

TANZANIA / JUDGMENT

MISC LAND APPEAL NO 16 OF 2023 BERNARD NESTORY VS EMMANUEL BHAHEBHURA

COURT
TANZLIIDECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (KIGOMA SUB-REGISTRY) AT KIGOMA MISCELLANEOUS LAND APPEAL NO. 16 OF 2023 BERNARD NESTORY APPELLANT VERSUS EMMANUEL BHAHEBHURA RESPONDENT (Appeal from the ruling and drawn of the District Land and Housing Tribunal for Kasulu at Bomani) (M. E. Sekabila, Chairman) ! I Dated 20th day of October 2022 In (Miscellaneous Land Application No. 68 of 2022)

JUDGMENT

Date: 02/05 & 14/06/2024 NKWABI, J.: The appellant lodged an application for extension of time to appeal against the decree of the Ward tribunal for Murusi ward in Land Case No. 6 of 2019 that was delivered ex-parte in his absence. His application was rejected by the District Land and Housing Tribunal for Kasulu at Bomani. The district land and housing tribunal heard the application and dismissed the application for want of merit on the ground that the appellant had not accounted for each day of the delay, he was duty bound to make follow-up and the delay is inordinate. I am troubled by the decision of the district land and housing tribunal, the appellant lodged this appeal which contains five grounds of appeal. In the hearing of the appeal, the counsel for the appellant argued only one ground of appeal, that is, the first one. During the hearing of the appeal, the appellant was represented by Mr. Ignatus Kagashe, learned counsel while the respondent too had the representation of Mr. Michael Mwangati, also learned counsel. I am grateful for their eloquent submissions. In submission in chief, Mr. Kagashe maintained that the appellant sued the respondent in the ward tribunal for Kigondo in Land Case No. 80 of 2019 in respect of plot No. 1546 block U Murusi, in Kasulu. The judgment of the ward tribunal, the appellant won the case as it was heard ex-parte. The judgment had not been reversed, the respondent filed a land matter in Murusi ward tribunal and filed Land Case No. 6 of 2016 against the appellant. The appellant appeared in Murusi ward where he preferred an objection on the jurisdiction of the ward since the land in dispute was situated in Kigondo ward. Mr. Kagashe further asserted that in the district land and housing tribunal, the appellant attached a letter to the affidavit thereto which stated that the land in dispute is in Kigondo ward and not Murusi ward. He added that the ward tribunal assumed jurisdiction and the District Land and

Housing Tribunal confirmed the decision of the ward tribunal. It is a further contention of Mr. Kagashe that the District Land and Housing tribunal ought to have considered the presence of two judgments over the same land and the same parties. Extension of time ought to have been granted and the judgments being considered, he stressed. Mr. Kagashe beefed up that the chairman stated that the appellant did not account for each day of the delay. In the affidavit, explained Mr. Kagashe, the appellant explained in the 6th paragraph on getting information about the judgment after a court broker issued him with notice of 14 days to give vacant possession over the piece of land. The application was filed on 23/03/2022. Mr. Kagashe asked me to see the 5th paragraph of the affidavit. The appellant accounted for each day of the delay. So, the chairperson did not consider the 5th paragraph of the affidavit, Mr. Kagashe contended. Mr. Kagashe did not end there, it was his further submission that the chairman too did not consider the illegality in the decision and proceedings. The matter proceeded ex-parte. There ought to have been issued summons to the appellant about the date of the delivery of the ex- 3 I I parte judgment. He referred me to the case of Cosmas Construction Co. Ltd V. Arrow Garment Ltd [1992] T.L.R. 127. Based on above submissions, Mr. Kagashe prayed the appeal be allowed. Decision of the District Land and Housing tribunal be set aside and extension of time to file appeal be granted. He also prayed for costs. I Mr. Mwangati strongly resisted the submission in chief that was advanced by his learned friend. He quickly prayed for the dismissal of the appeal with costs because the grounds narrated by the counsel for the appellant for the delay for more than three years, are unmerited. Mr. Mwangati contended that the counsel for the appellant has not explained the delay of the three years. He also disputed the claim that there are two judgments and insisted that there is only one judgment issued on the land in dispute in Murusi ward. The ward tribunal did give judgment on the I i land which is in Murusi ward, stressed Mr. Mwangati. Mr. Mwangati further stated that it is not true that the appellant sent an objection to Murusi ward tribunal, but he merely wrote a letter to the ward tribunal saying he could not be ready to be heard at Murusi ward tribunal. After refusing, explained Mr. Mwangati, he did not appear before the ward tribunal. He also contended that It was after three years when the appellant sent an application for extension of time. The alleged KIgondo 4 c judgment of the ward tribunal has not been tendered anywhere even in the case file that is here before this Court, pointed out Mr. Mwangati. He then referred me to the decision in Lyamuya Construction Co. Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 at page 6 on the prerequisites of granting an application for extension of time. He stressed that the delay is inordinate. Mr. Mwangati also asserted that the appellant ought not to have been negligent. Mr. Mwangati went on to submit that after the decision, there was execution proceedings and that the appellant was served with summons but the appellant was refusing to receive summons served on him by the process server. But when he was issued with eviction order by the court broker It Is when he ran for extension of time. Mr. Mwangati explained that in the case of Cosmas Construction's case, the Court of Appeal used the word "/77a/"which connotes discretion. He prayed that the appeal be dismissed with costs. The alleged Illegality ought to be apparent on the face of the record, Mr. Mwangati stressed. In a short rejoinder submission, Mr. Kagashe stated that in the case of Cosmas Construction, the word is used is mandatory, but the option is on the one who is given judgment against. He further stated that, the 5 appellant

