

TANZANIA / JUDGMENT

ibrahim juma vs debora michael bulemo

2021 tzhclandd 27 19 february 2021

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19 February 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM MISCELLANEOUS LAND APPEAL NO. 68 OF 2020 (Arising from the decision of District
Land and Housing Tribunal for Ilala as per (-ion. Kirumbi (Chairman) in Miscellaneous Land
Application No. 03 of 2020) IBRAHIM JUMA
APPLICANT VERSUS DEBORA MICHAEL BULEMO RESPONDENT

JUDGEMENT

MAIGE. J. At the center of this appeal, is the decision of the District Land and Housing Tribunal for Ilala ("DLHT")¹ refusing to extend time within which to apply for setting aside the dismissal order dated 16th August 2019. The main ground for the application was lateness to procure copies of the judgment and decree of the trial tribunal. The presiding chairperson refused the application on account that, a copy of judgment was not necessary for an application for setting aside a dismissal order. In his memorandum of appeal, the appellant has raised four grounds of appeal which in my careful reading, raise two issues for consideration. First, whether the presiding trial chairperson was right in not considering delay to procure a copy of judgment as sufficient ground for an extension of time. Two, whether the presiding chairperson was right in refusing to consider denial of a right to be heard as an element of illegality which would justify the grant of the application. The disposal of the appeal was by way of written submissions which were timely filed. For the appellant, the written submissions were filed by Adoif Mahay, learned advocate. The respondent filed her written submissions in person. I have duly considered the rival submissions. In address of the first ground, Mr. Mahay did not, as counter submitted by the respondent, say that a copy of judgment is an essential element of an application for setting aside a dismissal order. Instead, it was his submissions that, depending on the facts of the case, the said copies may be necessary in assisting the applicant to prepare his application. He placed reliance on the authority in MARY KIMARO VS. KHALFAN MOHAMED (1995) TLR 202 where it was held that: ... no doubt, copy of proceedings along with a copy of Judgment are necessary for the purpose of framing a sound memorandum of appeal. The argument may appear impressive but not in the circumstance of this case. The reason being that, in the affidavit in support of the application, the appellant did not state the date of the request of copies of judgment and proceedings. He did not attach any letter requesting for copies of judgment and proceedings as

well. In the absence of the evidence that, the appellant timely requested for the said documents, it cannot be said that there is a nexus between the delay to lodge the application and lateness to procure copies of the said documents. It is on that account that, I answer the first issue against the appellant. In relation to the second issue, it is the counsel's submissions that, for the reason of the appeal being dismissed for want of prosecution and without affording the parties opportunity to be heard on the issue, the presiding chairperson ought to have extended time on account of illegality. I cannot agree with him. In accordance with the judgment and proceedings of the trial tribunal, the issue of the submissions being filed out of time was not raised by the Court on its own motion. It was raised by the respondent in her submissions in rebuttal. The appellant would have countered the issue by way of rejoinder submissions. He opted not. In the circumstance, I agree with the respondent, in not doing so, the appellant had waived his right to be heard on the issue. He cannot therefore be heard condemning the trial tribunal for denying him a right to be heard. In any event, the omission to file a written submission being equated with non- appearance, the appellant would, which he did not, justify his failure to file a written submission in an application for setting aside the same. In my opinion therefore, the application is without merit and it is accordingly dismissed with costs. Right to appeal is explained. ! t ----- 1 4 Date 19/ 2/2021 Coram: Hon. a. Chugulu - DR. Appellant: Present in person Respondent: Present in person RMA: Bukuku COURT: Judgment delivered this 19th day of February, Court in the presence of applicant and respondent, Right of Appeal fully explained to the parties. UOI! uqjji A. Chugtilu, DR 19/2/2021

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