

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL REVISION NO. 14 OF 2021

AMANI TEMBA APPLICANT

VERSUS

MRS. MONICA MUJUNGU RESPONDENT

RULING

MRUMA, J.

The applicant herein Amani Temba successfully obtained an order setting aside ex-parte judgment passed against him in Land Application No. 32 of 2016 of the District Land and Housing Tribunal for Kinondoni District at Mwananyala on 16/7/2019.

In its ruling dated 19th December, 2019, the District Land and Housing Tribunal stated thus:

"I unhesitantly allow the Application by setting aside ex-parte judgment and decree delivered on 10/7/2017 [sic] by this Tribunal in Application No. 32 of 2016 and resume to where the main suit ended."

When the matter was called for hearing on 11/3/2021, Applicant therein Mrs. Monica Mujungu informed the Tribunal that she was ready and she prayed for another date so that she could call her witness.

On his part counsel for the respondent informed the tribunal that to his understanding the ruling which set aside an ex-parte judgment had the effect of ordering the matter to start afresh from where it ended.

In his ruling composed on 22/4/2021 the Learned Chairman of the Tribunal ruled that in his construction of the ruling, it did not set aside an order for hearing ex-parte but the ex-parte judgment alone. The Learned Chairman proceeded to set for a date of ex-parte hearing. The present applicant was not satisfied and he wrote a complaint to then Judge in charge who ordered this revision to be opened.

At the hearing of this revision, I invited parties to address me. The Applicant Amani Temba was represented by Mr. Benson Mpasu, Learned Advocate and the Respondent appeared in person.

Mr. Mpasu submitted that despite the fact that an order for setting aside ex-parte judgment was clear that the matter should proceed from where it ended his client was denied the right to be heard and when the

matter went back to the trial tribunal the chairman ordered it to proceed ex-parte.

I have carefully revisited the records of the Trial Tribunal. The records shows that on 22/4/2021 the Learned Chairman ordered the matter to proceed ex-parte for reason that an order to set aside ex-parte judgment does not contain an order for hearing interparties. I find this to be a bit obscure. If the Tribunal had intended that upon setting aside ex-parte judgment, the matter will proceed ex-parte then there was no reason to set aside the exparte judgment for that would have been repeating the same task with no apparent reason. My interpretation of the ruling of the tribunal which set aside ex-parte judgment is that it had an intention that the matter be heard inter-parties.

I thus, in terms of section 43(1) (a) and (b) and (2) of the Land Disputes Courts Act revise all proceedings of the District Land and Housing Tribunal dated 22/4/2021 which ordered the matter to proceed ex-parte and direct that this matter shall proceed inter-parties and as the Applicant there in Mrs. Monica Mujungu had already testified, the Respondent therein Amani Temba be afforded an opportunity to cross-examine her and thereafter the

matter should procedural as required by the procedure law governing proceedings in District Land and Housing Tribunals I make no as to the costs.

A. R. Mruma

JUDGE

18/11/2021

In terms of section 44(3) of the Land Disputes Courts Act, the record of this matter should be remitted to the District Tribunal within 14 days from the date of this order.



A. R. Mruma

JUDGE

18/11/2021