

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**LAND APPEAL NO. 6 OF 2022**

*(Arising from Land Application No. 71 of 2020 Kahama District Land and Housing Tribunal)*

**SOPHIA ALPHONCE BAVUMI..... APPELLANT**

**Versus**

**ANNA NGOGI ..... RESPONDENT**

**JUDGMENT**

*15<sup>th</sup> May & 11<sup>th</sup> August, 2023*

**S. M. KULITA, J.**

This is an appeal from Kahama District Land and Housing Tribunal (DLHT). The said matter was summarily “struck out” by the said tribunal regarding the faults that the Chairman had noticed in the pleadings before hearing the said matter. Aggrieved with the said decision, Advocate for the Applicant, the Appellant herein, Mr. Edwin Aaron from Hans & Co. Advocate of Mwanza lodged this appeal relying on the following 3 (three) grounds as they can be read in the Memorandum;

1. That, the trial Chairperson erred in law by striking out the application on the ground that the application was signed by unauthorized person.
2. That, the trial Chairperson erred in law by striking out the application without affording all parties an opportunity to be heard.
3. That, the trial Chairperson erred in fact by refusing to recuse himself from entertaining the case after he had been so requested by the Appellant's Counsel.

The matter was disposed of by way of oral submissions. While the Appellant was represented by Mr. Edwin Aaron and Mr. Paschal Joseph, Advocates, the Respondent was represented by Mr. Festo Daniel Lema, Advocate from LCA & Co. Advocates of Kahama.

In his submission in support of the 1<sup>st</sup> ground of appeal the Appellant's Counsel, Mr. Paschal Joseph stated that the Appellant issued the Power of Attorney to Fabian Philipo Mufuruki for him to represent her on all legal matters she is involved, this one being inclusive and that the said document, Power of Attorney is lawful and genuine.

Submitting on the 2<sup>nd</sup> ground of appeal that the Chairperson struck out the application without affording all parties an opportunity to be heard, the counsel averred that though the decision was for the Respondent herein the Appellant was also supposed to be heard before the Chairperson had determined the matter.

As for the 3<sup>rd</sup> ground which is refusal of the Chairperson from recusing himself from entertaining the matter inspite of being so requested by the Appellant, the Advocate submitted that as the said Chairperson ruled out that the application was defective while in real sense not. He said that they noticed the elements of biasness on the said Chairperson against the Appellant herein. The Counsel added that for the interest of justice the Chairman ought to have disqualified from entertaining that case, upon been so prayed to do so.

The counsel concluded by requesting for the appeal to be allowed and the suit be remitted back to the DLHT for Kahama and the same be heard by another Chairperson.

In reply thereto, Advocate for the Respondent, Mr. Festo Daniel Lema submitted in respect of the 1<sup>st</sup> ground of appeal that the power of attorney

was not there in the pleadings. They came to note it on 10<sup>th</sup> December, 2020 which was the hearing date, while the matter was in court since 11<sup>th</sup> August, 2020. He said that the said Special Power of Attorney is read to have been prepared before the original case was lodged at the DLHT but it was not attached. The counsel further submitted that the plaint seems to have been signed by somebody else purporting to be the Applicant while not. He thus concluded that the trial tribunal was right to declare it defective.

As for the 2<sup>nd</sup> ground of appeal the Respondent's counsel submitted that the fact that the appellant was not affected with the right to be heard, she had no reason to complain on that. The Respondent's counsel said that the Appellant is the one whose pleadings was found to be defective, hence his Advocate was asked to address the court on that, and he actually did so. He said that the respondent does not resist for what the tribunal had done and decided on that issue.

Submitting on the 3<sup>rd</sup> ground, Mr. Festo Daniel Lema, Advocate stated that the Appellant's counsel came up with the issue of recusal of the Chairperson after the said Chairperson had raised the issue of competence of the Application. He said that, that is wrong and misconception done by the

Appellant's counsel. He is of the views that refusal of the Chairperson on that issue was absolutely correct.

The Respondent's Advocate concluded by praying for the appeal to be dismissed with costs.

