** case cited herein above.

With regard to ground number 3 and 5, the Appellants stated in their Appeal that, the Tribunal erred in law and fact by miscalculating the period of time of delay for wrongly counting from the date of decision of dismissal of the appeal to the date of filing the application for extension of time instead of rightly counting from the date of expiry of time to file an application for restoration to the date of filing. Further, they

stated that the Tribunal erred in law and fact, by holding that the appellants had no good cause for delay without considering that the Appeal No. 39/2021 was tainted with illegalities as the Tribunal did not consider the written prayer through a letter dated 7th June 2022 for filing supplementary grounds of appeal.

In their submissions in support of their appeal, the Counsel for the Appellants lamented that; the Tribunal miscalculated the period of delay and concluded that the Appellants delayed for 25 days, while in fact it was not true. He asserted that, the Tribunal wrongly calculated the days from the date of decision to the time they were bereaved. However, the Applicants were of the submissions that days should be counted from the date when the Advocate came back from the funerals on 24th of September 2022 and the date when they filed their Application, which was a period of delay of three days. Thus, the Appellants managed to establish a period of delay for three (3) days. He landed his submissions by praying to the Court to allow an appeal with costs.

In rebuttal, the Counsel for the Respondent supported the decision of the Tribunal that, they counted the 25 days correctly in arriving at their decision. He further reiterated that their concern was also on 22nd of August 2022 to 16th September 2022 whereby the Appellants failed to account for the delay. He stated that if one computes the days will find that they also make 25 days hence the two grounds of appeal have no merit. He thus prayed for the appeal to be dismissed with costs.

Now coming back to my analysis with regard to the issue of miscalculation of days, I state that, there is nothing wrong to fault the Tribunal in this regard. The Tribunal correctly calculated the days from

the date of delivery of decision i.e. 14th of July to the date of filing the application for extension of time. The Land Disputes Courts (DLHT) Regulations, 20023 state that; an aggrieved person must file an application to set aside a dismissal order within 30 days from the date of the decision. Therefore, the counting was in line with the law. That the days should be counted from the date of expiry of time to file an application for restoration to the date of filing is a misconception on the part of the Appellants that will not be entertained by this court. The appellants had ample time to file their application within time after the delivery of the decision but they chose to slumber on the right. They chose not to be vigilant. They cannot be allowed to wake up now, as it is too late for them to catch the moving justice train. See also the case of **Hajibhai Kara Ibrahim Versus Mrs Zubeda Ahmed Lakha and others Civil Application No. 573/11/of 2022 Tabora**; where the court cemented the principle that the law tends to assist those who are vigilant and not those who sleep. (See also **Nyanza Road Works Limited v Giovan Goidon Civil Appeal No. 75 of 2020 Unreported**).

With regard to the fifth ground of appeal relating to the alleged illegality of the Tribunal not considering their written prayer for filing their supplementary appeal submitted through a letter dated 7th June 2022. I have noted that, the counsel for the appellant never argued it but also never specifically dropped it. I have also given due consideration to it and found that it does not have any legs to stand on. The prayer was submitted on 7th of June 2022 well after the date for submitting written submissions directed by the court had already expired, i.e. on 2nd of June 2022. Therefore, by 7th June, 2022 there was no any case or appeal for

them to supplement, refile or prosecute. I find that there was no any illegality done by the Tribunal in this regard.

In the upshot, i accordingly proceed to dismiss the Appeal with costs for want of merit.

It is so ordered.

DATED at DAR ES SALAAM this 10th day of November, 2023



Mwaiipo
S.D. MWAIPOPO

JUDGE

10th /11/2023

The ruling delivered this 10th day of November, 2023 in the presence of Advocate Lutufyo Mvumbagu for the respondent holding brief for Adam Kasegenya for the Appellants, is hereby certified as a true copy of the original.



Mwaiipo
S.D. MWAIPOPO

JUDGE

10/11/2023