

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

LAND CASE APPEAL NO. 77 OF 2019

(Arising from Misc. Land Application No. 70 of 2018 of the Singida District Land and Housing Tribunal ; Original Land Application No. 34 of 2017 of the District Land and Housing Tribunal Singida, at Singida)

**1.MPONYIWA MKUMBO
2.SUNGA MPONYIWA
3.MOHAMED TUNGO
4.JOSEPH MAKALWE
5.JAMES KASENDEKO**

APPELLANTS

VERSUS

MARKO ISSANGO RESPONDENT

25/4/2022 & 10/5/2022

JUDGMENT

MASAJU, J

The Respondent, Marko Isango, successfully sued the Appellants, Mponyiwa Mkumbo, Sunga Mponyiwa, Mohamed Tungo, Joseph Makalwe and James Kasendeko in the District Land and Housing Tribunal for Singida at Singida vide Land Application No. 34 of 2017 which was heard and decided *ex-parte*.

The Respondent then successfully applied for execution of the *ex-parte* judgment in the trial Tribunal. Aggrieved with the *ex-parte* decision and the *ex-parte* execution of the decree thereof, the Appellant unsuccessfully

applied for an order to set aside the *ex-parte* judgment and the decree thereof out of time vide Miscellaneous Land Application No. 70 of 2018 in the trial Tribunal, hence the appeal in the Court. The Appellants' petition of appeal is made up of one (1) ground of appeal.

The appeal was argued by way of written submissions as per the Court's Order dated the 17th day of August, 2021.

The Appellants submitted in support of the appeal that, the Court has discretionary powers to grant or dismiss the application for extension of time after being satisfied that there is sufficient cause in doing so. The Appellants cited the case of **Cartas Kigoma V. KG Dews Ltd [2003] TLR 420**, to support their submissions. The Appellants further submitted that they became aware of the existence of the land dispute after being served with summons of the Application for execution from the trial tribunal on the 8th day of May, 2018 and that they immediately duly lodged an Application for extension of time for them to file an Application for setting aside the *ex-parte* judgment which was dismissed for want of reasonable cause.

The Appellants further submitted that they were not duly served with summons notifying them on the date the *ex-parte* judgment would have been delivered. That, this is against the decision in **Cosmas Construction Co. Ltd Vs Arrow Garmets Ltd (1992) 127, CAT**. That, this is fatal illegality which amounts to a sufficient reason for not lodging their Application in time. The Appellants finally prayed the Court to allow the appeal accordingly.

In reply, the Respondent submitted against the appeal that the Appellants' Affidavit filed at the trial Tribunal does not state the reasons for

their delay in applying to set aside the said *ex-parte* judgment but rather concentrates as to why the Appellants failed to appeal in the said Land Application No. 34 of 2017. The Respondent further submitted that indeed the Appellants were served and they deliberately rejected service, and that, they failed to show sufficient cause as to why they delayed in applying to set aside the *ex-parte* judgment. The Respondent finalized his submissions by arguing that the Decree in Land Application No. 34 of 2017 has already been executed hence the Appellants' efforts to rescue the verdict in the said case is overtaken by events.

In rejoinder, the Appellants argued that giving the Defendant or Respondent notice of the date of judgment is a legal requirement imposed upon the court, which proceeds *ex- parte* in any matter before it, thus the Appellants could have not raised the issue in their Affidavit. That, the Ward Excution Officer (WEO) who allegedly served the Appellants with summons swore an Affidavit on the Appellants' allegedly refusal of service. That, the said Affidavit is very doubtful on who refused service, how and when the service of summons was carried and whether or not the said WEO involved the leader of the Appellants' locality. The Appellants, once more, prayed the Court to allow the appeal with costs.

That is what was shared by the parties in support of, and against the Application in the Court.

