

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 73 OF 2021

(Arising from Misc. application No 158 of 2020 and Originating from Land Application No 116 of 2018 in the district Land and Housing Tribunal for Mara at Musoma)

MCHUNGAJI BARNABAS JUMA MBONDYAAPPELLANT

VERSUS

MAJEMBE SONGORA (Administrator of the estates of

Gregory Metebesha Nyawaya)RESPONDENT

JUDGMENT

27th March & 2nd May, 2022

F. H. MAHIMBALI, J.:

The appellant Machungaji Barnabs Juma Mbondya has been aggrieved by the decision of the District Land and Housing Tribunal of Musoma through his Misc. application No 158 of 2020 in which the DLHT dismissed the appellant's application for two reasons. One the DLHT *suo motto* raised two legal issues that the enabling provision cited by the appellant was not proper. Secondly that, there was no sufficient cause for the grant of the said application.

Not amused with the said finding of the trial DLHT, the appellant has preferred this appeal armed with a total of four grounds of appeal namely:

- 1. That, the trial tribunal erred in law to dismiss Misc. Application No 158 of 2020 while the appellant has sufficient and good cause to grant the trial tribunal to extend the time for the appellant to set aside ex-parte judgment.*
- 2. That, the trial tribunal erred in law to raises legal issues suo motto and bases its decision on those issues without inviting the appellant to respond on those issues.*
- 3. That trial tribunal erred in law for failure to consider that there is illegality in the judgment of the trial tribunal, the judgment delivered on 20/9/2019*
- 4. That the trial tribunal erred in law to hold that the Misc. Application No 158 of 2020 was preferred under wrong provision of the law and proceeded to determine the matter on merit without jurisdiction.*

During the hearing of appeal, the appellant was represented by Mr. Daudi Mahemba whereas the respondent appeared in person and thus fended for himself.

In the course of hearing of the said appeal, Mr. Mahemba, abandoned ground no 3 and thus remained with only three grounds of appeal i.e. 1, 2, and 4.

He however combined grounds number one and four and argued them jointly. In his submission in those two grounds, he submitted that the reasons stated in Misc. Application No 158 of 2020 as to why he failed to defend /attend in original suit (land application No 116 of 2018) at DLHT is because of failure to get notice of the said application. That as per paragraph 5 of the affidavit in support of his application, he stated that the respondent is his brother in law and that they live neighbours. The reasons why he opted for substituted service via publication was not known as per that proximity. Nevertheless, he could not see the said substituted service published into the said newspaper in which he argued it was uncalled for considering the circumstances of this case. Thus by this reason, the application was justified for its grant as the respondent mis-informed the trial tribunal by stating that he was not reachable/traced.

On the second ground of appeal, he submitted that, the trial tribunal erred in law in raising its own legal issues and from them based its ruling. He based his argument considering what is featuring in page 2 of the DLHT's impugned ruling. As it was raised *suo motto*, the parties were denied the right to be heard whether the cited law was not proper and that the application is omnibus. He cited the case of **Charles**

Christopher Humprey Komba vs Kinondoni Municipal Council.

Civil Appeal No 81 of 2017 in which the Court of Appeal at page 8 made a good observation. He nevertheless, submitted that, even if the said application was considered omnibus, the appropriate remedy/order was to strike out and not dismiss the application as done. He prayed the appeal be allowed and that this court to order accordingly.

The respondent on the other side resisted the appeal arguing that the DLHT reached a proper finding as per law.

Whether the DLHT was justified to dismiss the application on the issues of law raised *suo motto* without according the parties the right of being heard is the legal question to be answered. I agree that the law is legendary that no one should be condemned unheard. It is trite Law that any decision to affect someone's right or interest, should not be arrived at unless the person to be affected has been offered with an opportunity of being heard. It has been insisted times without numbers that this principle of law of respectable antiquity needs no authority to prop it up. It is a common knowledge (see the case **Deo Shirima and two others vs Express Services Ltd**, Civil Application No 34 of 2008 (unreported) as quoted in the case of **Charles Christopher**

Humphrey Kombe vs Kinondoni Municipal Council, Civil Appeal No 81 of 2017, CAT at Dar es Salaam).

As that was obvious in application No 158 of 2020 originating from Land application No 116 of 2018 of the said DLHT, the appeal is meritorious. It is meritorious because, the DLHT condemned the appellant without being accorded with the right of being heard. Thus the appeal is allowed.

As what is the way forward, I have considered the submission in the said application, for interests of justice, the application was merited. The substituted service in the circumstances of this case was uncalled for. I thus substitute the dismissal order of the said application and grant the appellant with one prayer of the extension of time file on application before that DLHT to set aside the exparte order.

Considering the fact that such error was occasioned by the trial DLHT itself, I make no order as to costs.



DATED at MUSOMA this 2nd day of May, 2022.


F.H. Mahimbali

JUDGE

Court: Judgement delivered this 2nd day of May, 2022 in the presence of Mr. Daudi Mahemba, advocate for the appellant, Mr. Gidion Mugo, RMA and Respondent being absent



F. H. Mahimbali

Judge

2/5/2022

