

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL CASE No. 127 OF 2021

*(From the District Land and Housing Tribunal for Mara at Musoma in
Land Application No. 27 of 2021)*

RAJABU M. AGOSTINO APPELLANT

Versus

**1. FINCA MICROFINANCE BANK &
2. MUGABO AUCTION MART & CO. LTD } RESPONDENTS**

JUDGMENT

02.08.2022 & 02.08.2022

Mtulya, J.:

This court received a complaint directed at the Hon. Chairman of the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in his decision delivered on 5th November 2021 in **Misc. Land Application No. 271 of 2021** (the application), where he was recorded stating that:

*Shauri la Msingi Misc. Application No. 99 of 2020
lilikuwa likiahirishwa mara kwa mara kwa sababu zisizo
na maana kutoka kwa upande wa mleta maombi tangu
wajibu maombi walipoleta hati yao ya utetezi mnamo*

tarehe 07.08.2020. Hiivyo, naona maombi haya hayana msingi, na yanatupiliwa mbali kwa gharama.

The complaint which was registered in this court by learned counsel Mr. Christopher Waikama, learned Counsel for his client Mr. Rajab M. Agostino (the appellant), shows, in brief that:

*The learned trial chairman erred in law and fact for failure to take into account the appellant's sufficient reasons of failure to attend **Land Application No. 99 of 2021.***

The complaint was scheduled for hearing today, 2nd August 2022 and both parties invited learned minds of Mr. Christopher Waikama for the appellant and Ms. Tupage Anna Mwambosya for the respondents, to contest the complaint in the **Land Appeal Case No. 127 of 2021** lodged in this court. However, after short consultations and discussions, and touches on glance of the record, it was found that the appellant had preferred the application in the tribunal on 16th July 2020, but the proceedings in the case file is silent on what exactly transpired after the filing of the application. There is no either any sitting Coram, written statement of defence or any order of the tribunal in the case file.

However, the application was dismissed for want of prosecution in another suit, preferred in **Misc. Land Application No. 253 of 2020** before the tribunal (the first Misc. Application). The Misc. Application was contested in another **Misc. Land Application No. 271 of 2021** of the tribunal (the second Misc. Application) which was also dismissed for lack of good reasons to persuade the tribunal to restore the application, which is plain in its record.

It is the second Misc. Application which is disputed in this court. This court after receipt of the appeal and perusal of the record of appeal, noted the breach of several sub regulations from Regulation 5 to 10 of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003** (the Regulations). However, Hon. Chairman moved into Regulation 11 (1) (b) of the Regulations and dismissed the application for want of prosecution in another case file, the first Misc. Application. In turn the appellant preferred the second Misc. Application under Regulation 11 (2) of the Regulations.

The breach of the Regulations was spotted by this court and invited the learned minds, Mr. Waikama and Ms. Mwambosya to

explain on the status of the dispute and this appeal. Cherishing the right to be heard, Mr. Waikama contended that the present appeal is a proper case for this court to invite section 43 (1) (b) and (2) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act) and revise the record of the tribunal in the application and come up with its own directives, whereas Ms. Mwambosya, on the other hand, thinks that the original case file in the application has no any materials to assist this court and the tribunal to decide the dispute hence prayed this court to quash all proceedings and all Misc. Applications for proper application of the law, and anyone with interest on the dispute to prefer fresh and proper suit.

I have perused the record and submissions of learned minds, and noted the enactment of section 43 (1) (b) and (2) of the Act, and I think this is a proper case to invite the law and nullify the proceedings and decisions initiated by the tribunal in all the cited Misc. Applications, as I hereby do. Similarly, as the application is plain and silent, without any materials on record and there are complaints on want of prosecution, it will be quashed to follow the same course of the Misc. Applications. This is a court of law and justice. It cannot close its eyes when there

is vivid breach or improper application of the laws regulating land disputes (see: **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi**, Misc. Land Appeal Case No. 111 of 2021; and **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017).

Having said so, any of the parties who still interested in the dispute may prefer fresh and proper course in accordance to current laws regulating land disputes. I order no costs in the present appeal as learned minds in Mr. Waikama and Mwambosya cooperated at arriving to the justice of the parties as good officers of this court. I appreciate their understanding in laws regulating land matters and interpretation of what transpired in the tribunal in the application. They both cherished section 66 of the Advocates Act [Cap. 341 R.E. 2019].

Accordingly ordered.





F. H. Mtulya

Judge

02.08.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Rajabu M. Agostino and his learned counsel, Mr. Christopher Waikama and in the presence of the respondents' learned counsel, Ms. Tupage Anna Mwambosya.



F. H. Mtulya

Judge

02.08.2022