

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

MISC. LAND APPEAL NO. 15 OF 2021

(Arising From the District Land and Housing Tribunal for Mbeya, at Mbeya in Land Appeal No. 90 of 2020, Originated from Ilambo Ward Tribunal, in Land Dispute No. 27 of 2020)

NTUTA LOID.....APPLICANT

VERSUS

MAGRETH PAUL.....RESPONDENT

JUDGMENT

Date of last Order: 20.10.2021

Date of Ruling: 17.12.2021

Ebrahim, J.

The appellant herein filed the instant appeal challenging the decision of the District Land and Housing Tribunal for Mbeya, at Mbeya in Land Appeal No. 90 of 2020. The matter originated in Land Dispute No. 27 of 2020 at Ilambo Ward Tribunal. The said decision can be easily traced by starting with the proceedings of the Tribunal dated 25/11/2021. Below, I reproduce the proceedings in which the order, subject of this appeal emanated for easy reference.

"Tribunal: In the circumstances since the case number subject of this appeal is mistaken let the M/A reply there to be rectified in hand written form to mention the proper number.

Sgd

**A. Mapunda
Chairman
24/11/2020**

Order: Hearing on 18/2/2021

Sgd

**A. Mapunda
Chairman
25/11/2020**

18/2/2021

Akidi: A. Mapunda – Chairman

Washauri: 1. Sarah: Present

2. Sunday: Absent

Zamda

Mkata Rufaa: Present

Mjibu Rufaa: Present

Baraza: Shauri lipo kwa usikilizaji. Wadai wamesema wapo tayari. Hivyo linasikilizwa.

Imesainiwa

**A. Mapunda
Mwenyekiti
18/2/2021**

Mleta Rufaa: Nadhani nilichanganyikiwa tarehe ya Mwisho nilidhani leo mjibu rufaa analeta majibu leo na mimi nitajibu. Hivyo siwezi eleza sababu za rufaa.

Baraza: Mleta rufaa ameshindwa kuendesha/ kuleta hoja za rufaa yake. Hivyo rufaa hii inatupiliwa mbali kwa kushindwa kuendeshwa na mleta rufaa atalipa gharama

Haki ya rufaa imeelezwa.

Imesainiwa

A. Mapunda

Mwenyekiti

18/2/2021"

The last paragraph of the order (written in Kiswahili) can be lightly translated as follows:

***"Tribunal:** The appellant has failed to prosecute/bring argument for his appeal. Therefore, his appeal is dismissed for want of prosecution with costs."*

The above order made by the Tribunal on 18/2/2021 is the subject of this appeal. The appellant has raised three grounds. However, for the reasons to be apparent in the course of determining the matter, I will firstly determine the 1st ground of appeal which is couched as follows:

That the appellate tribunal erred both in law and fact when dismissed my appeal without justification cause.

During the hearing of the appeal, both parties appeared in person, unrepresented. It was heard by way of written submission per the parties' request.

In essence the appellant is complaining that his appeal was dismissed without justifiable reasons since his grounds of appeal were not considered. He prayed for this court to allow the appeal with costs and remit the matter to the tribunal for determination on merits.

The respondent's reply was hard to apprehend, I think it is due to the fact that she is a lay person and has no legal assistance. The issue for consideration is *whether the DLHT (the Tribunal) was justified in dismissing the matter.*

The Court of Appeal of Tanzania once said:

“Our conviction is that in the administration of justice, speed is good, but JUSTICE IS BEST” (bold emphasis added).

See **Civil Reference No. 1 of 2009, CAT at Dar es Salaam, in the Matter of Independent Power Tanzania Limited and in the Matter of**

a Petition by a Creditor for an Administration Order by Standard Chartered Bank (Hong Kong) Limited (Petitioner).

Also, see the case of **Khamis Muhidin Musa v. Mohammed Thani Matfar, Civil Appeal No. 237 of 2020 CAT, at Zanzibar** [2021] TZCA 735; (03 December 2021) tanzlii. In this case the appellant complained to be denied of his right to be heard. In regard with that complaint, he contended that the trial court denied him a right to call a third witness. In the course of determining that complaint the Court (CAT) examined the record and raised the issue of whether the appellant had made a particular prayer and obtained an order which he was found not to have fulfilled when the case was called on for hearing. It was held *inter alia* that:

"No party made any prayer and hearing was adjourned to 19th July 2018. It is on 19th July 2018 that the trial court made the order refusing adjournment of the hearing to call the third defence witness, but adjourned the same for judgement. We are satisfied therefore that, before the defence case was closed by the trial court and the matter adjourned for judgment, the appellant had not applied for any

orders that he was found to have failed to fulfil on 19th July 2018.

.....That was a denial of the right to be heard, which is cherished and hailed in Zanzibar where the right to be heard is not only a fundamental right to all citizens and foreigners alike, but also a right constitutionally recognized, guaranteed and protected by Article 12(6)(a) of the Constitution of Zanzibar of 1984."

Following the CAT observation in the two cases above in relation to the matter at hand, it is crystal clear that the appellant was denied not only the right to be heard but also the right to a fair trial. This is because, the appellant is a lay person and he has no legal representation before the Tribunal. The case was adjourned on 24.11.2020, it was scheduled for hearing on 18/2/2021. On 18/2/2021 due to the appellant's ignorance of the procedure pertaining to the hearing of appeals, he was given an opportunity to argue his appeal. He answered (lightly translated from Swahili) that:

"I think I confused on the last date I thought the respondent has to bring the reply today then I would answer. Thus, I cannot elaborate the grounds of appeal."

In my concerted opinion such statement of the appellant was showing undoubtedly, the ignorance of the procedure the appellant has. The wisdom would demand in such circumstances the Tribunal to guide him on what exactly was required of him. More wisdom would demand the Tribunal to adjourn the matter to the other date and give another opportunity by ordering the appellant to come prepared. If the appellant would have come unprepared after being addressed by the tribunal, then it would have been justified for the tribunal to make necessary order(s).

Nevertheless, since the matter was dismissed for want of prosecution, the remedy available is for the applicant to make application to the same tribunal praying for restoration of her case. In case the trial Tribunal refuses, then she can resort to an appeal. In essence, this appeal was prematurely filed. Accordingly, I dismiss it. Following the circumstances pertaining to the dismissal, I give no order as to costs.

Accordingly ordered.

A handwritten signature in black ink, appearing to be 'R.A. Ebrahim', written over a horizontal line.

R.A. Ebrahim

JUDGE.

Mbeya

17.12.2021

Date: 17.12.2021.

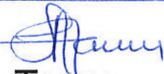
Coram: Hon. A.E. Temu - DR.

Appellant: |

Respondent: | Both present.

B/C: Gaudensia.

Court: Judgement delivered in the presence of both parties in open chamber.


A.E. Temu

Deputy Registrar

17/12/2021

DEPUTY REGISTRAR
HIGH COURT OF TANZANIA
MBWA