The background of this appeal is set from the Land Application No. 34 of 2017 in which the Respondent successfully sued the appellants in regards to 200 acres of land located at Mnang'ana Hamlet, Mayaha Village, Miyunge ward within Ikungi District in Singida Region where an *ex- parte* judgment was entered on the 11th day of October, 2017. The reason thereof for the

ex-parte hearing and judgment being that, the Appellants refused service of summons, whereby the Ward Executive Officer (WEO) Ms. Gladies J. Charles swore an Affidavit to that effect.

The Respondent then successfully applied for the Execution of the Decree of the *ex-parte* judgment vide Miscellaneous Land Application No. 143 of 2017, the Ruling thereof being delivered on the 9th day of April, 2018 by the trial Tribunal. The trial Tribunal then ordered the Appellants to hand over the land in dispute to the Respondent. That is when the Appellants allegedly became aware of the existence of the land dispute against them in the trial Tribunal. Hence their lodging of Miscellaneous Land Application No. 70 of 2018 in the trial Tribunal praying for setting aside of the *ex-parte* judgment out of time which was dismissed for want of merit.

The Court has perused the original record of the trial Tribunal in the Land Application No. 34 of 2017 and noted that the trial Tribunal set the matter for *ex-parte* hearing on the 7th day of June, 2017 after the Applicant alleged that the Appellants resisted/refused service and the Affidavit thereof being sworn by the WEO.

Regulation 8 of the Land Disputes Courts [The District Land and Housing Tribunal] Regulations, 2003 gives the manner in which service of notice for hearing/summons should be handled, that is by serving the party himself, his spouse, any member of the household above the age of 18 years, his advocate or any other person authorized by the party to represent him in that particular Application.

Regulation 9 provides for the alterative way (substituted services) in case the Tribunal is satisfied that it is not possible to effect personal service

of summons or notice of the date set for hearing. The Tribunal may order services to be effected by, thus;

"9. (a) Affixing a copy of the summons or the notice of hearing in a conspicuous place:

(i) On or as near as may be to the land where possible, and

(ii) Where the land is village land, at the office of the village council or other public place within the village or

(iii) Where the land is general land, at the office of the local authority having jurisdiction in the area where the land is located, and

(b) registered mail

(c) publishing a copy in one or more newspapers locally circulating in the area."

In the instant case, after the Respondent alleged that the Appellants refused service of summons, the trial Tribunal did not make any order for substituted service to be effected but rather set the matter for *ex-parte* hearing prematurely.

The service of summons relied upon by the trial Tribunal itself leaves so much to be desired since WEO's Affidavit does not specify on what dates the parties were allegedly served, the manner in which they were served, whether the said WEO knew the Appellants personally for her to effect the service or whether she involved any locally known leader of the community where the Appellants reside. Thus, the trial Tribunal ought to have ordered for substituted service for it to satisfy itself that the Appellants were duly served and were much aware of the land dispute against them.

Indeed, the Court agrees with the Appellants that the trial Tribunal was also legally bound to notify the Appellants of the date of the *ex-parte* judgment to be entered against them as per the position of the law in **Cosmas Construction Co. Ltd. Vs. Arrow Garments Ltd** (Supra).

The Court also noted that the trial Tribunal's original record of proceedings does not show the assessors opinion being read out prior to setting the date for *ex-parte* judgment as per the guidance of the Court in **Tabora Mwambeta V. Mbeya City Council, (CAT)** Civil Appeal No. 287 of 2017 read together with section 23(2) of the Land Disputes Courts Act [Cap 216] and Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003.

That said, the Court invokes its revisionary powers by virtue of section 43(1) (b) of the Land Disputes Courts Act, [Cap 216] to nullify the *ex-parte* trial, quash and set aside the *ex-parte* judgment, orders and Decree thereof along with the *ex-parte* execution thereof.

The parties may wish to go for trial *denovo* before the trial Court if they intend not to settle the dispute amicably. The parties shall bear their own costs accordingly.



GEORGE M. MASAJU

JUDGE

10/5/2022