

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA

LAND APPEAL NO. 82 OF 2021

*(Arising from Ruling in Misc. Land Application No. 22 of 2021 in the District Land and
Housing Tribunal for Mara at Musoma)*

BETWEEN

MASHAKA KIPILI KISULUMO..... APPELLANT

VERSUS

FINCA MICROFINANCE BANK LIMITED..... RESPONDENT

JUDGMENT

25 & 31st October, 2022.

M. L. KOMBA, J.:

Appellant and respondent had a land application No. 12 of 2020 at the District Land and Housing Tribunal of Musoma at Musoma (the Tribunal), as applicant and respondent respectively. Attendance of parties in the Tribunal was in question serve as the Advocate for the respondent, in some incidences, appeared and the Tribunal, according to record, on 27th January, 2021 dismissed the application for want of prosecution.

Being dissatisfied by that dismissal order, counsel for the applicant filed the application for restoration of the same where he did not parade reasonable reasons warranting restoration. The tribunal noted that the reasons forwarded had no evidence that on the hearing date the learned counsel had

been invited for law week activities without mentioning at which office the invitation originated.

Aggrieved by that decision (Application No. 22 of 2021), the appellant through petition of appeal had two grounds challenging the dismissal order of the application for restoration namely:

1. That, the Honorable chairperson erred in law and fact in relying on the record which is not in the Tribunal/Court to dismiss the appellant's application.

2. That, the honorable chairperson erred in law and fact in failing to consider that when the judiciary of the United Republic of Tanzania declares certain days to be a week for provision of legal services and Education to the General Public the same affects the normal functions in all courts and Tribunal in the United Republic of Tanzania owing to the fact that during that week all Court Stake Holders are required to participate in provision of legal services and Education to the General Public.

At the hearing of this appeal, the appellant was represented by Ms. Suzana Jacobo and respondent enjoyed the service of Ms. Anna Mwambosya both learned sisters.

Ms. Suzana while abandon the second ground she submitted on the first ground that the Chairman of the Tribunal misdirected himself by saying that the appellant and his advocate never showed up in the tribunal to prosecute his case while it is only one day where they failed to appear and the reason was communicated. Relying on the decision in **Mazera Makongoro Mahegu vs. Finca and another**, Land Appeal No. 114/2021 (unreported) HC Musoma, she said the only missing day was that of dismissal order.

On the other side Ms. Anna said the decision of the Tribunal was right because the matter was dismissed under Regulation 11(1) (b) of Land Disputes Courts (District Land and Housing Tribunal) GN. No. 174 of 2003, which is to the effect that non-appearance of the applicant amount to dismissal of application. She said, it was not the first day appellant fail to appear, every day the appellant fails to appear without any reason. The case was for appellant and not for the advocate and cited the case of **Maduhu Thomas Lauga vs. NBC and another** Misc. Land Application No. 22/2022 HC Shinyanga, where Mkwizu J. decided that the applicant must furnish sufficient reasons.

After hearing both counsel, the issue is whether the reasons by the chairman of the Tribunal in dismissing the said application were justified as per the tribunal records.

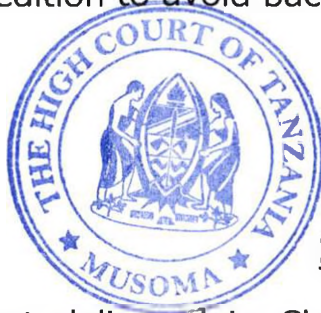
Whereas I agree that the application for the restoration lacked sufficient proof of the alleged issues by the learned counsel, with due respect I differ with the Chairman of the Tribunal on reasons of dismissing the said Land Application No. 12 of 2020 on 27/01/2021. My perusal to the Tribunal record establishes that the matter was called ten times from 21 January 2020 up to 27th January 2021, in almost all the time the counsel for the appellant did make appearance all times except on 6th February 2020 where both sides were absent contrary to counsel for the respondent who did not appear four times. This can be verified from the proceedings on, 21/01/2020, 27/01/2020, 6/2/2020, 6/03/2020, 4/04/2020, 27/05/2020, 3/7/2020, 8/09/2020, 25/11/2020 and 27/01/2021. Apart from one identified date the other date where appellant was missing is that of the dismissal order, that is, 27/01/2021. Upon further perusal of records of the Tribunal, I found this at page 2;

'...ni kutokana na mleta maombi kushindwa kufika Mahakamani tangu mwaka 2020 ilipekelea Baraza hili kufuta maombi yake. Mnamo tarehe 27 Januari, 2021.....sasa kama mleta maombi alitelekeza maombi yake baraza halina nafuu nyingine isipokuwa kuondoa kesi hiyo...'

From that record, as explain earlier the appellant appeared most of the time compered to the respondent and appellant did not abandon his application as adduced by the chairman.

I am aware and agree with Ms. Anna that according to Regulation 11 (1) (b) of GN 174 of 2003, non- appearance of a party on a date set for hearing attracts the dismissal. Nevertheless, for the interest of justice and bearing in mind the in considering the fact that it was only one day miss, contrary to what had been said by the Hon. Chairman, the case should be heard on merit.

On the upshot, the appeal is allowed. The dismissal order is hereby set aside. I order that let the matter proceed with the hearing from where it ended with expedition to avoid backlog. No order as to costs.




M. L. KOMBA

JUDGE

31 October, 2022

Judgement delivered in Chambers this 31th day of October, 2022 while advocates for both parties were remotely connected via teleconference.


M. L. KOMBA

JUDGE

31 October, 2022