attached the letter objecting the hearing In Murusi ward tribunal and that he also attached a letter from the Ward executive officer saying Murusi ward tribunal had no jurisdiction to entertain the matter. Further, the counsel for the respondent has not stated when the three years started to run, Mr. Kagashe pointed out. Concerning the summons of the ward tribunal, Mr. Kagashe submitted that there is no any ruling of the ward tribunal. About the case of Lyamuya Construction cited by his learned brother, he said that the principles enunciated therein are not comprehensive and each case must be decided according to its facts. He finally prayed his submission in chief be accepted and the appeal be allowed. I have closely examined the rival submissions of the counsel of both parties. I am of the considered opinion that this appeal has to succeed. The appellant alleged Illegality on the ground of want of jurisdiction. There Is also an alleged illegality of failure to notify the appellant on the date which the ex-parte judgment would be delivered. That is the requirement of the law stated in various decisions of the Court of Appeal. The illegalities such stated, appears to be apparent on the face of the record thus the District Land and Housing Tribunal ought to have extended time within which the appellant would have lodged the appeal before the district land and housing tribunal so that the district land and housing 6 tribunal would entertain the appeal on merit and decide whether to allow it for having merit or dismiss it for want of merit. On account of the alleged illegalities, the appellant had accounted for each day of the delay as opposed to the argument maintained by Mr. Mwangati. In other words, he had provided the district land and housing tribunal with a sufficient cause for extension of time within which to lodge an appeal. The learned Chairman of the District Land and Housing Tribunal was of the view that the appellant had the duty to make follow-up of his objection. That may be true, but the law imposes the duty of notifying the appellant when the ex-parte judgment would be delivered. Apart from the authority of Lyamuya's case (supra), another case that supports the appeal of the appellant is the case of Stanzia Stanley Kessy v. The Registered Trustees of Agricultural Inputs Trust Fund & 3 others. Civil Application No. 46 of 2005 where it was underscored that: "For my part, I would think that the circumstances yvere suc/7 that sufficient cause had been shown. Having, regard to the peculiar circumstances of the case namely that the date when the judgment was to be delivered was uncertain and that the judgment was delivered on 29.3.2003 without formal notification to the parties, it is 1 inconceivable that lack of diligence can be attributed to the applicant or her counsel for the delay in filing notice of appeal." In a nutshell, I allow the appeal and proceed to quash the ruling of the district land and housing tribunal for Kasulu. Further, I proceed to set aside its orders. Extension of time within which to file the intended appeal in the District Land and Housing Tribunal is granted. The appellant has 30 days from today within which to lodge the indented appeal in the District Land and Housing Tribunal. The appeal should be heard by another chairman with competent jurisdiction. In the circumstances of this appeal. I order that each party to bear their own costs. It is so ordered. DATED at 14th day of June, 2024. ■J. F. NKWABI JUDGE I 8

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