

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND APPEAL NO. 236 OF 2023

(Originating from the Decisions of the District of Land and Housing Tribunal for Ubungo at Luguruni Miscellaneous Land Case Application No. 178 of 2022 and the Kinondoni District Land and Housing Tribunal in Land Case No. 276 of 2021)

MAIMUNA ABDALLAH MPANDA APPELLANT

VERSUS

VICTORIA FINANCE PLC 1ST RESPONDENT

J & J RECOVERIES 2ND RESPONDENT

GODWIN BERNARD LIAMBA 3RD RESPONDENT

JUDGEMENT

Date of last order: 22/11/2023

Date of Ruling: 14/12/2023

MWAIPOPO, J:

This is an appeal filed by one Maimuna Abdallah Mpanda, hereinafter to be referred to as the Appellant against Victoria Finance PLC, J&J Recoveries and Godwin Bernard Liamba who are the first, second and third Respondents respectively.

The Appeal seeks to challenge the decisions of both, Ubungo District Land and Housing Tribunal at Luguruni in Miscellaneous Application No. 178 of 2022 and Kinondoni District Land and Housing Tribunal in Application No. 276 of 2021. In furthering her Appeal, the Petitioner filed a Petition of Appeal containing five grounds of appeal as follows: -

- 1. That, the learned trial chairman erred in law and fact to hold that Miscellaneous Application No. 178 of 2022 was filed out of time as prescribed by the law.**
- 2. That, the learned chairman erred in law and fact for entertaining Kinondoni District Land and Housing Land Application No. 276 of 2021 without having a proper instrument of Transfer in the Tribunal's record.**
- 3. That, the learned trial chairman erred in law and fact to hold that the Appellant was aware of the hearing date of Land Application No. 276 of 2021 whereas the file in respect of Land Application No. 276 of 2021 was transferred from Kinondoni District and Housing Tribunal without being informed and shown in the Kinondoni District Land and Housing Tribunal's transfer Register.**
- 4. That, the learned trial chairman failed to appreciate that the Appellant discovered that the case had been transferred to Ubungo District Land and Housing Tribunal thirty days (30) after the decision of dismissal had been given.**
- 5. That, the learned chairman failed to appreciate that the action against the Appellant accrued at the day when she discovered that the case file had been transferred to Ubungo District Land and Housing Tribunal for further hearing.**

At the time of granting the prayer to proceed by way of written submissions, the Appellant was represented by learned Advocate Abraham Senguji while the third Respondent was represented by the learned counsel Consetta Boniface who also held brief for learned counsel Robby Simon, for the 1st Respondent. The second Respondent J&J Recoveries was notified as per the order of the Court dated 22nd November, 2023 but opted not to attend. In the end, the Appellant and the 3rd Respondent complied with the timetable for

submission of Written submissions given on the 22nd of November 2023. Therefore, the case proceeded in the absence of other parties who were absent while notified.

Arguing in support of her appeal, against the decision of DLHT for Ubungo delivered on 25th May 2023 before Hon. Bigambo, on Application No. 178 of 2021, the Appellant began her submissions by praying to abandon ground 2, 3 and 4 of appeal. In submitting on ground 1 and 5 of appeal, the Appellant stated that, the trial Tribunal erred in law and in fact to hold that Miscellaneous Application No. 178 of 2022 was filed out of time in contravention with the law. She contended that the Chairman ruled that without considering the exclusion of the Appellant's days to obtain a copy of Ruling from the Tribunal as the law requires that the Application to set aside dismissal order has to be accompanied by the copy of ruling. The Appellant stated that she was supplied with the copy of Ruling on 2nd May, 2023. She argued further that, under no circumstances can an application to set aside dismissal order be filed without the impugned ruling and the Decree as they are necessary documents to accompany the Application for that purpose.

Furthermore, the Appellant argued that, it being the legal position, the law has also provided for the time required for the intended Applicant to obtain such documents and when such time should start to run against the Applicant. She contended further that under section 19 of the Law of Limitation Act Cap. 89 R. E. 2029, the requisite time to be excluded when obtaining copies of ruling has been provided for, to reinforce her point she referred the Court to the case of **Valeria MC Ginern vs Salim Farkrudin Balal, Civil Appeal No. 386 of 2019 (unreported)** where the High Court stated that, the time limit for filing an appeal started to run as from the date when the copy of the Judgment and Decree were certified. She ended by imploring the Court to find that the appeal has merit and allow it, and quash

the impugned Ruling and order with costs and then order restoration of the appeal filed in the High Court so that it could be heard on merit.

