IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND APPEAL NO. 136 OF 2022

(Originating from Misc. Land Application No. 253 of 2021 from the District Land and Housing Tribunal for Arusha at Arusha)

KIPARA MEDIRI.....APPELLANT

VERSUS

MEORI MEDIRI.....1ST RESPONDENT

MESHILIEKI MEDIRI.....2ND RESPONDENT

LAISO MEDIRI.....3RD RESPONDENT

KICHECHE MEDIRI.....4TH RESPONDENT

LEMBOTO MEDIRI.....5TH RESPONDENT

JUDGMENT

10th May & 16th June 2023

TIGANGA, J

In this appeal, the appellant is challenging the decision of the District Land and Housing Tribunal for Arusha, at Arusha (the trial tribunal) where he unsuccessfully sought for an order to set aside the dismissal order made by the trial tribunal on 22/02/2021 which dismissed Application No. 201 of 2019 in which he was the plaintiff suing the current respondents. Having unsuccessfully applied to set aside the said order, he

filed this appeal against the ruling and drawn order which refused his application on the following grounds.

1. That the trial Tribunal erred in law and fact for failure to evaluate evidence deposed by the appellant but rather the trial Tribunal went on refusing to grant restoration.
2. That the trial Tribunal erred in law and fact by curtailing the applicant's constitutional right to be heard.

As pointed out herein above, before the trial Tribunal the appellant applied to set aside the dismissal order. Unfortunately, the trial Tribunal was not convinced by the reasons advanced by the appellant and consequently refused to restore the application and dismissed the application for want of merits. For purposes of clarity, the reasons advanced by the appellant were that on 22/02/2021, when application No. 201 of 2019 was called for hearing, he was present at the trial Tribunal but could not stand to defend his case as he was ignorant of the tribunal procedures.

When the appeal was called for hearing, the appellant enjoyed legal services from the Legal and Human Rights Centre, whereas the respondents were under the representation of the learned counsel Mr.

Simon Mbwambo. With leave of the Court, the appeal was disposed of by way of written submissions.

Supporting the grounds of appeal, the appellant submitted as follows; on the first ground of appeal, he argued that despite sufficient reasons advanced by the appellant, the trial Tribunal failed to consider the evidence and grounds adduced by the appellant and went on refusing to set aside the dismissal order. He supported his argument with a number of cases including the case of **Regional Manager Tanroads Kagera vs Ruaha Concrete Co. Ltd,** Civil Application No. 96 of 2007 (Unreported), and **Amina Maulid Ambali & 2 Others vs Ramadhani Juma,** Civil Appeal No. 35 of 2019 (Unreported)

On the second ground of appeal, it was the submission of the appellant that the refusal of the trial tribunal to set aside the dismissal order amounts to denying the appellant his right to be heard enshrined under the constitution. The appellant thus urged this court to allow this appeal and quash the proceedings and ruling of the trial tribunal.

Opposing the appeal, the respondents through their counsel submitted as follows; on the first ground of appeal, the respondents argued that, the appellant did not show sufficient reasons for his non-appearance. The respondent went further to submit that the appellant herein was

represented by the counsel from LHRC and that on the material date, both the appellant and his counsel did not enter an appearance as per the records. Moreover, he added that since the appellant was under legal representation, he cannot plead ignorance of the tribunal procedures to save him. The respondents argued that it is not true that, the appellant was ignorant of the tribunal procedures since he has been appearing at the tribunal several times and he was able to address the tribunal on some issues. The respondents insisted that the appellant herein did not adduce sufficient reasons for the trial Tribunal to grant the application for setting aside and restoration of the dismissed application.

As to the second ground of appeal, the respondents argued that it is not true that the appellant was denied his right to be heard. In his view, the appellant was given his right to be heard but he squandered the same by not appearing on the day scheduled for hearing. The respondents also challenged the appellant's argument to seek refuge under the principle of overriding objective. It is the view of the respondents that the principle cannot be applied blindly and that failure to appear before the tribunal and to show sufficient cause for non-appearance cannot be cured by the overring objective.

