

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND APPEAL CASE NO. 133 OF 2022

(C/F Mbulu District Land and Housing Tribunal, Misc. Application No. 27
of 2022, Original Application No. 28 of 2020)

BETWEEN

PAULO SAFARI.....APPELLANT

VERSUS

DAFFI TATOK DARIDO..... RESPONDENT

JUDGMENT

25/07/2023 & 15/08/2023

MWASEBA, J.

Being aggrieved by the Decision of the District Land and Housing Tribunal of Mbulu at Dongobesh (herein DLHT) the appellant came before this court armed with the following grounds of appeal:

1. That the trial Tribunal erred in fact and law in that it dismissed an application for setting aside the dismissal order issued and delivered on 17th May, 2022, before Hon. N.M Ntumengwa, Chairman.



2. That the Trial Tribunal erred in law for failure to set aside the dismissal order issued and delivered on 17th May 2022 before Hon. N.M Ntumengwa, Chairman.
3. That the trial Tribunal erred in law for failure to afford the Appellant herein with his constitutional right of being heard in an application No. 28 of 2020.

Briefly, the appellant filed an application at the DLHT of Mbulu at Dongobesh via Application No. 28 of 2020 claiming to be declared a lawful owner of the disputed land against the respondent herein. The matter was scheduled for hearing on 17th May, 2022 and unfortunately the applicant did not show up and the application was dismissed for want of prosecution. Thereafter, the applicant filed an application No. 27 of 2022 to set aside dismissal order and the same was dismissed on 25th July, 2022 for want of a sufficient reason for nonappearance on the date the application was called for hearing. Aggrieved, he is now before this court challenging the ruling which dismissed an application for setting aside dismissal order.

During the hearing of this appeal, Mr. Arnold A. Tarimo, learned counsel represented the applicant whilst the respondent appeared in person,

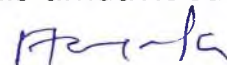


unrepresented. The appeal was disposed of by way of written submission.

Supporting the appeal, Mr. Tarimo submitted that in his affidavit supporting Application No. 27 of 2022 an application to set aside dismissal order, the applicant said that he was looking for his sick daughter who was studying at Philip Marmo Secondary School. He supported his statement with the documents from the school and Hydom Lutheran Hospital which show he was looking for his daughter from 16th to 18th May 2022.

It was his further submission that the respondent disputed the application for setting aside dismissal order without having any proof that the applicant was attending her sick child. He prayed for the court to allow the application so that the matter can be heard on merit and to avoid chaos in our societies/ communities. He supported his arguments with number of cases including the case of **Fredrick Selenge and Another vs Agness Masele** (1983) T.L.R 99.

Opposing the appeal, the respondent submitted that at the DLHT of Mbulu the appellant failed to adduce sufficient reasons for the Tribunal to exercise its discretion of setting aside its dismissal order. He argued further that the statement of the appellant in his affidavit supporting the

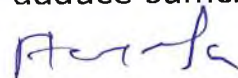


application No. 27 of 2022, he stated that he was called by the headmaster that her child is sick while the attached letter shows it was the student who wrote a letter asking for a permission to go home. He stated further that even the Hospital documents shows that he went on 26/7/2022 which shows that he could be able to attend the tribunal on the day scheduled for hearing.

The respondent submitted further that, on the day the application was scheduled for hearing the respondent's son saw the applicant at his kiosk working, thus, the applicant was only ignoring the orders of the tribunal. He supported his argument with the several cases including the case of **Jamal S. Makumba and Another vs Attorney General** (Civil Application No. 240/01 of 2019 (CAT at Dar es Salaam). He prayed for the application to be dismissed with costs.

I have had time to go through the ruling and proceedings of the trial tribunal in line with the grounds of appeal and the rival submissions from both sides. It appears that the main issue to be determined by this court is whether the appeal before this court is meritorious.

It has to be noted that, the law gives power to the court /Tribunal to set aside dismissal order, but it has to be done judiciously. However, in exercising the said power, the applicant has to adduce sufficient reasons



for not being present when the matter was called for hearing. As it was held in the case of **Shamsudin Jiwan Mitha vs Abdulaziz Ali Ladak** (1960)1 E.A 1054 it was held inter alia:

"In order to succeed in an application for reinstatement of a suit or appeal, the applicant has to show that he did not appear and that he was prevented from appearing by sufficient cause."

Having gone through the records of the trial tribunal, this court noted that in his affidavit supporting the application No. 27 of 2022 the appellant alleged that he failed to attend the hearing on 17/5/2022 due to the sickness of his daughter. He submitted further that he was called by the headmaster to pick her daughter on 16/5/2022 as evidenced by annexure PQ-2. He argued further that, he took his daughter for treatment at Hydom Lutheran Hospital as evidenced by Annexure PQ-2 and PQ-3. So, for that reasons he could not be able to attend the hearing and he had no one to send to the tribunal to notify about his absence.

In his side, the respondent opposed the reasons advanced by the appellant. He said he had no sufficient reasons for non-appearance on 17/5/2023. It is settled that sickness is the reasonable ground for granting an application for restoration of suit and the like. This is due to

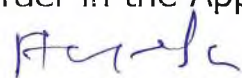


the fact that no one chooses to be well or sick. In the case of **Emmanuel R. Maira vs The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010 (CAT- Unreported) the court stated as follows:

"Health matters, in most cases, are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike."

Guided by the cited authority, this court does not see the reason as to why this application should not be granted. The record shows that the child got sick on 16/05/2022 as evidenced by the permission letter from her school. The child was taken to hospital as seen in prescription card and hospital letter. I don't see any reason for not granting his application as sufficient cause was shown. The record shows that, the appellant had not defaulted to enter appearance on the previous dates save on the particular day the matter was dismissed. Thus, the trial tribunal ought to use its discretion judiciously by granting the application as sufficient cause was shown.

I therefore proceed to allow the appeal and invoke the power given to this court under **Section 43(1) (b) of the Land Disputes Courts Act**, Cap 216 R.E 2019 to quash the decision of Application No. 27 of 2022 and proceed to set aside the dismissal order in the Application No.

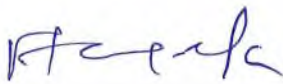


28 of 2022. The matter be remitted to the trial tribunal for determination of the main application.

It is so ordered.

DATED at **ARUSHA** this 15th day of August 2023.




N.R. MWASEBA

JUDGE