

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

LAND APPEAL NO 24 OF 2018

(Arising from the Ruling of the District Land and Housing Tribunal for Shinyanga in Misc. Land Application No. 114 of 2017 dated 25th May 2018)

REVOCATUS KENEDY NTANDUKEAPPLICANT

VERSUS

NATIONAL MICROFINANCE BANK PLC..... 1stRESPONDENT

DOLTHENE GENERAL BUSINESS ENTERPRISES....2nd RESPONDENT

JUDGMENT

Date: -31/3/2020-28/4/2020

MKWIZU, J.

Appellant lodged a land dispute against the two respondents in the District Land and Housing Tribunal. Appellant who was the applicant defaulted appearance; the tribunal dismissed the application. Upon resurfacing, appellant filed an application with the Tribunal in view of setting aside the dismissal order. His application was refused for failure to adduce reasons for his nonappearance on the day the application was set for hearing.

Dissatisfied, the appellant has come to this court with five ground of appeal challenging the DLHT's decision essentially on the ground that the Tribunal failed to consider his reasons for non-appearance.

When the appeal came for hearing, appellant appeared in person while the respondents had the services of Mr. Pastory Biyengo learned counsel. Submitting in support of his appeal, appellant said he did not tender the documents verifying that he was sick because the said documents got lost when he was being evicted from the house by the respondents. He requested the court to grant his appeal.

Mr. Biyengo for the respondents resisted the appeal, he contended that, the application before the Tribunal was dismissed for failure by the appellant to give reasons that prevented him attending the Tribunal on the material date. He said, the appellant's reason that he was sick, was not supported by any documentary evidence

On the appellant's allegation that the documents showing that appellant was sick got lost during the eviction, Mr. Biyengo said, is unfounded because he failed to tender in court loss reports to support his line of

argument .He said, the DLHT's decision was justified and therefore the appeal should be dismissed.

I have duly considered the submission of the appellant as well as the reply submission made by the learned counsel for the respondents. The main issue for determination is centered on whether or not the appellant had adduced reasons for his non-appearance when the matter was dismissed by the Tribunal.

Rule 11 (2) of the Land Disputes courts (The district Land and housing Tribunal) Regulations, GN.No. 174 of 2003 gives power to the DLHT to set aside the dismissal order if it thinks fit. It is a well-established position of the law that for the court or tribunal to set aside a dismissal order there must be adduced sufficient cause prevented a part to appear in court/tribunal when the matter was called on for hearing.

It was the appellant's submission that, he availed the tribunal with sufficient reasons, that he was sick on the material date. I think, the appellant's affidavit in support of his application to set aside the dismissal order at the Tribunal will shed light on this issue. Paragraph 12 gives reason why appellant was not able to attend the tribunal when the matter was set for hearing. In paragraph 15 appellant explains

what would happen if the application is not granted. The remaining parts of the affidavit set a background to the dispute between the parties. I find apposite to reproduce the mentioned paragraphs for easy of reference:

"12. That , the reason for the absence of the applicant on the date the application in question was dismissed the applicant (sic) was sick

15. That, if the dismissal order in application No 39 of 2015 of Shinyanga District Land and housing tribunal dated 2nd March 2017 is not set aside, applicant will suffer loss irreparably."

In its ruling, the tribunal having evaluated the entire application, the learned chairperson concluded that apart from alleging that he was sick, applicant neither mentioned the hospital in which he was admitted nor supported his claim with a document. On the allegation that the medical chit got lost during eviction, the learned Chairperson said, this again is a mere allegation without proof. The application was therefore dismissed on those grounds.

Indeed, as collected from the proceedings of the Tribunal and the above quoted paragraphs of the affidavit, the applicant had nothing in support of his allegation. He just mentioned illness as a reason prevented him from entering appearance before the tribunal when the matter was called on for hearing but nothing was produced to back up his allegation. In the absence of a medical certificate showing that the applicant was sick amounts to no reason at all. See the case of **K.V. Constructions, Limited V. Mwananchi Engineering Limited and Constructions**, Civil application No.50 of 2014, CAT (unreported). This being the position, the appellant failed totally to adduce sufficient reasons as to why he was unable to attend the tribunal when the matter was called on for hearing to warrant the tribunal to set aside its dismissal order.

Based on the above explained reasons, I find nothing to fault the tribunal's decision. The appeal is devoid of merit. It is hereby dismissed on its entirety with costs.

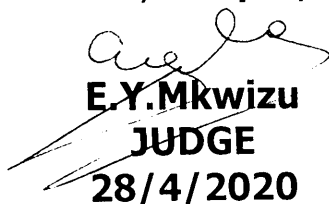
Order accordingly.

Indeed, as collected from the proceedings of the Tribunal and the above quoted paragraphs of the affidavit, the applicant had nothing in support of his allegation. He just mentioned illness as a reason prevented him from entering appearance before the tribunal when the matter was called on for hearing but nothing was produced to back up his allegation. In the absence of a medical certificate showing that the applicant was sick amounts to no reason at all. See the case of **K.V. Constructions, Limited V. Mwananchi Engineering Limited and Constructions**, Civil application No.50 of 2014, CAT (unreported). This being the position, the appellant failed totally to adduce sufficient reasons as to why he was unable to attend the tribunal when the matter was called on for hearing to warrant the tribunal to set aside its dismissal order.

Based on the above explained reasons, I find nothing to fault the tribunal's decision. The appeal is devoid of merit. It is hereby dismissed on its entirety with costs.

Order accordingly.

Dated at Shinyanga this 28th day of April, 2020


E.Y. Mkwizu
JUDGE
28/4/2020

Court: Right of Appeal Explained.

