IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND APPEAL NO. 21 OF 2021

(Originating from Misc. Land Application No. 30/2019 of the District Land and Housing Tribunal for Dodoma at Dodoma, and Land Case No. 12/2017 of Muungano Ward Tribunal)

CHARLES MATONYA ..... 1ST APPELLANT

MELEYA MATONYA ..... 2ND APPELANT

VERSUS

MAKSON LUNGWA.....RESPONDENT

JUDGMENT

15/8/2022 & 20/10/2022

KAGOMBA, J

The appellants, CHARLES MATONYA and MELEYA MATONYA, being aggrieved by the decision of the District Land and Housing Tribunal for Dodoma at Dodoma (henceforth "the Tribunal") which dismissed their Misc. Land Application No. 249 of 2019 filed at the Tribunal for setting aside the dismissal order of the Tribunal in their Land Appeal No. 222 of 2019 have filed this Appeal, seeking intervention of this Court so that eventually their

Land Appeal, which was earlier dismissed for want of prosecution, can be restored and determined on merit.

The background of this Appeal is very simple to grasp. Sometimes in 2017 the appellants filed Land Appeal No. 222 of 2017 at the Tribunal against MAKSON LUNGWA (Henceforth "the respondent") opposing the decision of Muungano Ward Tribunal, which was made in favour of the respondent. On 8/1/2019 when the appeal came for hearing at the Tribunal, the appellants didn't enter appearance. The Tribunal decided to dismiss the Appeal for want of prosecution, on the same date.

Keen to have their appeal determined on merits, the appellants filed Misc. Land Application No. 30 of 2019 praying the Tribunal to set aside its dismissal order dated 8/1/2019 stating, *inter alia*, that they were bereaved and had attended the burial of their relative one Janas Mwitaa, a brother -in -law to the 1st appellant. The Tribunal refused to set aside the dismissal order for a reason that the appellants failed to show sufficient cause for so doing in terms of regulation 11(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations of 2003.

The Tribunal found the said reason insufficient because the appellants failed to state the exact date when they were in Dar es Salaam attending the said funeral and the date on which they were in Mzula Village where the burial took place. The Tribunal further stated that the burial permit, which the appellants had annexed to their application for restoration of their appeal, did not show that the appellants and the deceased were relatives. It is this decision which has triggered this current appeal, founded on the following three grounds:

1) That, the Honourable Chairman erred in law and fact for dismissing the Misc. Land Application No. 30 of 2019 without considering the reasons adduced by the appellants therein.

2) That, That, the Honourable Chairman erred in law and fact for dismissing the Misc. Land Application without considering the strong evidence adduced by the appellants therein.

3) That, the Honourable Chairman erred in law and fact for dismissing the Application by considering weak and wrong evidence adduced by the respondent herein.

On the date of hearing of the appeal, Mr. Moses Masami, learned advocate appeared for the appellants, while the respondent appeared himself, unrepresented.

In his submission in chief, in respect of the first and second grounds of appeal submitted jointly, Mr. Masami retold this court the reasons given by the appellants for their absence as stated above and that they attached a burial permit receipt of which was acknowledged by the Tribunal. It was Mr. Masami's argument that funerals are part of our societal life, and that each person has his own way and extent to which he is touched by the demise of a person close to him. He implored this court to find that their inability to attend the hearing of their appeal was not intentional, and that the reasons adduced by his clients were sufficient. He argued that the reasons adduced ought to be given due weight by the Tribunal so as to give the appellants another chance to prosecute their appeal for the sake of justice.

On the third ground of appeal, Mr. Masami was of the view that, the Tribunal misdirected itself on the issue of legality of the relationship between the deceased and the appellants. He said, if that argument was important,

it could have led the Tribunal to order DNA test, a matter that would be outside its jurisdiction. According to him, the main issue before the Tribunal was whether the reasons adduced by the appellants were sufficient and not to question the biological relationship between the 1st appellant and the deceased.

Mr. Masami argued since it was the appellants who filed the appeal that was dismissed, it would have been a wastage of time for them to shy away from their own appeal deliberately. He said, given their age, the appellants had no reason to lie to the Tribunal about the relationship between the 1st appellant and the deceased, and that they couldn't be allowed by the deceased's family to take the burial permit as a proof to the Tribunal. He submitted that it was for those reasons the appellants believed their evidence was not considered by the Tribunal. Thus, he prayed this court to allow the appeal, quash the decision of the Tribunal and order the Appeal No. 222 of 2017 to be heard on merits.

Mr. Makson Lungwa, the respondent, opposed the appeal. He firstly conceded that the deceased was appellants' relative. He however hastened

to add that the death occurred in Dar es Salam and the date of hearing of the appeal was about five (5) days before the body of the deceased was brought to Mzula Village in Dodoma for burial. He argued that, under such circumstances, the appellant could have appeared before the Tribunal for the scheduled hearing on 8/1/2019.

