

TANZANIA / JUDGMENT

polycarp razaro vs rashid kavikuta and another 2021 tzhclandd 501 24 september 2021

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24 September 2021

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND REVISION NO. 09 OF 2020 (Arising from Ruling on Misc. Land Application No. 249 of 2016 delivered on 05/10/2016 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala by Hon. MBILINYI - Chairman) POLYCARP LAZARO APPLICANT VERSUS RASHID KAVIKUTA 1st RESPONDENT RHINO AUCTION MART..... 2nd RESPONDENT

RULING

Date of Last Order: 21/9/2021 Date of Ruling: 24/09/2021 A. MSAFIRI, J In this Application, the applicant is praying for the following orders that, this Hon. Court may be pleased to:-

1. This Honourable Court be pleased to call for, inspect and examine the records and Order in the Misc. Land Application No. 249/2016 delivered on 05/10/2016 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala by Hon. MBILINYI - Chairperson so as to satisfy itself as to the correctness, regularity, legality and propriety thereof.
2. That, in examining the correctness, regularity, legality and propriety in item 1 above this honourable Court be pleased nullify (sic) and quash the order of the District Land and Housing Tribunal for Kinondoni at Mwananyamala by Hon. Mbilinyi- Chairperson.
3. Costs of the application be provided;
4. Any other relief(s) and/or order(s) this court deems fit and just to grant. This Application is brought under Section 43(1) (a) (b) and (2) of the Land Disputes Courts Act, Cap 216 R.E. 2002. The Application is supported by the affidavit deposed by the applicant himself. On the other side the 1st respondent has filed counter affidavit vehemently challenging the applicant's application. The 2nd respondent did not file counter affidavit. On filing his counter affidavit, the 1st respondent filed also a Notice of Preliminary Objection on point that the applicant's Application is time barred for being filed contrary to Misc. Land Application No. 640 of 2018 (sic) before this court. On 31st March, 2021, this Court ordered

that the Preliminary Objection be argued by way of written submissions; hence the parties filed their written submissions. On the part of the 1st respondent, he was getting legal aid assistance from Legal and Human Rights Centre while the applicant was represented by learned advocate Emmanuel Machibya. In his submission on Preliminary Objection, the 1st respondent stated that this Application is incompetent before the court for being time barred as it has been filed after the elapse of twenty-one (21) days which was awarded by this Court by Hon. Maghimbi, J in Misc. Land Application No. 640 of 2018. 2 The 1st respondent observed further that previously, the applicant filed the said Application No. 640 of 2018 before this Court seeking an extension of time to file Revision and the prayer was granted. In the said application, the Court made an order that the applicant should file an Application within 21 days from the date of the Ruling i.e. from 24th February 2020. That this application was filed on 17th March 2020 therefore, it is contrary to the Order of this Court and it is hopelessly out of time. The 1st respondent cited the case of John Cornel vs. A. Grevo (T) Ltd, Civil Case No. 70 of 1998, (unreported). He prayed for this Court to sustain the Preliminary Objection and dismiss the Application. In his reply, the applicant submitted that although he partly admits with concern on the lateness, it was because he submitted his Application on 13/3/2020 which was Friday being only two days before the deadline date on 15/3/2020, which unfortunately, was Sunday. That, after submitting his pleadings for filing at the Court, he was informed to leave the same and return to collect the receipt later in the afternoon or next working day i.e. Monday 16/3/2020. The applicant avers that, when he returned to the court on Monday 16/3/2020 and asked on whereabouts of his documents, he was informed that the documents are still in the Registrar's office. The applicant argued that, indeed the pleadings were submitted on 13/3/2020 and not on 17/3/2020, and that it was endorsement and issuance of the receipt which was done on 17/3/2020, an act which was not occasioned by the applicant as per the contents of his affidavit. He prayed 3 that the submissions and prayers by the respondent should be disregarded and dismissed with costs. In rejoinder, the 1st respondent reiterated his prayers and added that the applicant has conceded that he has delayed in filing the Application but he had failed to compute for delayed days. That the applicant has delayed for two days and not one as he claims. He insisted that the Ruling in Misc. Application 640 of 2018 did not state that the Application has to be filed after the date of ruling, hence the date of delivery is inclusive when computing time of the delay. He conducted that, the delay for one day does not change the fact that the Application was filed out of time without leave of the Court. Having heard the submissions from both parties as well as going through the Court records, the issue here is whether this application is time barred and hence, incompetent before this Court. It is on record that the applicant filed Misc. Land Application No. 640 of 2018 before this Court seeking for extension of time within which to file an Application for revision against the ruling of the District Land and Housing Tribunal at Mwananyamala in the Misc. Land Application No. 249 of 2016. The application was granted by this Court upon which the court ordered that the application for revision should be lodged within twenty-one (21) days from the date of the ruling. As per the chamber summons, this Application was presented for filing on 17th March 2020 which is twenty-three (23) days after the ruling, making the applicant to delay for two days (2). In his

submission, the applicant stated that he submitted the pleadings on 13/3/2020 and not on 17/3/2020, but the filing and issuance of receipt was done on 17/3/2020 an act which was not occasioned by him. He insisted that he submitted the pleadings on Friday, 13/3/2020 however, the deadline for filing was 15/3/2020 which was Sunday. And that he was late for only one day. In my opinion, the applicant's submission cannot be proved by the Court. He stated that on 13/3/2020 when he presented his pleadings for filing, he was told to leave the documents for filing and come back later in the afternoon or on 16/3/2020 which was Monday. When he went back on Monday, he was told to return and come back again on 17/3/2020. The applicant's submissions are not clear on who was telling him to go and come back and cannot be proved therefore, they remains the mere narrations of the applicant. This court having granted him an extension of time within which to file his application, the applicant was expected to act promptly and filed the necessary documents within the prescribed time. There are numerous cases setting principle on accountability of each time of delay. One of them is the case of Yordan Johim Sanga vs. Governing Body of College of Business Education Revision No. 568 of 2019, High Court Labour Division Dar es Salaam (unreported), whereby Aboud, J made a reference to the case of Bushfire Hassan vs. Latina Lucia Masaya, Civil Application No. 3 of 2007 (unreported) where it was held that; " Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken". Hon. Aboud J, then proceeded to hold that," the allegation that the applicant delayed for one day does not change the fact that the application was filed out of time without leave of the Court". Basing on hereinabove principle, I find that the applicant has failed to satisfy this Court on the reasons for his delay to file this Application within time whereas he has filed the same contrary to the order given by this Court on 24th February, 2020 in Misc. Land Application No. 640 of 2018. For this reason, I sustain the preliminary objection raised by the 1st respondent and thereby dismiss this Application with costs. Right of appeal explained to the parties. A. MSAFIRI JUDGE 24/9/2021 6

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