Lastly, she argued that the trial chairman's error was in failing to consider that the Appellant was not aware that the Tribunal file had been transferred from Kinondoni District and Housing Tribunal to Ubungo District and Housing Tribunal hence it was not easy for the Appellant to act promptly in filing an application to set aside the dismissal order hence when they became aware, that is when she filed the said Application. Further she argued that the chairman was also supposed to consider and exclude the time when the Appellant was not aware of the ruling and the transfer of the file from one Tribunal another.

Submitting in rebuttal, the learned counsel for the 3rd Respondent began her submissions by expressing her no objection towards the prayer of the Appellant of abandoning grounds No. 2,3 and 4 of appeal. She therefore proceeded to argue on the remaining grounds of appeal as follows:

Commencing, with the first ground of appeal, the Counsel for the 3rd Respondent submitted that, the Chairman of Ubungo Tribunal was right to hold that her application was out of time. She submitted that Application No. 178 of 2022 was legally flawed for being time barred contrary to Regulation 11(2) of the Land Disputes Court's Act [The District Land and Housing Tribunal] Regulations, 2003. The Regulation allows a party whose case is dismissed for non appearance to file an application to set aside the dismissal order within 30 days upon showing good cause of failure to appear before the Court on the date the case was dismissed.

The Counsel further asserted that, under Regulation 11 (1) (b) GN no. 174 of 2003, the Appellant was supposed to move the Tribunal with an application to set aside the dismissal order within 30 days from the date the dismissal order was made, as per Regulation 11(2) of GN 174 of 2003. She submitted that

the Tribunal dismissed her application on 17th of March, 2022 hence 30 days ended on 17th April, 2022. However, the Applicant filed her case on 26th May, 2022 which was almost a 56 days delay. The Appellant filed her application out of time without leave of the Court. Hence it was undeniably time barred and no request for extension of time was made. She referred the Court to the case of **Shipping Agencies Corporation vs Lucas Machimu and 31st Others [Revision Application No. 108 of 2023 TZHCLD 1331 CLD 1331 22nd June, 2023** where the court held at page 4 that: -

Since it was undisputed that the complaint was filed beyond 30 days statutory time, as conceded by the Respondent herein, in terms of Section 3(1) read together with Section 46 of Law of Limitation Act (supra), the remedy was to dismiss the Application.

She amplified further that, guided on the above provisions of the law and the decided cases, it is clear that, the appellant was out of time, therefore she was required to move the Court by filing a proper application for extension of time whereby she could be heard on her case. She submitted that; the chairman of Ubungo Tribunal was fairly right to hold that Miscellaneous Land Application No. 178 of 2022 was filed out of time in contravention of the law.

With regard to the second ground of Petition of Appeal, the learned Counsel submitted that the Hon. Chairman of Ubungo Tribunal made a legal decision on Misc. Land Application No. 178 of 2022. She wondered how could the Chairman consider the Applicant's reasons for her case to be transferred from Mwananyamala to Ubungo while knowing that the Application was time barred and had no merit therein. She further contended that the Appellant gave reasons without proof of her absence during trial. She argued that, the appellant could have sent a representative or relative to represent her before the Tribunal but she did not do so. She stated that it could have been more efficient and legal if the Applicant/Appellant could have used the same

reasons for lodging the Application for extension of time under the Tribunal so as to be heard.

Lastly, the learned Counsel concluded by reiterating her request for the Petition to be dismissed on the grounds that the Chairman of Ubungo Tribunal was legally right and fair to hold that the Appellant's Application was time barred. She amplified that, since Application No. 178 of 2022 was filed out of time prescribed by law and without leave of the Court, she prayed for the Appeal to be dismissed with costs for lack of merit, she thus found the appeal a waste of time and an infringement of the rights of the 3rd Respondent.

Having heard the submissions of the Appellant and the third Respondent, I now proceed to determine as to whether the appeal has merit, in particular as to whether the decision of the DLHT (Bigambo Chairman) in Miscellaneous Application No. 178 of 2022 should be set aside.

