

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 114 OF 2021

*(Arising from the Ruling of the District Land and Housing Tribunal for Mara at
Musoma in Misc. Land Application No 21 of 2021)*

MAZERA MAKONGORO MAHEGU APPELLANT

VERSUS

FINCA MICROFINANCE BANK LIMITED 1ST RESPONDENT

CHAMPION AUCTION MART 2ND RESPONDENT

JUDGMENT

15 & 15th Mar, 2022

F. H. MAHIMBALI, J.:

At the DLHT of Musoma, there was pending Land Application No 145 of 2019 in which the appellant was the Applicant against the respondent.

According to DLHT's record, on 27th January, 2021 the case was dismissed by the DLHT (Trial Tribunal) for want of prosecution. The dismissal was with costs.

The dismissal order prompted the application's counsel on 29th January 2021 to file a application seeking restoration of the dismissed case.

Upon hearing of that application, the learned chairperson of DLHT dismissed the application on two grounds: one. that the parties in the main case were not in active attendance. Two, that even the restoration application lacked sufficient reasons and proof of the alleged excuse that the learned counsel had been invited for law week activities without mentioning at which office level (High Court or Bunda District court). Aggrieved by that decision, the appellant has advanced two grounds in his appeal against the dismissal order of the application for restoration namely:

- 1) That, the Honourable 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 honourable 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.*

During the hearing of the application, the appellant was represented by Mr. Emmanuel Paul Mang'arwe learned advocate whereas Mr. Steven Kaswahili represented the respondent.

The vital question to be posed is whether, the reasons by the DLHT in dismissing the said application were justified as per DLHT records.

Whereas I agree that the application for the restoration lacked sufficient proof of the alleged issues by the learned counsel, I differ with the learned chairperson of DLHT on reasons of dismissing the said Land Application No 145 of 2019 on the said 27/01/2019. That there was no any attendance by the parties at the DLHT in Land Application No 145 of 2019 is not justified. My perusal to the DLHT's record establishes that almost all the time the counsel for the appellant had been in active attendance (see proceedings on 11/10/2019, 23/12/2019, 2/3/2020, 21/4/2020, 2/6/2020, 1/7/2020, 7/8/2020, 1/10/2020, 26/10/2020, 25/11/2020). The only missing date is that of the dismissal order i.e 27/01/2021.

According to Law, Regulation No 11 (1) b of GN 174 of 2003, regulations for the conduct DLHT, non – appearance of a party on a date set for hearing attracts to dismissal order as rightly done.

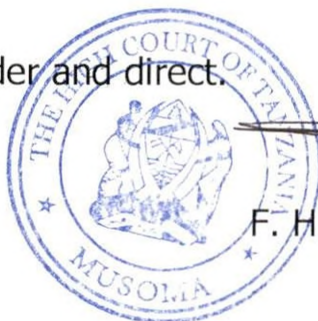
In fact, I agree with Mr. Steven Kaswahili that Regulation 13 (2) of GN 174 of 2003 is only applicable where the counsel for applicant or respondent appears to the Higher Court (CAT or High Court). For that

notice to be effective there must be proof of the same. In the instant matter, the argument that the learned counsel for the appellant was in law week activities is want of proof either. It is not automatic that whenever law week comes, then every advocate is duty assigned at law week activities. For that to make sense, there ought to have been proof of that engagement and participation as alleged.

Nevertheless, for the interest of justice and considering the fact that it was only a one day miss, contrary to what had been said by the Hon. chairperson, the appeal is for that matter allowed. The dismissal order is hereby set aside. In its place, I order that let the matter proceed with the hearing from where it ended with expedition taking into account that it is a 2019 case, thus backlog.

In the circumstance as of this case, each party shall bear its own costs.

I so order and direct.



F. H. Mahimbali,

Judge

15.03.2022