

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLENEOUS LAND APPEAL NO. 12 OF 2018

(Arising from the decision of District Land and Housing Tribunal for Mkuranga in Miscellaneous Land Application No. 79 of 2016)

OMARY MUSSA NKWARULO.....APPELLANT

VERSUS

FAUDHIA HAJI MAZIUNI.....RESPONDENT

JUDGEMENT

I. MAIGE, J.

At the center of this appeal, is the decision of the District Land and Housing Tribunal for Mukuranga (“DLHT”) refusing to extend time within which to appeal against the decision of the ward tribunal for Vikindu. The main ground for the delay, according to the affidavit in support of the application, was sickness. The **DLHT** refused the application on account that there was no proof of sickness of the appellant subsequent to 29th September 2016.

In his memorandum of appeal, the appellant blames the presiding chairperson in not holding that the appellant was prevented from timely filing his appeal by sickness. He is also blaming the chairperson in not taking into account the fact that the intended appeal had chances of success.

The disposal of the appeal was by way of written submissions which were timely filed. For the appellant, the written submissions were filed by Emmanuel William, learned advocate while for the respondent by Frank Chacha, learned advocate. I have duly considered the rival submissions.

In his decision, the honourable chairmans dismissed the application because there was no proof of the appellant sickness subsequent to 29th September, 2016.

In the affidavit, the appellant attached and marked as OMN collectively some medical chits suggesting that he was suffering from diabetic and heart complications. In his counter affidavit, the respondent did not doubt the medical chits. His concern was that the documents established attendance of the appellant at hospital on the date of the pronouncement of the judgment.

In his ruling, the presiding chairperson just made a sweeping statement that the appellant did not establish sickness subsequent to 29th September 2016. He did not make any comment on the factual depositions in paragraphs 4, 5 and 6 of the affidavit. Neither of the uncontested medical chits attached in the affidavit. He did not assign any reason as to why he did not believe the factual deposition in the affidavit. He should have.

The suit property described in the decision of the ward tribunal is unregistered farm. In paragraph 6 of the affidavit the appellant claimed that the suit property was a registered land with certificate of title. He attached as OMN3 a copy of a certificate of title in his name. He invited the Court to consider that as a ground for extension of time. The

chairperson did not make any comment therefor. This is so notwithstanding that the claim, *prima facie* demonstrated elements of illegalities in the intended appeal.

For the foregoing reasons, I do not think that the presiding chairperson was right in refusing to extend time within which to appeal. The affidavit in my reading demonstrated some apparent elements of illegalities in the intended appeal which would justify extension of time to appeal. I therefore allow the appeal and set aside the ruling of the DLHT. It is substituted with an order extending time to appeal against the decision of the ward tribunal. The appeal should be lodged within 45 days from the decision hereof.

Right to appeal is explained.

It is so ordered.



I. Maige

JUDGE

02/10/2020

Date: 02/10/2020

Coram: Hon. C. Tengwa - DR

For the Appellant: Emmanuel Ndaga, Advocate

For the Respondent: Frank Chacha, Advocate

RMA: Bukuku

COURT: Judgment delivered in the presence of both parties.


C. Tengwa

DEPUTY REGISTRAR

02/10/2020

Right to appeal is hereby explain to be available.


C. Tengwa

DEPUTY REGISTRAR

02/10/2020