In determining this Appeal, I have also taken note of the fact that the Appellant in her submissions dropped ground No. 2,3 and 4 of appeal, as they appear in the Petition of Appeal filed in Court. I will therefore proceed to determine ground no. 1 and 5 of appeal as follows: -

The first ground of appeal reads as follows;

1. That the trial Tribunal erred in law and in fact to hold that Miscellaneous Application No. 178 of 2022 was filed out of time as prescribed by the law

I have gone through the arguments presented by the Appellant and the 3rd Respondent and noted that, the Appellant in her submissions has relied on the reason that that the chairman did not consider the exclusion of days which the Appellant used to obtain a copy of the Ruling from the Tribunal whereby she contended that she obtained the copy on 2nd May, 2023, therefore, she argued that, the Chairman failed to observe the requirements of section 19 of

the Law of Limitation Act, which requires such days to be excluded. She also cited the case of **Valerie MC Given (supra)** to drive her point home. The 3rd Respondent on her part objected to such arguments by arguing that, the application filed by the Appellant was time barred and contrary to Regulations 11(2) of Case No. 174 of 2003 since it was to be preceded by an application for extension of time to file an application to set aside the dismissal order. The latter is supposed to be filed within 30 days after the decision, otherwise it can be dismissed by the Tribunal. She cited the case of **Tanzania shipping Agencies (supra)**.

In determining this first ground of Appeal, I have perused the records in order to satisfy myself with the grounds of appeal submitted by the Appellant, and noted that, based on the history of her case, the Appellant filed an Application No. 276 of 2021 before the DLHT for Kinondoni at Mwananyamala on 23rd day June, 2021 for a declaration of among other things that, the disposition of the suit premises by the 2nd Respondent is unjustifiable and for permanent injunction order to be issued against the disposition of the suit premises/ land by the 1st Respondent or any of its agents, assignees or any other persons, secondly for a declaration that the Applicant is not indebted by the Respondent because she had already paid the principal sum and interest in respect of the loan and thirdly, for costs of the suit and any other reliefs.

Secondly, I have perused the records contained in the file and observed that on 16th of February, 2022, the Applicant then, who is now the Appellant herein, wrote a letter to the chairman, DLHT at Kinondoni notifying the Tribunal that, she would not be able to attend the case on 18th February, 2022 due to the fact that she was bereaved and needed to attend the funeral of her sister. [See unreferenced letter dated 16th February, contained in the file). The same was responded to by DLHT (Bigambo Chairman) on 17th of

March 2022, vide DLHT Order of Hon. Bigambo Chairman dated 17th March 2022.

According to the proceedings of DLHT, on 18th February, 2022 the matter was called before Hon. Mwakibuja Chairman, however, it never proceeded due to the jurisdictional issue, hence the same was transferred to Ubungo Municipality, where the disputed land is and there is a Tribunal for that purpose. Therefore, the matter proceeded on the same date before Hon. Bigambo, Chairman, and the notice of absence of the Appellant was recognized and recorded by the Tribunal. The matter was then fixed for hearing on 17th of March, 2023, at 11:00 hrs.

However, according to the proceedings, the Appellant never attended the case. The 1st and 3rd Respondents attended to court and prayed for the dismissal of the matter. The Tribunal agreed with their prayer and dismissed the Application for want of prosecution under Regulation 11(1)(b) of GN No. 174 of 2003. Following the dismissal of the matter, the Appellant, then the Applicant, filed an Application No. 178 of 2022 before the District Land and Housing Tribunal for Kinondoni at Mwananyamala, praying for the Tribunal to set aside its dismissal order dated 18th February, 2022 and restoration of Application No. 276 of 2021, costs of the suit and any other reliefs they Court would deem fit to grant. The Application was filed on 26th of May, 2022.

