

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT TANGA**

**LAND APPEAL NO. 33 OF 2020**

(From the Ruling of the District Land and Housing Tribunal of Lushoto)

**HASSAN ABDALLAH SHEKIGENDA.....APPELLANT**

**VERSUS**

**ABDALLAH ALLY SHEMBAGO.....RESPONDENT**

**JUDGMENT**

**MKASIMONGWA, J.**

The Appellant in this matter is aggrieved with the decision of the District Land and Housing Tribunal for Lushoto at Lushoto in Misc. Application No. 21 of 2020. In that matter he prayed for an order setting aside a dismissal order delivered on 6<sup>th</sup> May 2020 in Bill of Costs No. 56 of 2018. In the Application, the Tribunal found the Appellant to have failed to exhibit a sufficient cause for non-appearance and the Application was consequently dismissed with costs. Following the pronouncement of the decision of the Tribunal, the Appellant decided to appeal to this Court basing on the following grounds;

- 1. That in regard to the circumstances of the case the trial Tribunal Chairperson grossly erred in law and fact to reject applicant's application for restoration after application lodged and stayed for almost one year on Tribunal's registry without case status due chairperson's*

*absence hence injustice and influence for non-appearance.*

2. *That in regard to the circumstances of the case the trial Tribunal Chairperson grossly erred in law and fact to proceed for several mentioning date without notice and finally set for hearing with applicant absence, hence contributed for non-appearance as the application lodged on time and stayed for almost a year without any status due chairperson's absence.*

From the above grounds, the Appellant prayed this Honourable Court to allow the appeal with costs, quash and set aside the dismissal order and restore applicant's Application so as to be determined on its merits.

In the Appeal, the Appellant was represented by Ms. Elisia Paul whereas Mr Ally Kimweri appeared for the Respondent. Submitting for the Appellant, Ms. Elisia Paul stated that it was not proper when the Bill of Costs was dismissed for want of prosecution while there was no service effected against the Appellant till when the Application was dismissed on 06/05/2020. She further argued that had the District Land and Housing Tribunal considered that fact, the Application for restoration could not have been dismissed. She was therefore of the view that the dismissal thereof was contrary to the principle in the case of **Mbeya Rukwa Autoparts and Transport Ltd vs Jestina George**

**Mwakyoma [2003] T.L.R. 251** and the case of **Nicodem Damiano Ntingahela vs Michael Yango and two others, (DC) Criminal Appeal No. 66 of 2019**. From the above cited cases, the counsel was of the view that one day absence is tolerable. With respect to the first ground of appeal, the counsel prayed to adopt her submissions made under the second ground and further submitted that since the Appellant was not heard then the Court should allow the appeal.

In his reply, Mr. Kimweri submitting with respect to all the grounds referred the Court to the case of **Phares Wambura and 15 others vs Tanzania Electric Supply Company Limited, Civil Application No. 186 of 2016, CAT at Dar es Salaam at page 9** and proceeded submitting that the reasons advanced by the Appellant at the Tribunal were not palatable. Mr. Kimweri stated that although the Tribunal was informed that on the date the matter came before it, the counsel for the Appellant was at the High Court, then that fact was not substantiated by providing a cause list of the High Court with respect to that date. He was of the view that the Appellant brought mistaken and unfounded grounds. The counsel further argued that the reasons stated in Court with respect to this matter were not pleaded which again is contrary to the principle in the case of **Wasagi vs Joshua Mwaikambo and another [1987] TLR 88** and the case of **Barclays Bank(T) Ltd vs**



**Jacob Muro, Civil Appeal No. 357 of 2019 CAT at Mbeya.** From his submissions, he prayed the appeal be dismissed with costs.

In a brief rejoinder, the counsel for the respondent reiterated what he stated in his submission in chief, the submissions based on what was pleaded before the District Land and Housing Tribunal.

Having considered the grounds of appeal both hinge on the notion that the Appellant was not notified of the status of the case when it was set for hearing and or necessary orders, circumstances which rendered non-appearance of the Appellant at the Tribunal. Considering what transpired at the Tribunal, parties conceded on the confusion of dates that transpired on 14/01/2020 and 15/01/2020 when the matter was set for necessary orders resulting to the Appellant's absence. It is apparent, however, that on 15/01/2020, the Appellant's counsel was notified that the matter was fixed for hearing later on 06/05/2020 on which date he did not appear before the Tribunal saying that he had another matter before the High Court where he appeared. In the case of **Abdallah**

**Zanafi vs Mohamed Omari (1969) HCD 191** it was held that;

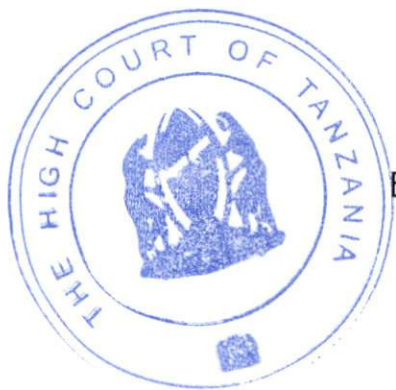
*"There are occasions when a court is empowered by law to set aside its own orders. A trial court is empowered to set aside an ex-parte decree or an order dismissing a suit passed as a consequence of non- appearance so long as the person against whom the decree or order for dismissal of*

*the suit is made is able to establish that he was prevented by sufficient cause from appearing in court on material day."*

Going by submissions from both sides in the case at hand, it is my view that since the counsel for the Appellant was well aware that the matter was scheduled for hearing later on 06/05/2020 and that since on the date was to appear before the High Court, he was obliged to notify and justify to the Tribunal of his absence on ground that he was appearing at the High Court. It is unfortunate that before the Tribunal there was no such a justification.

From the above, the Court finds that there is no sufficient reason exhibited to this Court warranting it to vary the decision of the trial Tribunal by setting aside the dismissal order; hence the Appeal is hereby dismissed with costs.

**DATED at TANGA,** this 7<sup>th</sup> day of September, 2021



  
E. J. Mkasimongwa

**JUDGE**

**07/09/2021**