

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 23 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Babati in Land Application No. 14 of 2020)

MLALE SOQWEDA.....APPLICANT

VERSUS

MARTHA GICHUALRESPONDENT

Date of last order: 20/2/2023

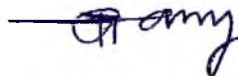
Date of Ruling: 14/3/2023

JUDGMENT

BARTHY, J.

The above-named appellant aggrieved with the decision District Land and Housing Tribunal of Babati (to be referred to as the trial tribunal), dated 16th December, 2022 he filed his appeal before this court advancing five grounds as follows;

- 1. The chairman who presided the trial tribunal erred in law by his intentional conduct of proceeding to determine the matter which is purely a res judicata.*
- 2. The chairman who presided the trial tribunal erred in law and fact by his failure to observe the procedures whereof he ended up with the proceedings which tainted with irregularities and biasness.*



3. *The chairman who presided the trial tribunal erred in law and fact by illegally refusing to take judicial notice of the existence of judgment of Land Dispute No. 7/1977 between the appellant and respondent, before by then zonal customary land tribunal.*
4. *The chairman who presided the trial tribunal erred in law and fact for his failure to go for locus in quo for the parties are at issue on territorial location of farmland, to say it whether the land is located at Gituan was village or Basuto village or Endamudayga village at it Hamlet/ kitongoji of Daudi in the purported village.*
5. *The chairman who presided the trial tribunal erred in law and fact by failing to analyze the evidence of the appellant hence thus reached into unjust decision.*

The applicant therefore prayed for the declaration that the matter is *res-judicata*, to quash and set aside the proceedings, judgement and decree of the trial tribunal, costs of the suit plus any other relief this court may deem fit and just to grant.

The background of this matter, albeit brief for purposes of appreciating this appeal as gathered from the records of the trial tribunal are such that;

The respondent herein sued before the trial tribunal for trespass by the appellant herein on her purported 25 acres of land situated at Daudi sub-village, Endamudayga village, Bassotu ward of Hanang district within Manyara region.



Where the respondent had claimed to have been on uninterrupted possession of land since 1960's after she and her deceased husband had cleared the virgin land and continued to use it ever since.

The evidence adduced before the trial tribunal reveal that, the respondent claimed to have invited the appellant as his house help and they started cultivating together on the suit land. Then the appellant claimed the land to belong to him. During the hearing, the respondent called witnesses who testified in her favour.

The appellant on the other hand claimed to have been allocated the suit land with the village council on 20/9/1990 after making an application. He claimed to have been allocated 20 acres farm land and 5 acres of land for household construction.

The appellant claimed they had the same dispute before the ward tribunal and district land and housing tribunal with the respondent a couple of times where he was declared the lawful owner of the suit land.

The appellant called witnesses as well to prove that there was the allocation of land to the appellant and other people from the village council in that year 1990.

A handwritten signature in black ink, appearing to read 'Amy', with a horizontal line drawn through the middle of the letters.

The trial tribunal upon hearing the matter decided that, the respondent was the lawful owner of the suit land and the appellant was said to be the trespasser. The trial tribunal gave an order of permanent injunction against the appellant over the suit land.

Aggrieved and unhappy with the said decision, the appellant appealed to this court.

During the hearing of the matter both parties were dully represented. Whereas Mr. Raymond Kim the learned council appeared for the appellant and Ms. Natujwa Bakari the learned counsel appeared for the respondent.

By the consent of the court, the matter was ordered to be disposed of by way of written submission on the following schedule of orders;

The appellant was to file his written submission on 24/2/2023, the respondent was to file her reply on 3/3/2023 and rejoinder if any was to be filed on 8/3/2023 and the matter was to come for judgment on 14/3/2023.

The records show that the appellant's side did not file any written submission in court. However, the respondent filed her reply submission in court on 3/3/2023 and making reference to the submission in chief of the appellant which was never filed before this court.

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It is now the settled position of the law that, failure to file written submission in court timely or without any good cause, it is as good as failing to appear before the court on the date fixed for hearing and prosecute or defend the case.

As decided in the case of George **Kimbe v. Peter Ngonyani, Civil Appeal No. 41 of 2014, Court of Appeal** held that, failure to file written submission is tantamount to failure to appear and defend case.

The appellant and his counsel on this matter, even after the failure to file the submission in chief timely as required, they did not file any application for extension of time to be allowed to file of the submission in chief out of time. The conduct show that the appellant did not have any good cause to move this court.

Considering that the schedule to file written submission by the parties was the order of the court, the parties were to comply and abide to it dutiful. The court's businesses must be run in an orderly manner and proper procedures to avoid chaos of every party to act on his own fashion and will.

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The orders of the court entail certainty and efficiency on the administration of justice timely. Failure to abide to the court's order, one has to suffer the consequences.

A similar stance was decided in the case of **National Insurance Corporation of (T) Ltd and another v. Shengena Ltd, Civil Application No. 20 of 2007, Court of Appeal** among other things held that, the court could not be made impotent by the party's inaction. It has to act.

The only remedy therefore is to dismiss the appeal with costs. It is so ordered.

Dated at Babati this 14th day of March, 2023



G. N. Barthy

**G. N. BARTHY,
JUDGE
14/3/2023**

Delivered in the presence of Mr. Raymond Kim for the appellant and Mr. Julius Lukumay for the respondent and the respondent in person.