

IN THE HIGH COURT OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

LAND CASE APPEAL NO. 07 OF 2023

*(Originating from Miscellaneous Land Application No. 181 of 2022, Songea District
Land and Housing Tribunal)*

AZA ISMAIL HONDE APPELLANT

VERSUS

PAUL ANTON MUMBA RESPONDENT

JUDGEMENT

17/05/2023 & 14/06/2023

E.B. LUVANDA, J.

The Appellant unsuccessfully filed the application to set aside the *ex parte* judgement entered by the Songea District Land and Housing Tribunal (herein after referred as the tribunal) on the ground that the Appellant failed to adduce sufficient reasons for his failure to appear before the tribunal. Being aggrieved he failed his petition of appeal comprises one grounds of appeal; thus, that the tribunal erred in law and in fact in giving an order for *ex parte* hearing on a date when the matter was set for mention contrary to law

By consent of the parties this appeal was argued by way of written submission. The Appellant was represented by Mr. E.O. Mbogoro learned

advocate, on other hand the Respondent was unrepresented, fending for himself.

The counsel for the Appellant submitted that, in giving an order for *ex parte* hearing the tribunal did not cite the enabling provision to support the order. The counsel insisted that in civil procedure mention dates are no creature of any statute, but it was introduced for practical convenience so that appropriate orders may be given in the course of proceedings with a view of controlling and expediting the judicial process. It is the counsel opinion that no adverse order may be given against a party on a mention date, including dismissal order. He submitted that, the order for *ex parte* hearing is analogous to dismissal order of the case on mention date where the absent party is the plaintiff or applicant, citing the case of **Shengena Ltd v. National Insurance Corporation and Another**, Civil Appel N. 9 of 2008, where the court emphasized that a case should not be dismissed on a mention date.

The counsel for the Appellant submitted that, the Appellant was given 21 days to file her written Statement of defence which lapse on 9th April, 2022. On 11th April, 2022 the case was scheduled for mention and the Appellant appeared at the tribunal when the case was already adjourned and the order for *ex parte* hearing against her was made, the

information was delivered to her by a tribunal secretary. It is the counsel opinion that it would have been wise for the tribunal to give the Appellant a chance to explain her reason for failure to file a written statement of defence for a delay of two days may be he would have sought for an extension of time as it was still within the extension period prescribed by law.

The counsel added that, the trial tribunal was supposed to set another mention date for appropriate orders, as 11th April, 2022 was fixed to ascertain whether the Appellant had complied with the tribunal orders given on 18th March, 2022.

In reply, the Respondent submitted that, the Appellant failed not only to file his pleadings but also to appear on the date fixed by the tribunal without any reason and to date he failed to account on his failure. The Respondent submitted that the case of **Shengena v. NIC and Another** (*supra*) cited by the Appellant is distinguishable from this case. As the tribunal did not dismiss the case but rather ordered for the *ex parte* hearing due to the Appellant failure to file his defence and to appear at the date scheduled. The Respondent thought that the Appellant would have filed the application to set aside the *ex parte* judgement if he had a reason for his default.

One among the laws which govern land matters is the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003. Regulation 7 of the Regulation provides for filing the written statement of defence, counter claim and counter affidavit for a party who is contesting the dispute to file his pleadings. It is in the record that, the Appellant (Respondent at the trial Tribunal) was ordered to file his written statement of defence within 21 days pursuant to the provision of regulation 7(1)(a) of the Regulation. Unfortunately, the Appellant did not file the written statement nor appeared at the mention date scheduled, as a result the Chairman ordered the matter to proceed *ex parte*. At paragraph 4 of the Appellant's affidavit before the tribunal, the Appellant claimed to have appeared before the chairman after his case was already called and the *ex parte* hearing was already made against him.

Sub regulation (3) of the same regulation vest a discretionary power to the tribunal chairman to extend the time to file the written statement of defence to a party upon showing good cause. For easy reference sub regulation (3) provides that:

(3) the chairman may, on good cause being shown by any party to the proceedings, extend the time within to file the written statement of defence or counter

claim as the case may be, except that in any case such extension shall not exceed-

(a) 14 days in case of filling a written statement of defence;

(b) NA

Being guided by the regulation quoted hereinabove, the Appellant was duty bound to adduce a good cause which precluded him to file his written statement of defence and not merely to appear in possession of a written statement of defence at the mention date as alleged. The law is silent on what amount to a good cause, but the court in its plethora of decisions analysed what can amount to a good cause. To mention few, the case of **Attorney General v. Tanzania Ports Authority and Another**, Civil Application No. 87 of 2016, Court of Appeal of Tanzania at Dar es Salaam; **Ms Henry Leonard Maeda and Another v. Ms. John Anael Mongi and Another**, Civil Application No. 31 of 2013, Court of Appeal of Tanzania at Arusha and **Andrew Athuman Ntandu and another Vs Dustan Peter Rima**, Civil Application No 551/01 of 2019 in which the Court of Appeal had the following to say;

'That there is no single definition of what amounts to good cause, in determining good cause circumstances of each case have to be taken into consideration as the term "good cause" is a

relative one and is dependent upon the circumstances of each individual case'

[Emphasis Added]

Herein, the Appellant conceded to have failed to file his written statement of defence and appeared belatedly on a mentioned date on the ground that he was encountered with transportation predicament. Regardless of being notified that the matter was scheduled to proceed *ex parte*, the Appellant continue to appear when the matter was prosecuted until the date when the *ex parte* judgement was delivered. Bear in mind that extension of time is not automatic. The Appellant was therefore supposed to seek to the tribunal to be granted extension of time to file his written statement of defence embodying into his application sufficient cause for delay. From the record no any evidence shows if the Appellant discharged his duty to apply for the same though he was present until the tribunal delivered the *ex parte* judgement as aforesaid. At paragraph 7 of Respondent counter affidavit, stated that the Appellant refused to submit anything claiming that he will appeal. Surprisingly, he filled the application to set aside the *ex parte* judgement while he was present when the case was adjudicated and he did nothing to pursue his right to be heard as provided by the law.

The Appellant defaulted to exercise his right to file the application for extension of time to file his written statement of defence before the tribunal negligently. Even when he was given a chance to explain before the tribunal, the Appellant refused to cooperate on ground that he will appeal against the decision and bring the matter back to the tribunal for retrial.

From the record the Appellant did not file a reply to a counter affidavit to rebut the assertion that he refused to say anything on the ground that he will appeal against the decision. This amount to concession of this factual issue.

From the reasons stated above the trial tribunal was in fact correct to dismiss the Appellant application for failure to adduce good reason for failure to file the written statement of defence and to appear on the mention date.

Appeal dismissed with cost.



E.B. LUVANDA

JUDGE

14/06/2023

