

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

LAND APPEAL NO. 25436 OF 2023

(Originating from Misc. Application No. 157 of 2023, Temeke District Land and Housing
Tribunal)

MGAZA MAKUNGA.....APPELLANT

VERSUS

MAULID MAPANDE.....RESPONDENT

JUDGMENT

14/05/2024 to 26/06/2024

E.B. LUVANDA, J

The genesis of this matter is rooted back on 24/02/2012 where the Appellant herein sued the Respondent herein at the Tribunal for a claim of somehow encroachment by way of expansion of his house towards a certain portion of land alleged forming part of the Appellant's land hold under residence licence Land No. TMK/AZM/MTN32/73 at Azimio Mtongani, measuring 86 square meters as depicted in the said residential licence exhibit P1 in the proceedings of Application No. 45 of 2012. The Appellant's title was said to have been by way of purchase from Mr. Rashid Shomvi in the year 1975 where the land was said to be approximately three-quarters acre. On the other hand, the Respondent

title is derived by way of inheritance from his father who passed away in 1997. According to the Respondent after demolition of his father mud houses, they embarked into construction of new house by aligning within the same perimeters and borders as it was built by their late father.

After hearing both parties the Tribunal delivered its judgment on 23/04/2013, decreeing the Appellants the rightful owner of a piece of land comprised 86 square meters but went on subjecting its final verdict to some future measurements to be done by the Tribunal broker and ordering any structure of the Respondent erected within the perimeters of those 86 square meters decreed to the Appellant to be subject to demolition. The reasons for making this half way and incomplete verdict was stated within the same impugned judgment being attributed to the fact that on the date the Tribunal visited at the *locus in quo*, had no facilities and equipment for measurements to measure the Appellant's land to establish if 86 square meters are intact or not.

It appears thereafter on 27/06/2013 the Appellant preferred an application for execution vide Misc. Application No. 85 of 2013. On 19/02/2014 the Tribunal made an order marking the execution closed for reason that a report done by the Surveyor from Temeke Municipal Council depict there is no Respondent's structure within the Appellant's square meters. Above all, the Tribunal ruled that

the said report depict the size of the Appellant's land is 186.3 square meters and the Respondents land 300.893 square meters.

Unfortunate this verdict which the Tribunal seemed to had conclusively ruled on the issue of controversy, was blocked and nullified by this Court vide Land Appeal No. 10 of 2014 for reason that the Tribunal was *functus officio* to re-open up its final verdict at its own accord *proprio motu*. This Court suggested that may be that could have been done upon review made by either parties.

On 4/07/2023 the Appellant filed Misc. Application No. 157 of 2023 before the Tribunal asking the Tribunal to extend time to enable him file review against the judgment dated 23/04/2013, on the ground that it was marred with serious illegalities.

The Tribunal refused to extend time for want of sufficient cause, for an argument that the alleged illegality was cured by this Court vide Land Appeal No. 10 of 2014 which abrogated ruling in Misc. Application No. 85 of 2013.

In the memorandum of appeal, the Appellant raised five grounds of appeal.

However during argument in writing seemingly Mr. A. J. Kanonyele learned Counsel for the Appellant abandoned altogether and come up with a single ground faulting the Honorable Chairman for failure to consider the illegality which prevailed from the clerical errors which arose in the judgment of Application No. 45 of 2012, arguing it was entered erroneously regarding the

size of the land in dispute typed to be 86 square meters. He submitted that such an error was subject to be corrected by review on application of either parties and not by the lower tribunal *suo motto* in Misc. Land Application No. 85 of 2013, as observed by this Court in Land Appeal No. 10 of 2014. He cited **VIP Engineering Marketing Limited and Two Others vs Citibank Tanzania Limited**, Consolidated Reference No. 6, 7 and 8 of 2006, CAT.

In reply, the Respondent submitted that there is no mis-apprehension of apparent error on the face of the records regarding measurements of the disputed premises, citing residential licence which depict the Appellant's land to be 86 square meters. He cited the case of **Dickson Elia Nsamba Shapwata and Another vs R**, Criminal Appeal No. 92 of 2007 CAT, for a proposition that not all discrepancies go to the root of the case. He submitted that the alleged failure of the Chairman to apprehend an apparent error on the face of the record, argued is not supported by any evidential documents for reason that the judgment in Application No. 45 of 2012 declared the Appellant to be the legal owner of the piece of land measured 86 square meters and there is no judgment which overruled the said decision.

On rejoinder, the learned Counsel for the Appellant submitted that there is a clear illegality proved in the judgment of Application No. 45 of 2012 which has not been dealt with, arguing it constitutes good cause and sufficient ground to

grant extension of time whether or not a reasonable explanation has been given for the delay, citing **VIP Engineering** (supra).

This ruling will not detain me much, because a substantial part was deliberated by the learned Chairperson. For that matter I will pick from page four, second paragraph from the bottom of the impugned ruling, I quote in verbatim,

'Awali ya yote nakubali kwamba ukiukwaji wa sheria (illegality) kama upo, ni moja ya sababu za maana au toshelezi kwa Mahakama kuongeza muda bila hata kujali kama Mleta maombi ameweza kueleza alichelewa wapi kwa kila siku.

*Katika shauri la **Hassan Abdullahamad vs Erasto Eliphase** [2020] TZCA 49 www.tanzlii.org.tz uk. 5 Mahakama ilisema;*

"It is settled law that a claim of illegality of the challenged decision constitutes sufficient cause for the extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for delay"

Herein, the main complain for the illegality are two fold: One, Tribunal's verdict scaling down the size of the Appellant's parcel of land adjudged to be 86 square meters, while there is an evidence (invariable was referring to a report by the Surveyor from Temeke Municipal Council) showing a vast land of 186.3. The learned Counsel for the Appellant suggest possibility of being clerical error or typographical mistake. But to my view this will be subject to scrutiny by way for

comparison with oral testimony of the Appellant asserting that in 1975 the suit land was approximately three quarters acre vis-à-vis a residential licence exhibit P1 depicting 86 square meters, as per the argument of the Respondent.

The second scenario on illegality is regarding the style of the learned Chairperson in half judging, subjecting the Tribunal judgment and its final verdict to scrutiny by the so called Tribunal broker, with eventuality of varying, altering, overruling, overhauling the Tribunal final judgment. This to my view, suggest possible error apparent on the face of records.

As per the passage of the ruling of the Tribunal quoted above, which is approved herein for purpose of assisting me in this ruling, I hold a view that it constitutes good cause and sufficient ground for extension of time.

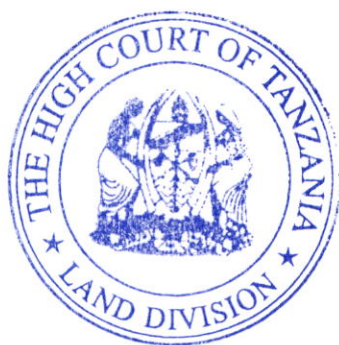
In that regard, I overturn the decision of the Tribunal. The Appellant is given an extension of fourteen days to present the intended review against the judgment dated 23/4/2013 and decree dated 23/04/2012 (sic).

The appeal is allowed. No order for costs.



E.B. LUVANDA
JUDGE
26/06/2024

Judgment delivered in the presence of the Appellant and the Respondent.



E.B. LUVANDA
JUDGE
26/06/2024