In his further submissions, the respondent revealed that the appellants were his relatives and he was willing to have the dispute settled amicably. He added that the appellants have no any evidence to support their case. For these reasons he opposed the appeal.

Mr. Masami rejoined by stating firstly that the argument that there were five (5) days before the body of the deceased was brought for burial from the date of hearing, was a new matter. He added that the reason for opposing the Land Application No. 30 of 2019, which was given by the respondent, as per Tribunal's Ruling, was that the deceased was not a relative of the appellant. With the respondent conceding that the deceased was a relative of the appellants, Mr. Masami argued that the appellants had therefore adduced a good cause. He wound up his submission by imploring the court to disregard the newly introduced argument, and prayed the court

for its mercy so that the appellants would be given another chance for their appeal to be heard on merit.

In determining this appeal, there are two established principles of the law which I shall endeavor to observe. Firstly, it is an established principle of law that each case must be decided on its own facts and attending circumstances. (See **Athumani Rashid vs. Republic** (Criminal Appeal 110 of 2012) [2012] TZCA 143 (25 June 2012). As such, the peculiar facts of this case shall be duly considered.

Secondly; matters not raised in the lower tribunals shall not be entertained at this stage. This is in line with the decision of the Court of Appeal in **Gandy v. Gaspar Air Charters Ltd.** (1956) 23 EACA 139; and **James Funke Gwagilo v. Attorney General** (CAT) Civil Appeal No. 67 of 2001 (unreported).

Having heard the submissions by both parties and after a careful perusal of the proceedings, it is apparent that the argument that the hearing was held five (5) days before the deceased's body was sent to Mzula for burial, as raised by the respondent, is a new argument that was not raised

in the Tribunal. I shall therefore not labour on the said newly introduced argument and I accordingly disregard it.

I consider, however, that the respondent has conceded to two facts. Firstly, the deceased was a relative of the appellants. Secondly, on the date of the hearing of the appeal, that is on 8/1/2019, the appellants were bereaved.

The above said, I think the issue to be determined by this court is whether the application has merit. Determination of this issue shall not detain me. It is not disputed that the appellants failed to appear before the Tribunal on 8/1/2019 when their appeal was set for hearing. It is for this reason the Tribunal dismissed the appeal for which the appellant invoked the mechanism under regulation 11(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 (GN No. 174 of 2003) to have their appeal restored.

The reasons given by the Tribunal for refusing to restore the appeal have been concisely stated in the background of this case herein above. Briefly and generally, the Tribunal found that the demise of the brother-in-

law of the 1st appellant was not sufficient reason for the appellants not showing up for hearing. Apparently, the Tribunal didn't state if it had reasons to suspect that the non-appearance was intentional. As correctly argued by Mr. Masami, it was the appellants who filed the appeal. As such, it should have been for ulterior motive that they would intentionally make no show.

When framing issues for determination, the Tribunal used the words "strong reasons", which it wanted the appellants to show if their appeal was to be restored. It kept using such words in some other paragraphs of its Judgement. Probably it was with the sense of a need for "strong reason" to be shown, as opposed to "sufficient or reasonable cause", which made the Tribunal find that attending the funeral of a brother-in-law wasn't reasonable or sufficient cause the appellants' non-appearance. I respectfully differ with the position taken by the Tribunal in this regard. According to the records, the appellants were entering appearance regularly in pursuit of their appeal, and there were no complaints of their previous deliberate non-appearance before the fateful date when the appeal was dismissed. These were relevant facts for consideration by the Tribunal but were not considered.

I stated earlier that each case has to be decided according to its own set of facts and obtaining circumstances. Another fact which the Tribunal didn't duly consider is the evidence of a burial permit, which the appellants submitted to exhibit their bereavement. I agree with Mr. Masami that we are living in a society where funerals are part and parcel of societal life. I also agree that human beings are touched differently by deaths of their loved ones, for different reasons. If all these were duly considered, the Tribunal would have found that the appellants couldn't take the trouble of producing the burial permit if they had not been bereaved, and importantly, if they had no genuine interest in pursuing their appeal, upon being given another chance. Such were the facts and circumstances obtaining in this case. The Court of Appeal in **Valerie McGivern v. Salim Fakhrudin**, Civil Application No. 11 of 2015, CAT, at Tanga, had this to say:

> *"The law is settled...that no particular reason or reasons have been set out as standard sufficient reasons. What constitutes good cause cannot therefore be laid down by hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case."*

Since the Tribunal didn't give due regard to the relevant facts and circumstances of the case as stated above, I find merit in the first and second grounds of appeal, which sufficiently dispose this matter. I accordingly, allow the appeal, quash the Ruling and Order of the Tribunal delivered on 18/9/2019. I hereby Order that the Land Appeal No. 222 of 2019 between the parties herein be restored for expedient determination on its merits, inter parties. As the parties are relatives, I make no order as to costs.

Dated at **Dodoma** this 20th day of October, 2022.

ABDI S. KAGOMBA

JUDGE