

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

MISCELLANEOUS LAND APPEAL NO 113 OF 2020
RAMADHANI HUSSEINAPPELLANT
VERSUS
WANKYO KIGOCHA..... RESPONDENT
(Arising from Application No. 462/2019 at the District Land and Housing Tribunal for Tarime at Tarime and Originating from Application No. 19/2018 at Nyandoto Ward tribunal)

JUDGMENT

11th May & 11th June, 2021

Kahyoza, J

Wankyo Kigocha sued **Ramadhani Hussein** for trespassing to his land before the ward tribunal (WT). The ward tribunal heard the suit of the application *ex- parte*. The ward tribunal adjudged **Ramadhani Hussein** a trespasser. **Ramadhani Hussein** knew the outcome of the application at the time **Wankyo Kigocha** applied to execute the decree. Aggrieved, **Ramadhani Hussein**, the appellant applied to the district land and housing tribunal (the **DLHT**) for stay of execution and extension of time to file revision on the ground that he was not served with the summons to appear and defend the suit. The **DLHT** granted the prayers. The applicant filed the revision proceedings, which were baptized Misc. Application No. 429/2019. The **DLHT** dismissed the application for revision.

Undaunted, **Ramadhani Hussein** appealed to this Court raising four grounds of appeal, which can be paraphrased as follows-

- 1) Whether the DLHT was justified not to invoke its revisionary powers in the circumstances of this case.
- 2) Whether it was proper for the DLHT not to revise the proceedings of the ward tribunal for the reason that one assessor participated in the decision making without hearing the evidence.
- 3) Whether the DLHT erred to hold that revision was not a proper remedy available for the appellant.
- 4) Whether the case law the DLHT relied upon was irrelevant and distinguishable.

Was the tribunal justified not to invoke its revisionary powers?

I will commence with the issue, which stems from the first ground of appeal, i.e. Whether the DLHT was justified not to invoke its revisionary powers in the circumstances of this case. It is not disputed that the ward tribunal heard the application between **Wankyo Kigocha** and **Ramadhani Hussein** *ex parte*. Upon discovering that the DLHT gave the *ex parte* judgment against him, **Ramadhani Hussein** applied for revision before the DLHT. The DLHT dismissed the application on the ground that the application was incompetent as the appellant was required to go the ward tribunal and apply to set aside the *ex parte* judgement instead of applying for revision. The DLHT held that-

"This was the position of High Court of Tanzania in the case KUYELA CHULUGU & ANOTHER VS MAUA MGAGA, MISC LAND CASE APPEAL NO, 25 OF 2012 H.C.T IRINGA (unreported)

KIHWILO "I am aware that it is trite law that the proper and correct course to whoever is aggrieved by an ex parte decision of the court or tribunal is to apply for setting aside the ex parte decision and not to prefer an appeal."

Above observation been (sic) my position I hereby dismiss this application and the applicant if is still interested to defend his right he have (sic) to apply before the ward tribunal to set aside its ex parte judgment."

There are no express provisions of any law providing the procedures for the person aggrieved by the *ex parte* decision or judgment of the ward tribunal to follow. However, it is established principle of law that if a tribunal or court gives the *ex parte* judgment or decision, the aggrieved person may apply to the same court or tribunal to set aside the *ex parte* judgment or decision. The appellant ought to have followed that established principle of law or though the law does not explicitly provide for that procedure. It is after the ward tribunal had denied the prayer to set aside its *ex parte* judgment when the appellant would have appealed to the district court.

I totally agree with the decision of my brother judge in the above case that the proper course and correct to whoever is aggrieved by an *ex parte* decision of the court or tribunal is to apply for setting aside the *ex parte* decision and not to prefer an appeal or revision. I see no ground to fault the chairman of the district land and housing tribunal.

In the end, I find that the DLHT was justified not to invoke its revisionary jurisdiction, to dismiss the application and direct the appellant

to apply to the ward tribunal to set aside its *ex parte* judgment or otherwise.

Now that I have answered the first issue affirmatively, I find no compelling reasons to determine the remaining issues as they will be affected by the findings regarding the first issue.

In the upshot, I uphold the decision of the district land and housing tribunal that the appellant was required to apply to set aside *ex parte* judgment of the ward tribunal before the ward tribunal, instead of initiating the revision proceedings in the DLHT. Consequently, I dismiss the appeal for want of merit with costs.

It is ordered accordingly



J. R. Kahyoza

JUDGE

11/06/2021

Court: Judgment delivery in the presence of the appellant and the respondent. Mr. Obwana advocate present for the respondent. B/C Catherine present.



J. R. Kahyoza

JUDGE

11/06/2021