

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND APPEAL NO. 176 OF 2021

(Originating from the Judgement of Land Dispute No. 179 delivered by the District Land and Housing Tribunal of Kilombero at Ifakara)

MUSSA SAIDD NZALLA.....APPLICANT

VERSUS

LUISA MNGUNGA.....RESPONDENT

JUGDEMENT

Hearing date on: 01/04/2022

Judgment on: 06/05/2022

NGWEMBE, J:

Mussa saidd Nzalla and Lusua Mnunga are in serious loggerhead in the corridors of law in respect to a piece of land situated at Lihami Street, Lipangalala Ward within Ifakara township in Kilombero District. The gist of the dispute is the allegations of trespass over a piece of land measuring 67m X 50m. The one who alleged to trespass is the appellant herein.

According to the available records, it is alleged that the appellant refused to receive summons to appeal before the District Land Tribunal, hence the suit proceeded exparte against him. The Respondent proceeded to prove ownership of the suit land. At the end the trial Tribunal proceeded to order *"the respondent to yield vacant possession*

of the same or and be forcefully evicted. The structure or house built by the respondent thereon to be demolished accordingly”

Following that *ex parte* judgement, the appellant on 28/10/2019 was summoned before the District Land and Housing Tribunal for execution of that *ex parte* judgement.

Being so decided and after being late to file application to set aside that *ex parte* judgement, the appellant rightly lodged an application No. 179 of 2020 to the same District Land Tribunal for extension of time. Unfortunate may be to the appellant, his application for extension of time was ceremoniously dismissed for failure to disclose good cause for such long delay. Therefore, the *ex parte* judgement and decree remained valid and kicking. Aggrieved again with that Tribunal’s ruling, the appellant found his way to this fountain of justice armed with three grounds, quoted verbatim hereunder:-

- 1. That the Chairman erred both in law and fact in evaluating the evidence and subsequently reached a conclusion to the effect that the appellant was not shown a sufficient cause for the delay to file the application for setting aside *ex parte* order;*
- 2. The Chairman grossly erred in law and in fact by not considering the fact that the appellant was never served with any summons the fact which diminish the legality of the *ex parte* judgement in which, by itself constitutes a good cause to extension of time; and*



3. *That the Chairman grossly erred in law and in fact by not appreciating the fact pursuing the right in a wrong legal forum constituted a good cause for extension of time.*

In the same trend, the respondent never appeared in this appeal, until on the date of hearing, which the court could no longer continue adjourning the appeal waiting for a respondent who is unlikely to appeal. As such, and after several adjournments, the court found prudent to proceed with hearing of the appeal *ex parte*.

Having so ordered to proceed *ex parte*, yet the appellant being unrepresented, and may be had no knowledge on the content of his appeal, he ended up adopting his grounds of appeal, accompanied with a prayer that this court may quash the whole decision and findings of the District Land and Housing Tribunal for Kilombero/Ulanga, and grant the appellant extension of time to file an application to set aside the *ex parte* judgement and decree with costs.

Perusing the grounds of appeal, specifically on the second ground, the appellant alleges illegality made by the District Land and Housing Tribunal for Kilombero/Ulanga in the application No. 31 of 2019. The memorandum of appeal alleges that, the appellant was never served with any summons to appear in any Tribunal or Court. As such the decision of the Tribunal was arrived either by false representation of the respondent herein, or with intent to mislead the Tribunal, the respondent misinformed it. Since the appellant had no information on the existence of such land dispute, diminishes the legality of such *ex parte* judgement.



Insisted in his grounds of appeal and in the records at trial that, the appellant was neither summoned nor heard before the District Land and Housing Tribunal for Kilombero/Ulanga. That application No. 31 of 2019 proceeded without his knowledge. In such circumstances, the question is whether the appellant was summoned or informed about the existence of land dispute against him? If not, it means he was denied the fundamental right to be heard.

Perusing closely on the judgement of the Tribunal in application No 31 of 2019, the Chairman recorded on the first page of his judgement that:-

"The respondent was reported to have escaped or refused service hence the order of ex parte hearing"

Such reasoning creates more questions than answers, for instance one may ask who reported that the appellant refused service of summons? Also, how can a person escape and at the same time refuse service? Obvious he cannot do both, escaping and refusing service at the same time. Usually, proof of service is through an affidavit by the process server to whoever served him.

Since the introduction of basic rights in our country, specifically in our Constitution and in fact this court and the Court of last instance (Court of Appeal), have pronounced several decisions on the right to be heard. Unless it is so clear and evident that, a party does not intend to appear in court and defend or prosecute his case, the consequences therein is statutory. In the case of **Abbas Sherally and Another Vs. Abdul Fazalboy and another, Civil Application No. 33 of 2002 (H.C unreported)** the Court held:-

"The right of a party to be heard before adverse action or decision is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic, a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice"

I fully subscribe to the reasoning in the above quoted decision because that is the legal position and no one shall depart from it. Since the decision of the District Land Tribunal lacks authenticity of service to the appellant, such alone is a good cause sufficient to invoke my discretionary powers to extend time to the appellant to actualize his intention.

Having so said and done, and for the foregoing reasons, the second ground alone concludes this appeal. Hence, I find merit on this appeal, thus proceed to quash the decision of the District Land and Housing Tribunal for Kilombero/Ulangu, which dismissed his application for extension of time, and proceed to grant extensions of time to lodge an application to set aside the exparte decision reached in Land application No. 31 of 2019. Consequently, the appellant is granted 20 days to lodge his application to the Tribunal to set aside its exparte judgement. No order as to costs.

I accordingly Order

Judgement delivered in chambers this 6th day of May, 2022



P.J. NGWEMBE

JUDGE

06/5/2022

Court: Delivered at Morogoro in Chambers on this 6th day of May, 2022
in the presence of the applicant and in the absence of the respondent.

Right to appeal to the Court of Appeal explained.



A handwritten signature in blue ink, appearing to be "P.J. Ngwembe", is written over the text of the judge's name.

P.J. NGWEMBE

JUDGE

06/05/2022