

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

AT SHINYANGA

LAND APPEAL NO. 50 OF 2020

*(Arising from the ruling of Maswa District Land and Housing tribunal in Misc. Land
Application No.95 of 2020)*

LUGANDU MAGIDA.....APPELLANT

VERSUS

GWANCHELE GIBAKA.....1ST RESPONDENT

EMMANUEL NKUNU.....2ND RESPONDENT

JUDGMENT

Date: 16th & 20th August, 2021

MKWIZU, J:

At the District Land and housing Tribunal for Maswa, appellant, **Lugandu Magida** filed a land Dispute registered as Land Application No 30 of 2018 According to the records, his land application did not proceed on merit, it was on 11 /6/2020 dismissed for non-appearance. He, to rescue the situation and in view of re enrolling his land dispute, appellant approached the DLHT with an Application No. 95 of 2020, this time for setting aside the dismissal order. Sickness was the sole reason for non-appearance before the tribunal on the date when land application was dismissed. Not convinced with the reason given, the tribunal again, dismissed the application for lacking in merit.

Appellant was not happy, he has come to this court with two grounds of appeal that:

1. *That the trial tribunal misdirected itself in dismissing the application on account of missing supporting evidence "medical proof" (sic) to prove the appellant's absence on the material date that is 11th June, 2020 due to sickness without considering the excuse presented to the Tribunal by one **Kilulu Lugandu** on behalf of the Appellant.*
2. *That the Tribunal erred in law and fact in dismissing MSc. Land application No. 95 of 2020 on the 11th June, 2020 yet scheduling the same for hearing on 24th July, 2020 whereas the clerk of the tribunal received and admitted a reply to the Written Statement of Defence filed by the Appellant herein on 2nd day of July, 2020*

When the matter came for hearing on 16th august, 2021, both parties were in person without legal representation. 1st respondent was not conversant with swahili language, thus, the appeal was heard through an assistance of an interpreter, duly affirmed to assist him on that aspect.

Supporting his appeal, appellant argued that, the tribunal was wrong in dismissing his application without considering that he had sent a person to inform the tribunal of his absence and sickness. He said, on 2/7/2020 the tribunal received his reply to the written statement of defence meaning that the case was still alive just to be informed of the dismissal order dated 11/6/2020 on 24/9/2020.

Both 1st and 2nd respondent opposed the appeal. While 1st respondent said the reasons given by the appellant for his absence were a lie, 2nd respondent admitted that indeed, appellant absence was communicated to the tribunal by a person who informed the tribunal that appellant was sick, but that person did not have any medical document to prove appellant's sickness and did not bring one even when he was so required by the tribunal to do so. It was 2nd respondent's view that, the dismissal of the appellant's application was on that ground justified.

Rejoining, appellant submitted that, the tribunal failed to consider that he was attending at the traditional healers who had no medical chit which could be tendered in court.

I have curiously evaluated the appeal plus the trial court's records. The only issue for this court's consideration is whether the appeal by the appellant is meritorious or not. As earlier on stated, this appeal emanates from the ruling refusing to set aside a dismissal order for on appearance. The law as it stands today, a dismissal order can only be set aside upon good cause shown for non-appearance on the part of the applicant on the date the matter was dismissed. See for instance the decision in **Nasibu Sungura vs Peter Machumu** [1998] T.L.R at page 501 where the court held *inter alia* that;

"an application to set aside the order dismissing the suit for non-appearance, the important question is not

whether the case for the applicant is soundly maintainable and meritorious, but whether the reasons furnished are sufficient to justify the applicant's non-appearance on the date the suit was dismissed."

According to the appellant's averment in paragraph 4 of his affidavit at the trial tribunal, the tribunal was duly informed of the appellant's sickness on 11/6/2020. 2nd respondent's submissions before this court supports this position. The only issue between the two is that, appellant did not support his excuse with a medical document. On this, appellant submitted that, he was being treated at the traditional healer who had no such documents.

The Tribunals chairperson did not go further to look into the nature of the medication center the appellant was attending to. His findings were based on reasoning that sickness as a reason for absence before the court must be proved by medical proof. I don't think if that is the position always. In my view, each case must be treated on its own peculiarity. In this case, appellant had taken a step of informing the tribunal about his sickness on the hearing date. He also deposed in his affidavit that the medical treatment was being received from a traditional healer. It was, in my opinion, for the tribunal chairperson to gauge if such an information was accurate, taking into account the nature of the proceedings, and conduct of the parties in the proceedings, the need to uphold the interest of justice in the community as well as the prejudice if any caused by such an adjournment. The tribunal di not evaluate further the matter. He dismissed the application after he had found that no medical report was brought to him supporting the illness alleged. I don't think if this was a fair treatment of the matter because, the

tribunal as well as the parties were all informed before hand of the appellant's condition and absence and no explanation were availed as to whether respondents would be prejudiced anyhow. In **Jesse Kimani V. McCornell and Another** (1966) EA 547 at page 556 it was decided that the application should be granted if the respondent would neither be prejudiced nor suffer any irreparable injury.

Consequently, I find the appeal meritorious. The appellant had adduced good cause for his absence on the date when the matter was dismissed. The appeal is allowed. The dismissal order by the tribunal is set aside. Misc. Land Application No. 95 of 2020 to proceed on merit from where it ended before dismissal order. Taking into account nature of the appeal and the parties herein, I order each part to bear owns costs.

Order accordingly.

DATED at SHINYANGA this 20th day of August, 2021


E. Y. MKWIZU
JUDGE
20/08/2021

COURT: Right of appeal explained


E. Y. MKWIZU
JUDGE
20/08/2021



