IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 93 OF 2022

(C/F Misc. Application No. 15 of 2022c, Land Application No. 12 of 2021 the District Land and Housing Tribunal of Mbulu)

DANIEL GIDABU ..... APPLICANT

VERSUS

LANTA SEHHO ..... RESPONDENT

RULING

23rd November, 2022 & 24th March, 2023

TIGANGA, J.

Under Regulation 11 (2) and 24 of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003**, (Land Regulations) the applicant prays that this court be pleased to set aside dismissal orders issued on 17th June, 2022 by the District and Housing Tribunal of Mbulu (trial tribunal) and restore Land Application No. 12 of 2021.

Brief history of this application can be traced back to 25th March, 2021 when the applicant filed Land Application No. 12 of 2021 at the trial tribunal, claiming for a piece of land measuring 1 ½ acres situated at Ayapara Mashariki, Sanubaray Ward in Mbulu District (the suit land). when the matter was set for hearing on 17th February, 2022 he arrived at the

trial tribunal around 10:30hrs and found that the mater had already been dismissed for want of prosecution. He immediately filed Misc. Land Application No 15 of 2022 praying that the dismissal orders be set aside so that his application can be heard on merit on the ground that his delay on the hearing day was initiated by the fact that the bus he took to the tribunal broke down. The trial tribunal dismissed his application for restoration by finding his reason for delay unfounded. Still aggrieved he has filed the current application. The application was heard by way of written submissions and both parties appeared in person and unrepresented.

Supporting the application, the applicant submitted that, the trial chairman ought to have adjourned the matter instead of dismissing it since it was the first day of hearing and he had no tendency of missing court sessions. That, failure of the trial chairman to consider his reason for delay while he had the discretion to do so as the applicant had genuine reason for delay, is contrary to the cardinal principles of natural justice i.e. right to be heard. Further that, his delay was not due to negligence but reasons that were out of his control. He prayed that this application be merited and this Court exercise its discretional powers and set aside the dismissal orders by the trial tribunal and order resoration.

In reply the respondent pointed out that, according to Regulation 11 (2) of the Land Dispute Regulations, after the trial tribunal dismissed applicant's application for restoration the proper channel was for him to appeal to this court instead of filling the current application. Thus, the application is bad in law for procedural irregularity therefore this court should dismiss it.

Regarding the gist of the application, the respondent submitted that, the reasons tabled by the applicant at the trial tribunal were not unfounded and rooted in negligence thus, the trial tribunal did not error in dismissing them. He cited the case of **Nelson Saulo vs. Solomon Saulo & Another,** Land Appeal No. 11 of 2021 to cement his argument that, the applicant ought to have furnished the trial tribunal with sufficient reason for delay. He prayed that the application be dismissed with cost.

In rejoinder the applicant reiterated his earlier submission and added that, according to Regulation 22 (d) of the Land Disputes Regulations, ruling on preliminary objection or any interlocutory application which do not finalise the case shall not be appealable hence the current application. He prayed that the application be allowed.

Having considered both parties' affidavit and submissions this court is of the view that the main issue of determination is whether the decision

of the trial tribunal to dismiss application for restoration was proper. However, before such determination, I do not find that this court is prope

rly moved and the following are my reasons.

First, the application is made under Regulation 11 (2) and 24 of the Land Disputes Regulations. Those provisions read;

> *11 (2). A part to an application may, where he is dissatisfied with the decision of the Tribunal under sub-regulation (1) within 30 days apply to have orders set aside, and the Tribunal may set aside orders if it thinks fit so to do* ***and in case of refusal appeal to the High Court****. (emphasis mine)*
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> *24.* ***Any party who is aggrieved by the decision of the Tribunal shall subject to the provision of the Act, have the right to appeal to the High Court*** *(Land Division): Provided that, an appeal shall not in any case be a bar to the execution of decree or order of Tribunal. (emphasis added)*

From the two provision, it is crystal clear that the proper forum for applicant's grievance was to appeal to this Court instead of filling the present application. Even the provisions of law that he used indicate that he ought to have appealed and not otherwise.

then I think it ought to be treated as final order; but if it does not, it is then, in my opinion, an interlocutory order."

Subscribing to the above provision to the application at hand, when the applicant was denied restoration by the trial tribunal, such order was final since there is nowhere else the parties can get their right unless through appeal. In that regard, such application for restoration cannot be termed as an interlocutory application. In yet another case of **Vodacom Tanzania Public Limited Company vs. Planetel Communications Limited**, Civil Appeal No. 43 of 2018 CAT at Dsm, the Court held that;

"In the light of the settled position of the law, it is clear that an interlocutory ruling or order is not appealable save where it has the effect of finally determining the charge, suit or petition. ..."

See also; **Tunu Mwapachu & 3 Others vs. National Development Corporation & Another,** Civil Appeal No. 155 of 2018, CAT at Dsm (unreported) and **Khadija Lumbi vs. Tanzania Revenue Authority**, Civil Appeal No. 240 of 2019 CAT at Dsm.

In the circumstance as rightly submitted by the respondent, this application is misplaced, bad in law for procedural irregularity thus, the Court cannot determine it as the same is not properly moved.

The application is hereby dismissed with costs. If the applicant will decide to follow the right procedure and appeal in pursue of his right, since he is unrepresented, he is advised to do so at the newly High Court of the United Republic of Tanzania, Manyara Registry.

It is so ordered.

Dated and **delivered** at **Arusha** this 24th day of March, 2023

J.C. TIGANGA

JUDGE