

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(IN THE DISTRICT REGISTRY OF MUSOMA)
AT MUSOMA

LAND APPEAL CASE No. 35 OF 2022

(Arising from the District Land and Housing Tribunal for Mara at Tarime in Misc. Land Application No. 194 of 2021; Misc. Land Application No. 94 of 2021; and Land Application No. 33 of 2020)

ERNEST OJODE AMUOM APPELLANT

Versus

EZEKIEL MOSSO NELSON DEFENDANT

JUDGMENT

24.02.2023 & 28.02.2023

Mtulya, J.:

The **District Land and Housing Tribunal for Mara at Tarime** (the tribunal) in **Misc. Land Application No. 194 of 2021** (the dispute) on 17th November 2021 was invited to determine a leave for enlargement of time for **Mr. Ernest Ojode Amoum** (the appellant) to file an application for setting aside *ex-parte* decision of the tribunal in **Application No. 33 of 2020** (the application) delivered on 9th April 2021. After registration of all relevant materials for and against the dispute, the tribunal on 6th May 2022, had decided against the appellant.

The reasoning of the tribunal in the dispute is found at page 2 of the decision that: *mleta maombi alikataa wito wa kuhudhuria mahakamani kwenye Shauri Namba 33 la Mwaka*

2020. During the hearing of the dispute, the appellant had invited the services of learned counsel **Mr. Samson Samo**, who complained for summons of hearing and summons for date of delivery of the decision in the application. His grievances are displayed on the materials registered at page 5 and 7 of the typed proceedings in the application conducted on 4th March 2022.

Following the decision of the tribunal in the dispute, Mr. Samo for the appellant rushed to this court complaining that the tribunal did not reply a vital question on summons for hearing and judgment date. In his opinion, that was relevant materials as summons are distinguished in three stages of mention, hearing and judgment date.

In order to bolster his submission, Mr. Samo cited authorities enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) on the right to be and Regulation 11 (1) (c) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) on summons for hearing date. Mr. Samo also cited precedents in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251, **Chahusiku Athumani v. Atuganyile**

Mwaitege, Civil Appeal No. 122 of 2007 and **Cosmas Construction Company Limited v. Arrow Garments Limited** [1997] TLR 127 regarding the interpretation of the right to be heard and summons for hearing respectively. Finally, Mr. Samo prayed the appeal be allowed, decision of the tribunal in the dispute be quashed and this court order the tribunal to compose a decision that will resolve the issue of summons of hearing and judgment date.

On the other hand, **Mr. Ezekiel Mosso Nelson** (the respondent), being a lay person, had decided to hire legal services of **Mr. Wambura Kisika**, learned counsel, to contest the submission and related authorities. Mr. Kisika in his brief reply contended that: first, Mr. Samo has submitted materials related to the application, instead of the dispute; second, application for enlargement of time requires applicant to produce relevant materials on the reasons of delay; third, citation of authorities in article 13 (6) (a) of the Constitution and Regulation 11 (1) (c) of the Regulations were wrongly invited in the dispute; fourth, Execution of the application has already been completed since 20th December 2021 and no possibility of any other order to be produced in the application; and finally, litigations must have an end and this dispute has already completed to its finality.

In order to move this court to decide in favour of the respondent, Mr. Kisika cited the authorities in **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2017 on reasons for enlargement of time and **Felix Emmanuel Mkongwa v. Andrew Kimunga**, Civil Application No. 249 of 2016 on disputes which have been taken by event. However, when Mr. Kisika was prompted by this court on undetermined issue in the record of the tribunal regarding the complained summons of hearing and judgment date, and appropriate available remedies, he conceded the argument on the subject. According to him, there was a fault in conversations of summons of hearing which remained undetermined by the tribunal and proper remedy is to order the tribunal to determine it according to the law. However, Mr. Kisika contended further that the tribunal has no mandate to re-open a dead file in the application as the execution has already taken its course.

Scanning the record and submissions produced by the two learned minds, it is obvious that the learned chairman of the tribunal had declined to determine the issue of summons of hearing and judgment date as required by the law. This court has said in a multiple of precedents that its jurisdiction on appeal is to consider and resolve matters that have been considered

and decided upon by lower courts or tribunals (see: **Nyamatemo Frugence v. Hekwe Kitang'ita**, Misc. Land Appeal Case No. 117 of 2021; **Manyonyi Weswa v. Malibha Njoya**, Misc. Land Appeal Case No. 34 of 2022; and **Simion Nehemia & Another v. Erasto Nehemia**, (PC) Civil Appeal Case No. 66 of 2022).

The thinking of this court on the subject is borrowed from the directives of our superior court, the Court of Appeal, in the precedent of **Alnoor Sharif Jamal v. Bahadur Ebrahim Shamji**, Civil Appeal No. 25 of 2006, which was settled in **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi**, Civil Appeal No. 98 of 2018. This court cannot either alter or produce interpolations in the present appeal, even if there may be good reasons registered in favour or against the appeal at this stage.

In my considered opinion and for interest of justice to the parties, I think the decision of the tribunal in the dispute has to be suppressed in favour of proper decision of the tribunal. This is a court of law and justice and has additional powers of ensuring proper application of laws by courts and tribunals below. It cannot close its eyes when it sees vivid error material to the merit of the dispute which had caused injustice to the parties.

Having said so, and noting the error occurred only in drafting of the judgment, and being aware of the indicated

precedents, I am moved to quash the decision of the tribunal as I hereby do so. I further invoke the provision of section 43 (1) (b) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** and hereby remit the record of the dispute to the tribunal and order the tribunal to compose fresh and proper Ruling that shall compose all necessary materials registered by the parties in the dispute. The tribunal should do so within sixty (60) days from the date of this Judgment, without any further delay. I order no costs in the present appeal as the wrong was committed by the tribunal in declining to reply the complained issue of the indicated summons.



Ordered accordingly.


F. H. Mtulya

Judge

28.02.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of **Mr. Samson Samo**, learned counsel for the appellant and in the presence of the respondent, **Mr. Ezekiel Mosso Nelson**, and his learned counsel **Mr. Wambura Kisika**, through teleconference attached in this court.


F. H. Mtulya

Judge

28.02.2023