

TANZANIA / JUDGMENT

ally abdallah mbili vs sultan mohamed mwilola 2023 tzhclandd 16979 5 october 2023

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5 October 2023

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND APPEAL NO. 285 OF 2023 (Originating from Misc. Land Application No. 61/2022, Mkuranga District Land and Housing Tribunal) ALLYABDALAH MBILI APPELLANT VERSUS SULTAN MOHAMED MWILOLA RESPONDENT

JUDGMENT

28/09/2023 to 05/10/2023 The Appellant named above Is appealing against the decision of the first appellate Tribunal refusing to extend time for the Appellant to lodge an appeal against the decision of Mgomba Ward Tribunal in Land Dispute No. 13/2021. In the petition of appeal, the Appellant grounded that; One, the District Tribunal erred in law and facts to entertain and decide the matter without receiving opinion of assessors; Two, the District Tribunal erred in law and facts for failure to appreciate that the Appellant was not availed with copy of judgment from the Ward Tribunal; Three, the learned Chairperson erred in law and facts for failure to appreciate a fact that the Appellant was denied the right to be heard at the Ward Tribunal; Four, the learned Chairperson erred In law and facts for failure to appreciate a fact that Mgomba Ward Tribunal had no jurisdiction. Arguing ground number three, the Appellant submitted that the Ward Tribunal did not dispense justice to him for reason that he was denied the right to be heard. He submitted that after having entered appearance before the Ward Tribunal to heed to a summons to appear, he was arraigned the claim against him and after explaining to them a fact that he purchased from someone, he was directed to bring the vendor and thereafter he was discharged and exonerated. He submitted that he was not given any update on the matter until when he saw the Respondent taking possession of the farm claiming that It was decreed In his favour by Mgomba Ward Tribunal. He submitted that by that time already he was denied the right to be heard, argued that had the District Tribunal considered this ground could had granted him extension of time to lodge appeal out of time. In reply, the Respondent submitted that the reasons of the trial court (sic. District Tribunal) was clear that the Appellant was summoned before the Tribunal (sic. Ward Tribunal) and therefore he was given a chance to establish his case, but the Appellant failed, argued at the District Tribunal the Appellant failed to account for reasons of

delay so as the appellate Tribunal to extend time so as to file an appeal out of time. It is true that rules require the one who seek extension of time to account reasons for delay. Herein, at paragraphs five, six, and seven of the affidavit in support of his application, the Appellant deponed that he was released by the Ward Tribunal after having procured the vendor as directed, asserted that he was surprised in March, 2022 when he got information that the Mgomba Ward Tribunal determined the case in favour of the Respondent over his six acres farm, the Appellant pleaded to have been condemned unheard for the reasons that the Ward Tribunal did not receive his evidence, instead directed him to procure the vendor which he complied with. In the counter affidavit, the Respondent made an evasive denial in all facts in the entire affidavits of the Appellant, including paragraphs five, six and seven mentioned above. I understand that facts in paragraph five of the affidavit, portray that the Appellant appeared alone at the Ward Tribunal. However, a fact that only the vendor was appearing and the Appellant appearance dispensed by the Ward Tribunal or that the Appellant was condemned unheard, are facts which transpired at a trial, for which it was expected the Respondents to counter those facts vide his counter affidavit. To my view responding factual issue through submission is legally untenable. Now, in absence of a counter arguments or facts from the Respondent In his counter affidavit, and in view of a undeniable fact that the Mgomba Ward Tribunal withheld to share the impugned judgment to the Appellant, (as pleaded at paragraph six of affidavit) of which of course could had assisted the District Tribunal or this Court to ascertain the truth. In the premises, the Appellant is given a benefit of doubt. I therefore reverse the decision of the District Tribunal and proceed to grant the Appellant an extension of time to present his appeal within thirty days counting from the date hereof. The appeal is allowed. No order for costs. E.Bf LLJ3/ANDA IDGE i/10/2023 01 vi' Judgment delivered in the presence of the Appellant, Respondent in person and Mr. Godfrey Kizito Advocate for Respondent. /n E.K LUVAND k/ /JUDGE ^4- QB/10/2023

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