

TANZANIA / JUDGMENT

HAMISI SIMANGO MKOI VRS ELIKA MHUMA MTEMI

COURT
TANZLIIDECIDED
25 April 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA DODOMA SUB REGISTRY AT DODOMA PC CIVIL APPEAL
NO 16303 OF 2024 (Arising from Kongwa District Court in Civil Appeal No. 1389 of 2024)
BETWEEN HAMISI SIMANGO MKOIAPPELLANT VERSUS ELIKA MHUMA MTEMI
.....RESPONDENT

JUDGMENT

Date of last order: 02/12/ 2024 Date of the Judgment: 13/12/2024 LONGOPA, J.: The appellant and the respondent were parties before the Primary Court of Kongwa Urban where the respondent was applying to be appointed as administrator of the estate of late Mhuma Msele Mtemi and the application that was objected by the appellant herein. In course of determining the objection against being appointed to be administrator, the Primary Court determined about ownership of land between the estate of the later Mhuma Msele Mtemi and Veriani Simango Mkoyi/ Hamisi Simango Mkoyi to be lawfully and rightfully owned by Veriani Simango Mkoyi thus that land shall remain owned by Hamisi Simango Mkoyi. 1|Page It is this part of the decision that aggrieved the respondent who preferred an application for extension of time to file an appeal out of time having been prevented by a good cause namely sickness. Upon hearing of the application, the District Court of Kongwa allowed the application for extension of time and granted the respondent a period of seven days to file an appeal. It is that decision which aggrieved the appellant thus appealed to this Court challenging the decision of the District Court. The Appellant herein above being aggrieved by the ruling of the District Court of Kongwa at Kongwa, Misc. Application No. 1389 of 2024 dated 25th April 2024 before Hon. N.S. Mwakibibi-SRM, appealed against the whole decision on the following grounds:

1. That, the Honourable Magistrate erred in law and in fact for deciding in favour of the respondent and allow the misc. application without considering that the 2|Page respondent has no good or sufficient reasons for extension of time to file an appeal.
2. That, the Honourable Magistrate erred in law and in fact for deciding the case in favour of the respondent and allow the misc. application basing on new issue of illegality as to jurisdiction of primary court while departing from facts stated and argued by respondent through her misc. Application.

3. That, the Honourable Magistrate erred in law and in fact for deciding in favour of the respondent and allow the misc. application basing on ground of jurisdiction which was not narrated, the Petition of appeal was not attached in the respondent's affidavit and also not served to the Appellant.
4. That, the Honourable Magistrate erred in law and in fact for making bias finding in its ruling which lead to irrational and unfair decision. 3|Page On strengths of the grounds of appeal, the appellant prays for this Honourable Court to allow this appeal with costs. The appellant was represented by Mr. Ayub Suday, learned advocate while the respondent appeared in person fending for her herself. The counsel for the appellant stated that the appellant was dissatisfied by decision of the District Court of Kongwa he preferred an appeal on four grounds of appeal but abandoned We shall not argue the 4th grounds of appeal while the 2nd and 3rd grounds shall be argued jointly. On the 1st ground, it was submitted that the application before the District Court the major reason on the affidavit was that the respondent was sick. This ground was not proved either in the affidavit or the oral/ written submission before the District Court. The respondent stated to have been suffering from malaria and was attended at Mkoka Health Centre but the same affidavit there was nothing documentary in nature that would substantiate the attendance at the Health Centre. That being a ground of application, the respondent ought to have included all necessary documents to prove the sickness. It is true that the District Court has 4|Page powers to extend time under Section 20(4) of the Magistrates Courts Act, Cap 11 R.E. 2019. But, such powers must be exercised judiciously where there are good reasons/ good cause for the grant of extension. This was in the case of Godwin Ndewesi and Kalili Ishengoma versus Tanzania Audit Corporation [1995] TLR 295 -The Court stated the need to prove the existence of good cause. It was the appellant's submission that the District Court in the Ruling did not consider absence of the good cause as there were no documentary on sickness thus the Court erred to use a different reason on the jurisdiction of the Primary Court which was not part of the reasons advanced by the respondent. Thus, the appellant prayed that this ground has merits. In respect of the 2nd and 3rd grounds, it was submitted that the District Court raised illegality issue no pleaded by the parties before the Court. The District Court used the grounds of appeal to determine the application while the same were not stated in the affidavit and there was no attachment of the grounds of appeal in the affidavit. It is a settled principle under Rule 3 of the Civil Procedure (Appeals in Proceedings 5|Page Originating in the Primary Courts) Rules, GN No 312 of 1964 - the application must be in writing, state the reasons for delay, the grounds of appeal must be attached or the reasons to be stated in the affidavit. The decision of the District Court stated that jurisdiction of the trial primary court was questionable. There was no issue of jurisdiction in the application and Paragraphs 1-4 of the affidavit nowhere the jurisdiction is raised. The grounds were not stated nor attached to the affidavit. It was further submitted by the appellant that the District Court erred to use the new issue that was not part of the application. On these grounds, it was the appellant's prayer that this appeal be allowed on these submissions and quash and set aside the decision of the District Court to extend time. It was the appellant's prayer that the appeal be