Thirdly, I have carefully perused the said Application and noted that was attached no copy of a letter requesting for records or ruling of the Tribunal was attached and none of the grounds stated in the Affidavit mentioned about the Appellant pursuing copies of the ruling or records. In these circumstances I also perused Regulation 11(1)(b) of Land Disputes Courts (The District Land Housing Tribunal) Regulations, GN No. 178 of 2003 and noted that it allows for the dismissal of the Application wherever the Applicant is absent without good cause. Similarly, Regulation 11(2) entitles an Applicant who is aggrieved

with the decision of the Tribunal under sub regulation I of Regulation 11 within 30 days, to apply to have the dismissal order set aside and the Tribunal may set aside its orders as it thinks fit so to do or in case of refusal an applicant may appeal to the High Court. The said Regulations read and I quote;

Regulation 11(1)(b)

On the day the application is fixed for hearing the Tribunal shall-

(b) where the applicant is absent without good cause and had received notice of hearing or was present when the hearing date was fixed, dismissed the application for non-appearance of the applicant

Regulation 11(2)

A part to an application may, where he is dissatisfied with the decision of the Tribunal under sub regulation (1) within 30 days apply to have the orders set aside, and the Tribunal may set aside its orders if it thinks fit so to do and incase of refusal appeal to the High Court.

Based on the said provisions, I have noted that, the Application by the Appellant for setting aside the dismissal order by Hon. Bigambo was filed on 26th of May, 2022 which was beyond 30 days stipulated under Regulation 11(2) of the GN No. 174 of 2003. In this regard I agree with the Counsel for the 3rd Respondent that, as a matter of procedure the Appellant ought to have first filed an application for extension of time to file an application to set aside the dismissal order. Further I agree with the decision of Hon. Bigambo, Chairman, that, the said Application was filed out of time without leave of the

Tribunal. Since the proceedings before the Tribunal are governed by the Law of Limitation Act, the Tribunal was correct to dismiss it in line with section 3(1) of the Law of Limitation Act, Cap 89 RE 2019. The said section reads and I quote;

“Subject to the provisions of this Act every proceeding described in the first column of the schedule to this Act and which is instituted after the period of limitation prescribed thereof or opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence.”

This position was affirmed in the cases of **Kijakazi Ame haji (supra)** cited in the decision of Tribunal and the **shipping Agencies** case (supra) cited by the counsel for the 3rd Respondent. In addition, in the case of **Festo Gabriel Dindili vs Regency Medical Centre Revision App. No. 398/2022, HCT DSM**, Maganga J held that:

“Under section 3(1) of the Law of Limitation Act, the consequences for any proceedings instituted out of time without leave of the court is dismissal whether or not limitation has been set up as a defence. The effect of an order of dismissal is that it connotes that the matter has been concluded.”

In another case of **Tanzania Breweries Ltd vs. Edson Muganyizi Barongo and 7 others Misc. Labour Application No. 79/2014 HCT Dar es salaam**, the High Court went on to State that;

"The remedy for a time barred application filed without leave is dismissal. However, unfortunate it may be for the Plaintiff, the Law of Limitation Act on actions knows no sympathy or equity, it is a merciless sword that cuts across and deep into all those who get caught in the web."

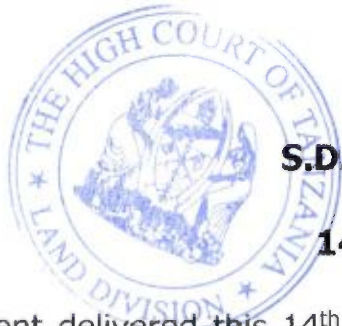
Based on the above quoted cases, the case of Valerie **Mcgiven (supra)** cited by the Appellant is hereby distinguished in this regard.

Moving to the second ground of Appeal, the Appellant has contended that; the learned Chairman erred in law and fact for entertaining Kinondoni DLHT Land Application No. 276 of 2021 without having a proper instrument of transfer in the Tribunal's record.

With regard to this ground of appeal, I agree with the submissions by the Counsel for the 3rd Respondent that, the decision of Hon. Bigambo, Chairman was proper/correct. The Tribunal could not proceed to consider the Appellants reasons for the transfer of the case from Mwananyamala to Ubungu, in a wrong Application, which was before it, and which was also time barred and had been filed without leave of the court. The said reasons ought to have been set out by the appellant and considered in an application for extension of time to set aside the dismissal order.

Based on those reasons I proceed to dismiss the Appeal with costs.

DATED at DAR ES SALAAM this 14th day of December, 2023.



S.D. Mwaipopo
S.D. MWAIPOPO
JUDGE
14/12/2023

The Judgment delivered this 14th day of December, 2023 in the presence of Appellant, Maimuna Abdalla Mpanda and Learned Advocate Consetta Boniface for the 3rd respondent, is hereby certified as a true copy of the original.



S.D. Mwaipopo
S.D. MWAIPOPO
JUDGE
14/12/2023