

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

AT MWANZA

LAND APPEAL No. 25 OF 2022

*(Arising from the decision of the District Land and Housing Tribunal of
Mwanza at Mwanza in Land Application No.90 of 2013)*

**JOYCE JACOB (Administrator of the Estate
of the Late Manyanza Malile Jacob) -----APPLICANT**

VERSUS

LENAS BUCHUMI-----1st RESPONDENT

DIRECTOR AIRTEL CO LTD-----2nd RESPONDENT

RULING

Last Order date: 28.07.2022

Ruling Date: 28.07.2022

M. MNYUKWA, J.

By way of chamber summons, the applicant Joyce Jacob, the administrator of the estate of the late Manyanza Malile Jacob appealed to this court against the decision of the District and Land Housing Tribunal for Mwanza at Mwanza (trial tribunal) in Land Application No. 90 of 2013 which was dismissed.

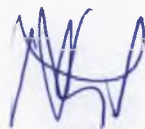
Briefly it goes that, the appellant in this court once filed Land Application No. 90 of 2013 before the trial tribunal for Mwanza at Mwanza



on a dispute of a piece of land. During the hearing, the advocate for the 1st Respondent raised a preliminary objection that the tribunal lacked jurisdiction to entertain the application. The trial tribunal directed the preliminary objection to be argued by way of written submission and on 29.04.2022, the trial tribunal delivered its Ruling. After receiving the copy of the Ruling, the applicant noted that her written submission was not considered and therefore, claimed that she was not afforded a right to be heard as the decision was entered *exparte*. Dissatisfied, she appealed in this court with two grounds of appeal that: -


- 1. The trial tribunal erred in law and fact to deliver its Ruling *exparte* against the appellant while she complied with the order of the trial tribunal of filing her written submission (copy of the written submission and the payment receipt attached)*
- 2. The trial tribunal erred in law and fact to rule out that the appellant delayed to file her case without inquiring from the respondents and that the appellant did not comply with the orders of the trial tribunal to file their submission.*

The appellant prays for this court to set aside the decision of the trial tribunal and remit the file to proceed from where it ended in hearing of the preliminary objections, costs of the suit and any other reliefs this court may deem fit to grant.



During the hearing, the appellant engaged the service of Mr Adam Robert, learned counsel and Mr. Kassim Gilla, learned counsel appeared for the 1st respondent while Mr. Kyariga N. Kyariga appeared for the 2nd respondent. At the hearing, the appellant prayed to drop the 2nd ground of appeal. Before he submitted to the 1st ground of appeal, the learned counsel for both respondents supported the appeal and make a prayer before this court for the appeal to be allowed and the court to order the trial tribunal to compose a Ruling after considering the submissions of both parties including the submissions of the appellant. The respondents' main argument was that, the appellant filed her submissions as per the schedule of the trial tribunal and when the matter was scheduled for mention to confirm if the parties complied with the order of the trial tribunal, the chairman acknowledged that submissions from both parties to be completed. They also added that even the trial tribunal records bear the testimony.

Before determining the grounds of appeal presented by the appellant and considering the brief submissions of the parties, this court probe the parties to address on the issue of whether the appeal before it is competent as the appellant challenged the exparte Ruling delivered by the trial tribunal.



Addressing the court specifically on the issue as to whether the appeal is competent before the court, Mr. Adam Robert for the appellant observed and submitted that the appeal was incompetent before this court as the appellant was required to file an application before the trial tribunal to set aside the ex-parte order. The submissions by Mr. Adam Robert, learned counsel were also supported by Mr. Kassim Gilla and Mr. Kyariga N. Kyariga learned counsels for the 1st and 2nd respondents respectively.

Since both parties conceded, I also agree with the learned counsels that, this application is improperly before this court for the reason that the appellant is appealing against the decision of the trial tribunal while her main reason is that she was not afforded the right to be heard since the matter was determined ex-parte as per the records.

The law is trite that, the applicant can apply to set aside ex-parte decision in terms of Order IX rule 9 of the Civil Procedure Code, Cap 33 R.E 2019 that the court will only set aside Exparte Order upon the applicant showing sufficient cause as to absenteeism entered. Further, Order XL Rule 1 (d) of the Civil Procedure Code, Cap 33 RE: 2019 allow the applicant to appeal against an order refusing to set aside an exparte Order.



Equally, an ex-parte judgment is appealable under section 70 (2) of the Civil Procedure Code, Cap. 33 RE: 2019, which provides that "an appeal may be from an original decree passed ex-parte".

The same was stated in the case of **Dangote Industries Ltd Tanzania Vs Warnercom (T) Limited** Civil Appeal No. 13 Of 2021.

In this appeal, the appellant is challenging the ex-parte Ruling as she was not afforded the right to be heard. It is settled position of the law that, the appellant before filing this appeal was required to challenge the decision of the trial tribunal in terms of Order IX rule 9 of the Civil Procedure Code, Cap. 33 RE: 2019. As stated in **Jaffari Sanya & Another v. Saleh Sadiq Osman**, Civil Appeal No. 119 of 2014, the jurisdiction to set aside an ex-parte judgment is exclusively conferred to the trial tribunal, it cannot be addressed by way of an appeal or revision.

The Court observed as follows: -

*"On the basis of the above provision and authorities, it is settled that where a defendant against whom an ex-parte judgment was passed, intends to set aside that judgment on the ground that **he had sufficient cause for his absence**, the appropriate remedy for him is to file an application to that effect in the court that entered the judgment".*



In the circumstance, I find the appeal before this court incompetent and in fine, I proceed to struck it out with no order as to costs.

It is so ordered.




M. MNYUKWA
JUDGE
28/07/2022

Court: Ruling delivered on 28/07/2022 in the presence of the counsel for the applicant and in the presence of the 2nd and 3rd respondents' learned counsel.


M. MNYUKWA
JUDGE
28/07/2022