

TANZANIA / JUDGMENT

NTUTA WAILES RULING Final

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA MISC. LAND APPLICATION NO. 20745 OF 2024 (From District Land
and Housing Tribunal of Mbeya at Mbeya, Land Application No. 45 of 2023) NTUTA
WAILES.....APPLICANT VERSUS PAULO
MPOYO.....RESPONDENT

JUDGMENT

Date: 15 January 2025 & 20 February 2025 SINDA, J.: The applicant brought this application under Section 47 (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019 (the LDCA). He is praying before this court, inter alia, to grant his application for extension of time to appeal against the Judgment of Hon. A. Mapunda, Chairman of the District Land and Housing Tribunal for Mbeya at Mbeya (the DLHT) dated 13 May 2024. 1 The brief particulars of the matter are that the applicant and respondent were involved in a land dispute, that was decided in favor of the respondent at the DLHT. The applicant wishes to challenge the said decision, but unfortunately the time to lodge the appeal had already expired. Hence this application. Hearing of the application was by way of written submissions. Both the applicant and respondent appeared in person, unrepresented. In his submission in chief, the applicant argued that in an application for extension of time, the delay must be explained and each day of delay must be accounted for. But, he added, the points alleging illegalities are also sufficient reasons for extension of time, as the case is in this matter. He cited the case of Selina Chibago vs. Finihas Chibago, Civil Application No. 182 “A” of 2007 that referred to the case of Principle Secretary, Ministry of Defence and National Service vs. Devman Valambhia

[1992] TLR. The applicant argued that he was dissatisfied with the decision before the DLHT dated 13 May 2024, but it was not until 13 June 2024 that he was furnished with the certified copies of judgment and decree. That upon 2 reading the DLHT judgment (the Judgment), the applicant noted some illegalities. First, the Honourable Chairman did not record and include the opinion of Musa Mwasapili assessor in his judgment. Second, an illegal order of issue of ownership to the respondent. On the first illegality, the applicant submitted that one assessor was not present at the conclusion of the hearing to give his opinion. He referred to Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations,

2003. He stated that the said illegality is obvious at page five of the Judgment. The applicant added that the said illegality goes against the provision of Section 23 (2) of the LDCA. That provides among other things, that the chairman should sit with two assessors who shall give their opinion before the chairman reaches the judgment. The applicant chose to abandon the second illegality, with hopes to address it during appeal, subject to whether this application will be granted. Submitting against the application, the respondent was of the view that the applicant failed to account for reasons of delay since he was furnished with the certified copies of judgment and decree on 13 June 2024. Rather he focused on illegalities that were in the Judgment. The respondent insisted that in the application for extension of time, the applicant is duty bound to account for each day of delay. He cited the case of Ultimate Security (T) Ltd vs. Chande Ally Lubugile and 3 Others, Civil Application No. 428/01 of 2021 which approved the case of Hassan Bushiri vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007. He added that, the discretion to extend time is vested upon the court. It can only do so after considering various criteria as provided in the case of Shah vs. Mbogo and Another [1967] E.A 116. Regarding illegalities as submitted by the applicant, the respondent argued that the chairman of the DLHT at page 5 of the Judgment stated he would continue with only one assessor and cited Section 23 (3) of the LDCA. That the cited provision allows him to proceed with the remaining assessor. In his rejoinder submission, the applicant reiterated most of what he stated during his submissions in chief. He insisted on the issue of illegality being enough to warrant extension of time as he cited the case of Kalunga and Company Advocates vs. Nbc Ltd [2006] T.L.R. 235. He then agreed that the discretion to extend time is vested before the court, and the court can only grant upon there being sufficient reasons. He also added that, each case should be looked at in its own facts, merits and circumstances. That is, before arriving at a conclusion on whether or not sufficient reason has been shown for extension of time. Supporting his argument, he cited the case of Selina Chibago vs. Finihas Chibago (supra). Having gone through submissions by both parties, I agree that the discretion to extend time is vested upon the court. I also understand that when bringing such an application, the applicant must account for each day of delay. In the matter at hand, the applicant delayed for 43 days in filing for his appeal. However, while arguing in support of his application, he did not account for each day of delay. Instead he focused his discussion primarily on illegalities that are allegedly available in the Judgment. The applicant claimed it was wrong for the DLHT chairman to finalize the case, while one of the assessors, namely MUSA MWASAPILI did not give his opinion. Thus it goes contrary to Section 23 (2) of the LDCA, that provides: “The District Land and Housing Tribunal shall be duly constituted when held by a chairman and two assessors who shall be required to give out their opinion before the chairman reaches the judgment.”⁵ From the above, I believe the applicant’s argument is misplaced. He based his argument on a general rule, that has an exception. The exception to Section 23 (2) of the LDCA is Section 23 (3) of the LDCA. That provides: “Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the

remaining member, if any, may continue and conclude the proceedings notwithstanding such absence.” As I revisited the records of the DLHT, particularly at page five (5) of the Judgment, the Honorable Chairman stated and I quote: “Shauri hili nilianza kusikiliza na washauri wawili. Sarah Ntabangale na Musa Mwasapili. Baadae Musa hakuwepo. Hivyo niliendelea na mshauri mmoja chini ya kifungu cha 23 (3) cha Sheria ya Mahakama za Migogoro ya Ardhi Sura ya 216 Marejeo ya 2019.” That being the case, it is my opinion that there is no any illegality on the face of records. The DLHT Chairman clearly followed the procedure and provision of law that allowed him to continue with one assessor in the absence of the other. Thus, the argument concerning illegality as raised by the applicant is rather baseless. As a result, I am of the view that the applicant was not successful in accounting for the delay as required by the law and a number of decided cases. See: Ultimate Security (T) Ltd vs. 6 Chande Ally Lubugile and 3 Others (Supra) which cited the case of Hassan Bushiri vs. Latifa Lukio Mashayo (Supra). From the foregoing, the applicant has failed to advance good cause for extension of time. The application is hereby dismissed. I make no order as to costs. It is so ordered. DATED at MBEYA on this 20 day of February 2025. A. A. SINDA JUDGE 7

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