allowed with costs. On the other hand, the respondent stated that she presented her certificate of the hospital / documents indicating the hospital where she went to get treatment. The District Court saw the certificate that indicated that the respondent was sick and got treatment at Mkoka Health Centre. It 6|Page was respondent's submission that she tendered the same before the District Court of Kongwa when the application was made. It was the respondent's prayer that this appeal be dismissed as she was prevented by stated categorically valid ground of sickness that caused the respondent to fail to attend/ file the appeal within time. That is the reason that made the District Court to allowed the appellant by extending time for seven days to file the appeal. I have carefully and dispassionately considered the rival submissions of the parties in light of the available grounds of appeal and the records of both Kongwa Urban Primary Court and District Court of Kongwa. I shall demonstrate the validity or otherwise of these grounds of appeal in the following analysis. To begin the analysis, it is important to reiterate that granting the extension of time is a discretion of the respective trial court. In the case of Attorney General vs Raksha Gadhvi & Others (Civil Application No. 147/01 of 2022) [2024] TZCA 10 (30 January 2024) (TANZLII), at page 6, the Court of Appeal stated that: 7|Page On the strength of rule 10 of the Rules, an extension of time is purely discretionary and judicially exercised by the Court. In Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, (unreported), the Court formulated following benchmarks to be considered in granting extension of time: "(a) The applicant must account for all the period of delay, (b) The delay should not be inordinate, (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, (d) If the court feels that there are other sufficient reasons, such as the existence of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged." The trial court which is considering an application for extension of time is enjoined to consider all the factors for extension of time. Such 8|Page Court can grant or deny to grant extension of time depending on the factors supporting the application to the satisfaction of the Court. In the instant appeal, the respondent stated categorically in Paragraph 3 of the affidavit in support of the application that immediately after the delivery of the judgment the respondent fell sick and treated at Mkoka Health Centre where she was diagnosed with malaria and UTI thus prevented by a good cause. The applicant/ respondent herein attached Annexure MM2 that was a medical report to substantiate the ground of failure to prefer an appeal timely. In law, sickness once proved is a good cause for extension of time. This was a principle in the case of Nyanza Roads Works Limited vs Giovanni Guidon (Civil Appeal 75 of 2020) [2021] TZCA 396 (20 August

2021) (TANZLII), at pages 12-14, the Court of Appeal stated that: Firstly, it is long settled that the court's discretion must be exercised judiciously as opposed to capriciousness on the basis of material placed before it for consideration. While 9|Page there is no dispute on the respondent's heart complications which would ordinarily constitute good cause, the respondent did not satisfy the CMA that the delay was solely due to sickness.

Unfortunately, the learned Judge directed his attention to the respondent's illness in the absence of evidence how was it material to not only the delay but also failure to lodge his application for condonation immediately after the lapse of 30 days. Secondly, while we agree with the learned Judge on the expeditious resolution of disputes, we think that expeditiousness must be subject to the dictates of the law and justice. We appreciate that in terms of rule 3(1) of the Labour Court Rules, G.N. No. 106 of 2007, the High Court exercising jurisdiction as a Labour Court is a court of law and equity which ought to have regard to the fact that the duty to act promptly is not a mere technical aspect without any consequences in case of failure by a litigant to exercise 10 | P a g e his remedy as it were. We have no doubt that had the High Court have regard to the above, it should not have exercised its discretion in the respondent's favour and quashed the decision of the CMA as it did. It is lucid from the decision of the superior court of the land that a party who relies on sickness as a good cause for failure to institute a case or challenge a decision timely he should be able to demonstrate with evidence how that sickness prevented him from instituting the dispute/preferring an appeal right time. My careful consideration of the application for extension of time and its supporting affidavit revealed that there existed a good cause for extension of time on basis on the compelling evidence of sickness. Thus, I would have granted extension of time on basis of existence of good cause. However, it is lucid when the application for extension was filed on 25th January 2024 a petition of appeal against the decision of Kongwa Urban Primary Court was filed with three grounds of appeals namely: First, that the honourable trial court erred in law and facts not to consider strong 11 | P a g e evidence adduced by the appellant hence decided on favour of the respondent; that the honourable trial court erred in law and fact to decide who is the owner of the land while knowing that those matters are of the land courts; and that honourable trial court erred in law and fact to decide that the land mentioned as a deceased property to be removed in the list of the deceased properties. Indeed, these grounds of appeal filed simultaneous with the application for extension of time was in line with Rule 3 of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, Government Notice 312 of 1964. As the grounds of appeal that were filed together with the application for extension of time contained a ground touching on the jurisdiction of the trial Kongwa Urban Primary Court to determine a dispute over ownership of land which raised a question of illegality, it was incumbent for the District Court of Kongwa to consider the ground of illegality in determination of the extension of time. 12 | P a g e Indeed, it is the settled law that illegality is one among the major grounds to demonstrate existence of good cause. In the case of Attorney General vs Raksha Gadhvi & Others (supra), at page 7, the Court of Appeal noted that: The position of the law is settled that an issue of illegality of the impugned decision constitutes good cause for extension of time. In Principal Secretary Ministry of Defence and National Service v. Devram P. Valambia [1992] TLR 387 the Court held: "In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right" Given glaring and

