

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

LAND REVISION NO 13 OF 2020

ABRAHAM MASHAURIAPPLICANT

VERSUS

IBRAHIM MANGALU1ST RESPONDENT

JONAS MAPESI2ND RESPONDENT

*(Arising from Land Application No. 88/2010 District Land and Housing Tribunal for Mara at
Musoma)*

RULING

9 &19/2/2012

Kahyoza, J

This is a *suo mottu* revision. This Court received a complaint that this matter has been adjourned several times and for no good reasons. After perusing the record, I entertained reasonable doubt whether the applicant had still interest in the matter pending before the district land and housing tribunal and whether the law guiding adjournments were complied with. I direct this revision to be opened and call the parties to address me on the following issues-

- a) Whether the applicant has interest with this matter.
- b) Whether the DLHT did comply with the law guiding adjournments.

The parties advocate appeared and addresses the Court as directed. The applicant's advocate Mr. Lauren, submitted that when he received the

Court order, he applied for proceedings before the tribunal. Unfortunately, he did not obtain the proceedings. He requested this Court to review the proceedings. He submitted regarding the first issue that the applicant is still interested in the application. He stated that the applicant acquired the land in dispute and developed the same. In 2010, he applied to the DLHT to protect his interest. The matter went up to the High Court Mwanza. The Judge ordered the matter to be heard a fresh in 2018.

He added that on various dates the applicant and the applicant's advocate attended the court to proceed with this matter, the tribunal adjourned the hearing because that the first Respondent was sick. Several adjournments were grounded in the first respondent's absence.

He added that another ground was the change of advocates. The second respondent has been changing advocates several times. He submitted that applicant's non-appearance happened in 2020, one of the reason being that the applicant's advocate got an accident. In March 2020, he was attending the Court of Appeal sessions or High Court, and that the summons was tendered. He submitted further that only one adjournment was recorded that the matter was adjourned without reasons on his part. On that day, he was unable to appear, sent an advocate to inform the tribunal that he was attending sessions and submit the causelist. Regrettably, that advocate did not attend. On that day, the applicant was absent as he was sick. The matter was adjourned with costs.

The matter was adjourned again as he was bereaved the applicant was present in tribunal. On the following date, he was present and the applicant was absent as he was sick.

The applicant's advocate submitted that the regulations governing adjournment are clear and they provide that when the applicant is absent without good cause the application must be dismissed. He contended that all adjournments were genuine and were for good cause. He concluded that the complaint was not based on reasonable grounds. The applicant has interest.

The respondent's advocate, Mr. Andrew, submitted that the respondent's letter was based on the questionable conduct of the applicant's advocate and the applicant from 6/11/2019 up to 2/11/2020.

He refuted the applicant's advocate contention that he applied for proceedings but he was unable to obtain them. He argued that the applicant's advocate adduced no evidence to prove that contention.

He argued further, that the applicant's and the applicant's advocate conduct shows that the applicant had lost interest. If the applicant did not attend then it was the applicant's advocate who was absent. In that case, the one in attendance gave reasons for absence of the other. He submitted that going through the proceedings one would find that the reason for adjournments was either the applicant or his advocate being sick. Sickness is the ground for adjournment. However, that ground was misapplied.

The respondent's advocate submitted that tribunal adjourned this matter without demanding evidence. On the 6/11/2020 it was reported that the applicant was sick. There was no proof.

The applicant's advocate submitted that he was absent on some dates conducting criminal sessions without submitting a cause list. He doubted if the applicant was attending sessions as claimed or at all.

He concluded that all adjournments on the applicant's part were due to the applicant's sickness or his advocate. All those adjournments show that the applicant had no interest with this matter.

The respondent's advocate submitted in relation to the second issue that it was obvious that the regulations governing adjournments were not complied with. He cited **Shembu Shefaya V. Omary Ally** [1992] 245 to support his contention that a person who alleges that he was sick and for that reason unable to attend the court must provide explanation.

