IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISCELLANEOUS LAND CASE APPEAL NO. 15 OF 2020

(Appeal from the decision/ruling of the District Land and Housing Tribunal of Mbulu at Dongobeshi in Misc. Land Application No. 10 of 2018, C/f Land Appeal No.85 of 2017 Originating from Ayamohe Ward Tribunal Application No. 10 of 2017)

VARERIAN FIITA.....APPELLANT

Versus

ISSA SAID QANAAY..... RESPONDENT

JUDGMENT

11th August & 3rd November, 2021

MZUNA, J.:

In this appeal, Varelian Fiita, the appellant herein, is seeking for this court to restore the appeal which was dismissed following a ruling of the District land and housing tribunal for Mbulu (DLHT).

Briefly stated, Issa Said Qanaay, the respondent herein successfully sued the appellant in the Ayamohe ward tribunal over the ownership and trespass in the suit land measuring 44 meters' x 30 meters worth Tshs 2,000,000/-. Aggrieved, the appellant appealed to the DLHT vides Appeal No. 85 of 2017 which was later dismissed for want of

prosecution. Still minded, the appellant, filed application No. 10 of 2018 seeking restoration of the appeal alleging that he failed to attend due to sickness. This ground was ruled out by the DLHT for the reasons that the supporting medical chit from the Doctor was filled 8 days after the dismissal of the case and therefore never proved that his absence was due to sufficient reasons hence the instant appeal. Both parties to this appeal appeared in person, unrepresented. The appeal was heard orally.

In this appeal six grounds have been advanced to challenge the decision of the DLHT. They touch on issue of **One**; Failure to analyse "the unchallenged expert report of the Medical Doctor" (ground No.4); **Two;** Failure to take cognizance of the fact that the case had its "peculiar circumstances right from the it's(sic) grass root" (ground No. 4). And **Three;** Failure to "exercised his revision power as to whether the matter before the Ward Tribunal was defeated by the principal of non-joinder of parties" (Ground no.5) and that "the decision caused "a miscarriage of justice" (Ground No.6).

Despite the fact that six grounds of appeal were fronted in the memorandum of appeal, the appellant in his oral submission argued only two grounds out of those six. Probably this is due to being untrained expert in law. He argued on grounds one and four only. Be it as it may,

the issue for determination is *whether there was good cause for non appearance of the appellant on the date set for hearing of the appeal.*

The appellant contended that on the date the case was dismissed, he was sick and the person he sent to court to convey the message did not attend. He said, he missed attendance because he was attending treatment with some hourly injections.

He further submitted that the dismissed appeal stands an overwhelming chances of success because he has all necessary documents to prove its ownership. He therefore prayed for this Court to allow the appeal and order a restoration of Land Appeal No. 85 of 2017 in the DLHT.

Opposing the appeal, the respondent submitted that, if at all the appellant was sick, the village executive officer would have confirmed basing on the record if he was admitted or otherwise. The respondent asked this court to consider the question of interest of justice. In his rejoinder, the appellant reiterated the submission in chief.

The question for determination is, was the District land and housing tribunal justified to dismiss the application for restoration of the appeal dismissed for want of prosecution? Regulation 11(2) of the Land

Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 to which this application relates, provides that:-

> *"A part to an application may, where is dissatisfied with the decision under the tribunal under sub-regulation (1) within 30 days apply to have the order set aside and the tribunal may set aside its orders if it thinks fit so to do and in case of refusal appeal to the High Court".*

When dismissing the application, the Chairman of the tribunal ruled among other things that;

> *"It is a generally (sic) practice known that upon receiving a patient the doctor must fill a form which among other things contains the date, signature and stamp which stand as a proof that the said patient really attended at the Hospital for medical treatment, the certification letter issued by Mbulu District Hospital appears to me as a new practice which is not acceptable in the eyes of the law. More over the applicant have (sic) alleged to have sent someone for reporting his sickness excuse before the Tribunal but failed to provide sufficient reasons as to how the one he sent failed to appear on time when the matter was called for hearing, hence this matter raises doubt..."*

I had time of passing through the records of the DLHT and see the said letter from the District Medical Officer of Mbulu. The letter was written on 20th December, 2017 addressed to **'WHOM IT MAY CONCERN'.** Reading between the lines of this letter, it is quite clear that it is reporting the incidence of treatment of the appellant received from the Mbulu District Hospital. This is not a medical chit which proved

attendance to the Hospital on the date in question. Bringing such a letter to prove an incident which had already passed is to say the least an afterthought as correctly pointed out by the Chairman of the tribunal.

Even assuming it showed his attendance for argument's sake, still there ought to have been an excuse from duty. I once said in the case of **Blue Pearl Hotel and Apartments Limited Versus Ubungo Plaza Limited and Another**, Misc. Land Application No. 346 of 2017 (unreported) where I quoted the case of **K.V Construction Limited v. Mwananchi Engineering Limited & Constructions,** Civil Application No. 50 of 2004, CAT at Dar es Salaam (unreported) that;

> *"...in the absence of medical chits showing that the advocate was 'excused from duty because of illness' then no sufficient reasons had been shown".*

I think the same holding applies to the case under consideration. Merely having hourly injections does not prevent someone to attend court. Similarly, one would have expected the appellant to annex copy of the affidavit for the one he sent to notify court (whose name he did not even disclose) but never bothered to do so. It was held in the case of **John Chuwa v. Anthony Ciza** [1992] TLR 233 (CA) that:-

"An affidavit of a person so material .... in this case, has to be filed".

Failure to attach such affidavit leaves the appellant's story as mere speculation. For that reason, to say the tribunal never considered the unchallenged report of the Doctor is not true. The report (letter) was challenged because it was written on 20th December, 2017 while the case was dismissed on 12th December, 2017. The letter shows that the appellant attended to hospital for treatment on 11th December, 2017 a day before the date of the dismissal orders. The respondent talked about absence of proof that indeed the appellant was admitted and I think correctly so.

The appellant touched as well on allegation that there are peculiar circumstances of the case and that there was need to revise the record for the interest of justice to avoid a miscarriage of justice. I am aware, reasons justifying setting aside a dismissal order are not exhaustive. It depends on the circumstances of each particular case. This position was also echoed by the Court of Appeal in the case of **Mwanza Directors M/S New Refrigeration Co. Limited vs TANESCO Limited and Another** [2006] TLR 239 where the court held that;

> *"What amounts to sufficient or good cause for non-appearance depends on peculiar circumstances of each case."*

This takes me to the provisions of section Section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 RE 2019 which states that:-

> *"(1) ... the High Court–*
>
> *(a)... (N/A)*
>
> *(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion,* ***if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings*** *and make such decision or order therein..."* (Underscoring mine).

Reading from the appellant's grounds of appeal he says he has the documents proving his ownership, issue of non joinder of parties whom he never disclosed and above all that he stands an overwhelming chances of success. All these are matters of evidence which a court dealing with issue of restoration of a dismissed appeal cannot go into details.

From what I have demonstrated above, I see no *"error material to the merits of the case involving injustice"* that may move this court to intervene. There is nothing peculiar only that the appellant was negligent in prosecuting his appeal.

In the circumstances therefore, this appeal stands dismissed with costs.

M. G. MZUNA,

JUDGE.

04. 09. 2020