

TANZANIA / JUDGMENT

20120711 TZHC Dar es Salaam

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE APPEAL NO. 99 OF 2011 (From the Decision of the District Land and Housing Tribunal of Kinondoni District at Magomeni in Land Case No. 390 of 2005) MWANAISHA MOHAMED NGOICHELE APPELANT VERSUS st MOHAMED SALUM. 1 RESPONDENT nd LUTUFI MWAKAJUKA..... 2 RESPONDENT rd HADIJA OMARY 3 RESPONDENT

RULING

J. C. M. MWAMBEGELE, J.: This is a ruling in respect of Land Appeal No. 99 of 2011; an appeal from the decision of the District Land ,. and Housing Tribunal of Kinbndoni District at Magomeni (J. T. Kaare, Chairperson) on a judgment delivered on 28 th July, 2011 in Land Case Appeal No. 390 of 2005. This matter commenced in the District Land and Housing Tribunal of Kinondoni District where Mwanaisha Mohamed Ngochele (hereinafter referred to as "the Appellant") unsuccessfully sued Mohamed Salum, Lutufi Mwakajuka and Hadija Omary (hereinafter referred to as "the Respondent", "the 2nd Respondent" and "the Respondent" respectively or simply "the Respondents" when referring to the trio) for trespass into the disputed parcel of land located at Goba Kizudi in Kindondoni District, Dar es Salaam. The Appellant was aggrieved by the decision of the District Land and Housing Tribunal hence this appeal before me. 2 The court record has it that on 19 th day of March, 2012, the District Registrar ordered that the appeal would be argued on 10 th July, 2012. The record shows that the appellant was represented by Kaijage, Learned Advocate and the Respondents were present in person. When this matter came up for hearing on 10 th July, 2012 as scheduled, neither the Appellant nor her advocate. Mr. Onesmo, Learned Advocate appeared for the Respondents who were also present. Mr. Onesmo, Learned Advocate, submitted that when this hearing date was fixed by the court, the appellant and her advocate were present. They are aware of the hearing date. What has changed is the venue and the presiding Judge. In view of the fact that the Appellant and her Advocate were aware that this matter is coming up for hearing on 10 th July, 2012 and have not appeared, Mr. Onsesmo, Learned Advocate submitted, they must have lost interest in pursuing the appeal. Mr. Onesmo, Learned Advocate thus prayed that the appeal be dismissed with costs. 3 The court record shows clearly that on 19 th March, 2012 when the hearing date was fixed by this court, the Appellant's advocate was present. Neither the Appellant nor her advocate has shown appearance on the fixed hearing

date; that is to say, 10 th July, 2012. Mr. Mr. Onesmo, Learned Advocate, did not cite any provision of the law on which he pegged his prayer to have this appeal dismissed. But I think the Learned Advocate had in mind the provisions of Order XXXIX Rule 17 (1) of the Civil Procedure Code, Cap 33 of the Laws of Tanzania. This provision reads: Where on the day fixed or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed. I join hands with Mr. Onesmo, Learned Advocate that the Appellant might have lost interest in prosecuting this 4 . appeal. In the circumstances, the provisions of Order XXXIX Rule 1 7 (1) of the Civil Procedure Code, Cap 3 3 of the Laws of Tanzania comes into play. This appeal, for non appearance of the Appellant, is dismissed with costs. I should mention here, in passing though, that even if this appeal were to proceed, it is amply clear that it would be time barred. Mr. Onesmo, Learned Advocate, has not suggested anything to this effect. The judgment of the District Land and Housing Tribunal is dated 28 th July, 2011. The same was read to the parties on the same date. The Petition of Appeal does not show the date on which the Petition of Appeal was filed; but it shows that the Appellant signed the same on 4 th October, 2011. Logic would have it that the same might have been filed on or after the date of signing. This (the filing date) was well after the expiry of the time limit provided by the law. 5 . For the avoidance of doubt, I must be open that, I am aware that the provisions of the Land Disputes Courts Act, as amended by the Written Laws (Miscellaneous Amendments) Act, No 2 of 2010 does not specify the time limit for appeals to the High Court on matters originating from the District Land and Housing Tribunal. Section 38 (1) of the Act reads: "Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court: Provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired/√ • 6 As evident in the above cited provision of the law, the reference is respect of appeals to the High Court on matters dealt with the District Land and Housing Tribunal in its appellate or revisional jurisdiction. I am not aware of any provision of this Act dealing with time limit to appeal to this court when a party is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its original jurisdiction. In my view, this is a lacuna in the law. But reading in context and armed with the mischief rule of statutory interpretation, it seems to me that the legislators intended to include in this provision the time limit for appeals on matters dealt with the District Land and Housing Tribunal in its original jurisdiction as well. I would therefore think the time limit to appeal to this court when a party is aggrieved by a decision or order of the District Land and Housing Tribunal in its original jurisdiction is sixty days. In the premises, even if the Appellant appeared on the date fixed for hearing; that is 10 th July, 2012 to be 7 . ' particular, I would have struck out this appeal suo motto. It seems to me that it is high time . the legislators amended this provision to read: "Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction ll In the upshot, as stated hereinabove, this appeal is dismissed with costs. DATED at DAR ES SALAAM this 11 th day of July, 2012. J.C. M. MWAMBEGELE JUDGE 8

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