That being said, it is now time for consideration of the appeal as follows; on the first ground of appeal, the appellant faults the trial tribunal for failure to evaluate evidence deposed by the appellant. With due respect, this court has failed to understand what the appellants intend to demonstrate on this ground of appeal. It should be remembered that the application that was filed at the trial tribunal was to seek an order to set aside the dismissal order. It is a settled position of the law that, in an application for restoration/setting aside dismissal order, the applicant must adduce sufficient reasons for his failure to attend on the date when the matter was dismissed. Therefore, it is for that reason that what is important to be considered by the tribunal/court is not the evidence about the merit of the case, but sufficient reasons for the non-appearance.

Well, that said, this court would wish to look at the issue as to whether the appellant adduced sufficient reasons at the trial tribunal. Going by the records of the appeal, in particular on the application of the appellant in paragraphs 4, 5, and 6 the appellant alleged that on the date when the matter was called on for hearing that is on, 22/02/2021, he was present but he failed to stand and speak before the tribunal due to his failure to understand tribunal procedures and consequently the tribunal dismissed the application for non-appearance. This court has also taken into

consideration the respondent's counter-affidavit which disputed the appellant's assertion on the reason that the records of the trial tribunal were very clear that, on the material date, neither the appellant nor his Advocate was present in court when the application was called for hearing.

Further to that, the respondents also stated that the appellant's claim that he was ignorant of the tribunal's procedures is incorrect on the reason that he has been attending several sessions at the tribunal and more so the tribunal uses Swahili language therefore he cannot plead that he could not stand and speak.

With due respect, the appellant's assertion is not backed up by the records of the trial tribunal. I have thoroughly gone through the proceedings in Application No. 201 of 2019 and the following was observed; on several sessions, the appellant appeared before the tribunal while also represented by Advocate Joseph Oleshangay. However, on 27/10/2020 Advocate Richard Manyota appeared at the tribunal representing the appellant, on the said date the matter had been fixed for hearing nevertheless Mr. Manyota informed the court that, he has just been instructed the same morning as the Advocate who was representing

the appellant had been shifted to Dar Es Salaam Head Quarters, therefore, he prayed for another date of hearing since he was not well prepared.

Following his prayer, the matter was adjourned and scheduled on 22/02/2022 for hearing. The records further reveal that on the said date when the matter was scheduled for hearing, neither the appellant nor his Advocate appeared to prosecute their case, eventually the matter was dismissed for non-appearance.

From what has been gathered from the records, this court finds no reason to fault the decision of the trial tribunal in refusing to set aside the dismissal order for lack of sufficient reason as the reasons advanced by the appellant have not been backed up by the proceedings as demonstrated above.

As to the second ground of appeal, the appellant alleged that the trial tribunal curtailed the appellant's right to be heard. It is well established that the right to be heard is a constitutional right enshrined in our Constitution under Article 13 (6) (a), however, this right is not absolute especially where a party has been accorded the opportunity to exercise such right and has defaulted. In the case of **Wambele Mtumwa Shahame vs Mohamed Hamis** (Civil Reference No. 8 of 2016) [2018]

TZCA 39 (06 August 2018) the Court of Appeal of Tanzania had the following to say;

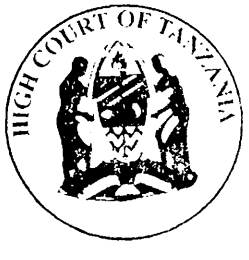
> *"...the right to be heard is not absolute. It has to be enjoyed with certain limits prescribed by the law."*

In the matter at hand, the appellant cannot say that the trial tribunal curtailed his right to be heard as already demonstrated, the matter was scheduled for hearing therefore it was for him and his counsel to appear and prosecute their case something which they did not do, and consequently the matter was dismissed.

Based on the above discussion, it is the finding of this court that the appeal is devoid of merit, it is consequently dismissed with costs.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 16th day of June 2023



J. C. TIGANGA

JUDGE