

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

AT BUKOBA

MISC. LAND APPEAL NO. 30 OF 2022

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Land Application No. 31 of 2021 and Land Appeal No. 47 of 2020 and Original Civil Case No. 04 of 2020 at Kanyigó Ward Tribunal)

SEMEON SIMON LUBUNDA.....APPELLANT

VERSUS

GRACE SIMON LUBUNDA..... RESPONDENT

JUDGMENT

Date of Judgment: 22.07.2022

Mwenda, J.

The appellant being aggrieved by the dismissal order for want of prosecution in Land Appeal No. 47 of 2020 before the District Land and Housing Tribunal for Bukoba at Kagera filed Land Application No. 31 of 2021 for restoration of the same. The said application was dismissed with costs for lack of sufficient reasons. Being aggrieved with the said decision he preferred this appeal with five (5) grounds of appeal.

At the hearing of this appeal the appellant appeared in person while the respondent invited the legal service of Mr. Samweli Kiula the learned advocate.

In his submission in chief the appellant submitted that, before the District Land and Housing Tribunal his application for restoration was dismissed for lack of

sufficient reasons as he failed to tender bus tickets as exhibit. He said that, he did not tender the said bus tickets because kanyigo buses do not issue tickets. He further submitted that since he is a layman he did not know if there was any need for him to tender an affidavit from either the bus driver or traffic police to support his testimonies that they are the ones who delayed him to appear before the court in time.

He submitted that he appeared in court at 9:18 hours and that it was the only day when he was late. He said on that day the case was scheduled for mention so it was not proper for the Hon. Chairman to dismiss his appeal. He therefore prayed this appeal to be allowed.

In reply to the submission by the appellant, Mr. Kiula the learned counsel for the respondent submitted that it is not true that Kanyigo buses do not issue tickets.

With regard to appellant's submission that his delay to attend in court was caused by the traffic police who trapped them along the road, the learned counsel for the respondent submitted that, it is trite law that when reasons for delay are levelled against someone else then that person should be called upon to testify or swear or affirm an affidavit in that regard.

On submission that the appellant is a layman who do not know legal procedures, the learned counsel further submitted that, ignorance of the law is not a defense.

On top of that he said on 17/11/2021 the records are clear that the case was fixed for hearing and the appellant was present when the tribunal fixed another hearing

date but the appellant defaulted appearance. He said, it was proper to dismiss his appeal. To support his argument, he cited Regulation 11 (1) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations GN. 174 of 2003 which state that;

"On the day when an Application is fixed for hearing the tribunal shall, where the applicant is absent without good cause and have received notice of hearing or was present when the date was fixed, dismiss the application for non-appearance."

He submitted further that since the appellant was aware of the hearing date then, the trial tribunal was justified to dismiss the appeal. To support his arguments, he cited the case of *JOSEPH JEROME MUNE VS. MAKALA GACHUMA @ MAKALA AND ONE ANOTHER, MISC. CIVIL APPLICATION NO. 22 OF 2020* (unreported). He therefore prayed this appeal to dismiss.

That being the summary of submissions by both parties the issue for determination is whether this appeal is meritorious.

From the records the appellant filed an application for restoration of Land Appeal No. 47 of 2020 which was dismissed for lack of sufficient reasons. The reasons for the delay which the appellant advanced before the tribunal was that the bus he boarded was trapped by the traffic police officer while on his trip to attend tribunal's session. He however did not produce any document to support his

allegations. Also he tendered no bus ticket to prove that he traveled on that day. Also there is no proof that the bus he boarded was stopped by the traffic police as he failed to bring the traffic police officer and the driver to testify in that regard. On that premise the Hon. Chairman dismissed the appellant's application.

At the hearing of the present appeal the appellant submitted that he did not know if there was a need for him to call either the driver or the traffic police officer to testify that they are the ones who delayed him to appear before the tribunal in time.

It is trite law that in applications to set aside dismissal order, the applicant must advance sufficient reason for his failure to appear on the hearing date. This position was stated in the case of JOSEPH JEROME MUNA VS MAKELE GACHUMA @ MAKELE & ANOTHER MISC. CIVIL APPLICATION NO. 22 OF 2020 where this court while citing the case of NASIBU SUNGURA VS PETER MACHUMU [1998] TLR 497 AT PAGE 501 held inter alia that;

"An application to set aside the order dismissing the suit for non-appearance, the important question is not whether the case for the applicant is soundly maintainable and meritorious, but whether the reasons furnished are sufficient to justify the applicant's non-appearance on the date the suit was dismissed."

Guided by the above position of law this court is of the view that the applicant did not advance sufficient reasons for his non-appearance. This is so because he failed to produce any evidence to support his allegations that on that day he boarded a bus which was trapped by the traffic police officer along the road.

From the foregoing observations this court finds no merits in this appeal and it is hereby dismissed with costs and the decision in Land Application No. 31 of 2021 before the District Land and Housing Tribunal for Bukoba at Kagera is hereby upheld,

It is so ordered.


A.Y. Mwenda
Judge
22.07.2022


Judgment delivered in chamber under the seal of this court in the presence of Mr. Semeon Simon Lubunda the Appellant and in the presence of Mr. Samwel Kiula the learned counsel for the respondent.


A.Y. Mwenda
Judge
22.07.2022
