IN THE HIGH2 COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT COURT OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 14 OF 2021

(C/F Land Application No. 113 of 2019, District Land and Housing Tribunal of Arusha at Arusha)

AMANI KARAINEI.....1ST APPELLANT

LAZARO KARAINEI.....2ND APPPELLANT

PAMELA JACKSON .....3RD APPELLANT

NGIVUNYONI KARAINEI.....4TH APPELLANT

VERSUS

BETUEL LENGIYEU.....1ST RESPONDENT

LUMALIZA INVESTMENT AND AUCTION MART.....2ND RESPONDENT

JUDGMENT

25/11/2021 & 28/02/2022

GWAE, J

This appeal is aimed at challenging the order of Arusha District Land and Housing Tribunal of Arusha at Arusha (trial tribunal) dated 16th February 2021 striking the appellants' application with costs. Initially, the tribunal, through its ruling wrongly dated 24th June 2020 instead of 25th June 2020, overruled the 1st respondent's preliminary objection however it rightly

expunged the appellants' application form filed in the tribunal and directed that, the appellants to file a fresh application form in the prescribed format within seven days from the date of the delivery of the ruling.

In the impugned ruling, the learned tribunal chairperson held that, a proper course or an order to sensibly make against the appellants' defective application form for the 2nd time was to strike out the appellants' application on the ground that they had repeated the same mistake.

Aggrieved by the decision of the trial tribunal, the appellants have filed this appeal with a total of five grounds of appeal to wit;

1. That, the trial tribunal erred in law and fact for dismissing the applicant's sic) application on the technical ground which did not prejudice the respondents
2. That, the trial tribunal erred in law and fact for dismissing the appellants' application while the case was not heard on
3. That, the trial tribunal erred in law and fact for dismissing the appellants' application on the technical ground while the remedy was to struck (Sic) out the applicant or to make amendment

4. That, the trial tribunal erred in law and fact for giving which hinders the appellants to access justice through the court process
5. That, the trial tribunal erred in law and fact for dismissing the appellants' application while knowing that the appellants have been affected by the order of the tribunal while they were not part to both judgment and execution order of the tribunal

On the 21st October 2021 the parties who are laypersons sought and obtained leave to dispose this appeal by way of written submission. In his submission the appellants merely reiterated what is contained in their joint memorandum of appeal that the trial tribunal wrongly dismissed their application. Thus, denying them an access to justice.

The appellants then bolstered their joint submission by citing a decision of the Court of Appeal in **National Insurance (T) Ltd vs. Shengena Limited,** Civil Application No. 230 of 2015 (unreported) where the term dismissal and striking were interpreted to mean and I quote;

> "For those matters, we wish to remind the learned judges that orders of dismissal and striking out a matter have

different legal consequences. As rightly submitted by the applicant, while the former order (dismissal) presupposes that, the matter has been heard on the matter and finally determined hampers the appellant from pursuing the same matter before the court"

On the other hand, the 1st respondent argued that, the appellants are misleading the court as the application was not dismissed but struck out after they had failed to comply with the order dated 25th June 2020. He further submitted that, the tribunal rightly exercised its discretion to strike out the application since the appellant failed to assist the trial tribunal to further the overriding objective and their failure to comply with directions and order of the tribunal. He then urged this court to make a reference to the case of **Erick Raymond Rowberg and two others vs. Elisa and another**, Civil Application No. 571 of 2017 (unreported) delivered on the 6th December 2019.

In determining this appeal, it is appropriate if parts of the impugned order impugned order are reproduced herein under;

"Endapo maombi haya yatatupiliwa mbali nadhani hii itawanyima waleta maombi fursa ya kuleta tena madai yao kwennye vyombo vya sheria. Kasoro ilibainishwa si ya kutupeleka huko. Ingeweza

kurekebishwa kwa kuamuru iletwe hati ya maombi nyingine iliyo sahihi. Lakini sitoweza kuamuru hivyo kwa sababu hii ni mara ya pili kasoro ya aina hiyo hiyo imejitokeza.

Kwa kuhitimisha na kwa sababu zilizoelezwa natamka kwamba maombi haya yamefutwa na mjibu maombi namba 1 anastahili kurejeshewa gharama zake"

From the above excerpt, it is plainly clear that, the learned tribunal chairperson did strike out the appellants' application as correctly submitted by the 1st respondent. Thus, the appellants' assertions are unfounded and baseless since the trial tribunal warned itself for the danger or prejudice for making a dismissal order on the ground that the application before it, is incompetent or defective. The learned chairperson went on holding that, if the appellants' application was dismissed the appellants could not have an opportunity of pursuing their case and he thought that it was not fair to order re-filing of the application form as the error has been committed twice.

I am alive of the principle that when a matter is incompetent before a court of law, a proper order to make is an order striking out an application or appeal or petition rather than an order dismission the same. Dismissal order is usually made by courts in various scenarios for instance;

i. When a matter is heard on merit and finally determined and a court of law finds that the matter before it lacks merit. A remedy is to appeal to a higher court

ii. When a matter is filed out of time where law applicable is the Law of Limitation, Cap 89 Revised Edition, 2019 is applicable (See section 3 (1) of the Act. The remedy is to appeal

iii. When a party especially plaintiff or applicant or petitioner or appellant does not enter his appearance on a date (s) fixed for hearing, remedy for an aggrieved party is to make an application for restoration (See MCA &CPC)

Being guided by the decision of the highest court of the land in **National Insurance (T) Ltd vs. Shengena Limited** (supra) and **Ngoni Matengo Cooperative Marketing Union Ltd vs Alimahomed Osman** (1959) EA 577, had the trial tribunal ordered dismissal of the application the appellants would have been denied their right to re-file the dispute but as the ruling of the tribunal is clear to the effect that the application was struck out according, I therefore not need to be detained determining this appeal. as this appeal is nothing but a total misdirection or misapprehension of the essence of the final order of the trial tribunal on the part of the appellants.

Perhaps use of Swahili language in the term "yatatupiliwa mbali", which in my understanding symbolizes, dismissal whereas the word "y**amefutwa**" connotes that, the application was struck out, might have contributed to the filling of unfounded appeal to the appellants' misapprehension of the basis of the decision of the Commission.

Furthermore, I am of the considered view, that the trial tribunal gave a well-reasoned ruling that it was improper for it to order an amendment or refiling of the application form in the prescribed format since its earlier order was not complied with.

In the final event and for the foregoing reasons, this appeal is devoid of merit, the same is dismissed entirely. The 1st respondents shall have his costs of this appeal borne by the appellants

It is so ordered.

M. R. GWAE
JUDGE
28/02/2022