

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISC. CIVIL APPLICATION NO. 79 OF 2022

(Arising from Land Revision No. 7 of 2022, Originating from Misc. Land Appeal No. 112 of 2014, Land Appeal No. 85 of 2013 in the District Land and Housing Tribunal and Land Case No. 18 of 2013 of Sima Ward Tribunal)

ANASTAZIA BUJASHI.....APPELLANT

VERSUS

BUDEBA NYANDA.....RESPONDENT

RULING

2nd June & 2nd June, 2023

Kilekamajenga, J.

The instant application seeks to set aside an expert ruling in Land Revision No. 7 of 2022. The application is made under Order XLIII Rule 2, Order IX Rule 9, Section 68(e) and Section 95 of the Civil Procedure Code, Cap. 33 R.E. 2019 and any other enabling provisions of law. The application is accompanied with an affidavit of the Counsel for the applicant, Ms. Susan N. Gisabo. The matter finally came for hearing. The applicant was absent but represented by the learned advocate, Mr. Kulwa Samson, whereas the learned advocate, Mr. Mathias Mashauri appeared for the respondent. In his oral submission, the counsel for the applicant argued that, the affidavit in proof of service is erroneous for containing contradictory information. In his view, there is no clear evidence whether the applicant was served with the summons. To bolster his argument, the counsel referred the court to the cases of **TM Sanga V, Sadirudin G. Albai**

and two others 1977 LRT 51; **Baiywa v. Bach** 1986-1989 EZ at 27; **Mary Mchome Mbwambo and Amos Mbwambo V. Mbeya Cement Company Limited**, Civil Appeal No. 161 of 2019, CAT at Dar es Salaam (unreported). The counsel insisted that, under the law, the service of summons to the applicant ought to be certain something which lacks in this case. He urged the court to set aside the impugned "*ex parte*" ruling.

In response, the respondent's counsel, Mr. Mathias Mashauri resisted the application stating that, the applicant failed to appear for hearing despite being served with the summons. In fact, she refused to accept the summons and therefore, denied herself the right to be heard. The counsel further blamed the applicant's counsel for employing delaying tactics. He further distinguished the submitted cases from the instant matter.

When re-joining, the counsel for the applicant insisted on the points raised in the submission in chief and urged the court to allow the application.

Having considered the competing arguments from both sides, I feel obliged to set the backdrop of this matter. The applicant lost the case in the District Land and Housing Tribunal of Geita in Land Appeal No. 85 of 2013. Thereafter, she

appealed to this court vide Misc. Land Appeal No. 112 of 2014 where again she lost the case. Precisely, this court decided among other things that;

*"The decision of the District land and Housing Tribunal for Geita at Geita in Appeal case No. 85 of 2013 dated 13th of March, 2014 and the decision of Sima Ward Tribunal in original Land Case No. 18 of 2013 **are hereby quashed and set aside.**"*

(Emphasis added).

Immediately after this decision, the applicant went back to the District Land and Housing Tribunal at Sengerema and filed Execution proceedings No. 118 of 2021. In other words, she applied to execute the decree of this court which is non-existing because the decision of the District Land and Housing Tribunal and that of the Ward Tribunal were quashed. Erroneously, the District Land and Housing Tribunal ordered the respondent to vacate from the suit land. The respondent rushed to this court and filed Land Revision No. 07 of 2022. The process to serve the summons to the applicant commenced; but when the court process server approached the applicant for serving the summons, the applicant refused to receive the summons. The court process server chronicled the whole event and the affidavit in proof of the summon shows the following words:

*Hakupatikana tulijaribu kumtafuta kwa No. 076575690.....
baadaye alipatikana jioni lakini alikataa kuja kusaini.*

After receiving the said affidavit, the court proceeded to hear the respondent and issued an "*ex parte*" ruling nullifying the execution done by the District Land and Housing Tribunal. Now, the applicant has approached this court seeking to set aside the "*ex parte*" ruling. It is evident from the backcloth of this matter that, the *ex parte* ruling came after the applicant's refused to sign the summons to appear. I am aware, the applicant has the right to be heard, but such right was abandoned by the applicant after refusing to sign the summons and appearing for hearing. I do not find any reasons to side aside the "*ex parte*" ruling as the applicant wilfully refused to appear. I hereby dismiss the application with costs.

DATED at **Mwanza** this 2nd day of June, 2023.




Ntemi N. Kilekamajenga.
JUDGE
02/06/2023



Court:

Ruling delivered this 2th June 2023 in the presence of the Counsel for the applicant Mr. Kulwa Samson and the counsel for the respondent, Mr. Mathias Mashauri. Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
02/06/2023