He ended by emphasising that the tribunal did not observe the provisions of regulations 13 and 14 of the **Land District (The Land and Housing Tribunal) Regulations**, G.N. 174/2003 (the **Regulations**). The tribunal adjourned the matter on several occasions without demanding evidence to support the reasons for adjournment.

I examined the record and realised the fact that this matter has suffered from unprecedented adjournments. Following this Court's order on the 11th May, 2018 (High Court Mwanza district registry) directing the tribunal to hear the matter *de novo*, the tribunal adjourned the hearing of the application **25 times**. The tribunal chaired by different chairpersons gave reasons for adjournments and at times it skipped to provide reasons for adjournments. Upon receipt of the record from the High Court, the tribunal set a first date of hearing on the 28/6/2018. It adjourned the hearing to 4/07/2018 without advancing any reason. The record shows that from 28/6/2018 to 2/11/2020 the matter was adjourned **25 times** without conducting any hearing. This is what I named unprecedented adjournments. It is unusual to keep adjourning a matter for more than two

years, without taking any step. It does not matter who was to blame for adjournments but it is unprecedented to adjourn a case for two years without taking any action. The tribunal had a duty to control adjournments. There is no doubt that the regulations governing adjournment were not followed. I will commence with regulation 15 of **the Regulations**, which states;

"15 The tribunal may, where an application is left unattended by an applicant for the period of three months-

a) Dismiss the application the application for want of prosecution;

or

b)....N/A"

This matter was unattended by the applicant for a period of more than two years; entering appearance is not attending an application under regulation 15 of the **Regulations**. A matter is attended by a party when that party conducts or prosecutes it. The tribunal should have used the provisions of regulation 15(a) the **Regulations** to accord the application the respect it deserved.

The above notwithstanding, the tribunal was duty bound to control adjournments by applying regulation 13 of the **Regulations**. Regulation 13 provides that -

"13(1) The parties to the proceedings may during the hearing of proceedings be by an advocate or any other representative

(2) Where a party's advocate is absent for two consecutive dates without good cause and there is no proof that such advocate is in

(the High Court or Court of Appeal, the Tribunal may require the party to proceed himself and if he refuses without good cause to lead the evidence to establish his case, the tribunal may make an order that the application be dismissed or make such other orders as may be appropriate.

(3) Where a party's advocate is absent for the reason of attending the proceedings in the High Court or Court of Appeal, the Tribunal shall not believe any other evidence as a proof for being in the superior courts other than by producing summons to the advocate and cause list from such courts.

(4)N/A

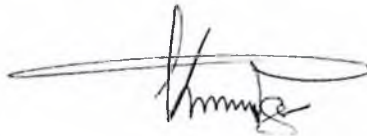
The record speaks louder that both parties prayed a part to the unprecedented adjournments. However, the applicant's or his advocate's absence took the lion's share of the identified adjournments. Several adjournments were granted to the applicant without strictly observing the provisions of regulation 13. This is one of the reasons that pushed me to call for revision of the application to see if the tribunal had observed the law.

After hearing the submission by both sides, I hesitate to invoke my revisionary powers under S.43 of the **Land Disputes Court Act**, Cap 216 to dismiss the application, much as the tribunal did not observe the law governing adjournments as shown above. The reason for my hesitancy is that I have been convinced that parties still have interest in matter. I also formed an opinion that dismissing this application may fuel the dispute,

worsened situation, given the nature of the disputed. I instead of dismissing this application. I order this matter to be heard **continuously from 29 – 31/3/2021, by the tribunal.** The chairman and the parties are ordered to prepare and attend this matter to completion within those days or as may be adjourned by the tribunal for unforeseen reasons. In any case, the tribunal should conclude this matter before the **end of April, 2021.**

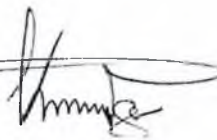
The chairman should make prior arrangements to ensure this case, which has been pending from 2010, is brought to conclusion with dispatch as directed. No order as to costs.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
19/2/2021

Court: Ruling delivered in the presence of the applicant and the second respondent. The first respondent is absent with leave. Ms. Catherine present.



J. R. Kahyoza
JUDGE
19/2/2021