conspicuous record of the Kongwa Urban Primary Court decision/judgment revealed that page 3 on the issues for 13 | P a g e determination involved a question of lawful and rightful ownership of land and analysis in pages 4-6 of the Judgment categorically determined the ownership of land matter which is not within the jurisdiction of the Primary Court. Such determination may touch on illegality thus jurisdictional issue may arise. It was pertinent in the circumstances that the District Court should have to avail opportunities to both parties to be heard on that point thus making it essential and crucial to extend time so that both parties might be heard In the case of Mtengeti Mohamed vs Blandina Macha (Civil Application No.344 of 2022) [2023] TZCA 17328 (12 June 2023) (TANZLII), at page 7, the Court of Appeal stated that: In that connection as we held in the case of Tumsifu Kimaro (the Administrator of the Estate of the late Eliamini Kimaro) v. Mohamed Mshindo, Civil Application No. 28/17/2017 (unreported), where the Court is called upon to extend time on the ground of illegality of the decision sought to be appealed against or revised by a 14 | P a g e higher Court, the issues is whether the application for extension of time discloses, at least on a balance of probabilities some illegalities manifest on the record and whether the said illegalities raise any point or some points of law of sufficient importance. Coming to the present case, the crucial question for consideration that arises is whether or not the applicant has demonstrated, on a balance of probabilities the existence of some material illegalities on the record as to raise a point or some important points of law. It is the law that the allegation of illegality on the impugned decision should not only be stated but also demonstrated that such error was manifest on the record. It is not enough to state about existence of the illegality but also the presence of such illegalities manifest on record. It is on record that Kongwa Urban Primary Court's judgment had contained an error evident on face of the record that Kongwa Urban Primary Court acted without jurisdiction to determine who is the rightful owner of the piece of land in question between the estate of the late 15 | P a g e Mhuma Msele Mtemi and Verian Simango Mkoyi cum Hamis Simango Mkoyi. Section 4 of the Land Disputes Courts Act, Cap 216 R.E. 2019 provides for the jurisdiction of the Magistrates Courts in civil matters related to land. It provides that: 4.-(1) Unless otherwise provided by the Land Act, no magistrates' court established by the Magistrates' Courts Act shall have civil jurisdiction in any matter under the Land Act and the Village Land Act. This provision proscribes the Magistrates' Courts from exercising civil jurisdiction over land matters. Indeed, the question of who is the rightful and lawful owner of the land in question as one of the issues drafted and determined by the Kongwa Urban Primary Court while exercising civil jurisdiction was definitely touching on jurisdiction thus illegality if the court exercise such jurisdiction without due regard to limitation stated by the law. 16 | P a g e At page 4 of the Judgment of the District Court, it is evident that Honourable trial Magistrate N. S. Mwakibibi, Senior Resident Magistrate acted properly to consider the illegality as an important ground to allow extension of time so that parties can be heard by way of appeal with regard to competence of Kongwa Urban Primary Court to determine the question of who is lawful and rightful owner of land in question. As the record available to this Court indicate the filing of the application for extension of time and the petition of appeal against the decision of Kongwa Urban Primary

Court on the same day indicates that such grounds of appeal existed in line with clear provision of Rule 3 of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, Government Notice 312 of 1964. In my settled view the trial District Court of Kongwa acted properly and in accordance with the law in exercising its discretionary powers to extend time. There existed some good causes for extension of time both in the affidavit in support of the application and in the grounds of appeal attached in a petition of appeal filed simultaneously with the application for extension of time. 17 | P a g e In effect, the grounds of appeal preferred by the appellant tainted with lack of merits thus they should be dismissed. I proceed to overrule all the three argued grounds of appeal and as such dismiss the appeal in its entirety with costs. It is so ordered. DATED at DODOMA this 13th day of December 2024 E.E. LONGOPA JUDGE 13/12/2024. 18 | P a g e

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/323635/source_file/f6eb4345a2c12689/HAMISI_SIMANGO_MKOI_VRS_ELIKA_MHUMA_MTEMI.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/hamisi-simango-mkoi-v-elika-mhuma-mtemi-Extensionoftime-tanzlii-2024--6a3ea5243b1caa912981a19e

Prepared on 13 October 2026 · Esheria