In rejoinder, Advocate for the Appellant reiterated what he had stated in his submission in chief save for the fact that the power of Attorney was not objected by the opponent party while produced before the tribunal by the holder, hence it is wrong to challenge it at this appellate stage. As well the counsel rejoined that the issue of faults in signatures in the documents for the suit does not go to the root of the case. He said that it is curable through overriding objective.

In my analysis on the 1<sup>st</sup> ground of appeal that the trial Chairperson erred in law by striking out the application on the ground that the application was signed by unauthorized person, I have this to say; It is vivid in the record, as submitted by the Respondent's counsel that the Appellant presented a Special Power of Attorney subsequently, after the suit being lodged in the tribunal. I don't find it fatal for the Appellant to be represented by a person who is not an Advocate but has power of Attorney to represent her in court.

The issues raised by the Chairperson for the DLHT which entertained the matter are the following;

1. That, the said power of attorney is read to have been prepared and signed since 23/6/2020 but was not attached in the pleading, to wit a plaint, which was lodged at the tribunal on 26/8/2020.
2. The document purported to be the power of attorney looks to have been signed by the donor, Sophia Alphonse Bavuni, the Appellant herein, by a thumb print, but the plaint is purported to have been signed by that same person through handwriting.
3. The Signature purported to be of the Applicant, Sophia Alphonse Bavuni in the application/plaint is absolutely the same to that of Donee (Fabian Philipo Mfuruki) in the purported Power of Attorney.

These are the doubts that the chairmperson had noticed and the same led him to strike out the Land Application No. 71 of 2020 at the DLHT which was before him on that 23/12/2021. In my view those grounds were sufficient for the application to be struck out as they are faults that can be seen on anyone's naked eyes. They do not need a great effort to be noticed.

Amongst the grounds that the appellant has raised in her Memorandum of appeal is that his right to be heard was infringed. Her Advocate alleged in the 2<sup>nd</sup> ground of the Memorandum that the suit was struck out without the Respondent herein being given an opportunity to be heard. On the other hand the Respondent's Counsel replied that, had that been an issue, it is the Respondent's side which could have challenged the same, if it was illegal and the same prejudiced her (Respondent).

I went through the records, particularly page 8 of the Tribunal's proceedings and noticed that the said issue was addressed to the Appellant's counsel, Mr. Edwin Aaron by the DLHT Chairperson, Hon. Paulos Lekamoi, and the Counsel replied the same by stating that the Applicant's documents have no any legal defect. Therefore, as far as the matter was concerned, that the tribunal was to be addressed on the competence of the application lodged by the Applicant, Sophia Alphonse Bavumi (Appellant herein) before the DLHT, there was no infringement of the "right to be heard" by the presiding Chairperson, as the one who was supposed address it, is the one who had lodged the said application alleged to be defective, who is the Appellant/Applicant not the Respondent herein.

I have actually been surprised with the pleadings prepared by Mr. Edwin Aaron and the submission by Mr. Paschal Joseph, Advocates challenging that the Respondent herein was not given right to be heard by the trial tribunal. Even if that is the case, how has it affected rights of their client, Appellant? In fact, as stipulated herein above, it was unnecessary for the Respondent to reply and actually, nobody was prejudiced on that. Further, the fact that the original case was "struck out" it means the Applicant/Appellant still had a venue to re-file the same case at the said DLHT after the rectification of the noticed errors which are vividly seen therein, but wrongly the Advocates still opted to challenge the said decision of the DLHT's. In my view, the Appellant's option to institute this appeal is nothing but abuse of the court processes. I therefore find this ground of appeal meritless.

On furtherance to addressing the court on that issue of legality of the applicant's pleading and the Power of Attorney, the counsel for the Appellant went further by requesting the said Chairperson to recuse himself from entertaining that case. However the Chairperson refused to do so for the reason of lack of sufficient cause and that the Advocate has no right to choose the Chairperson to entertain his case. In resolving that issue which falls under the 3<sup>rd</sup> ground of appeal, I find the trial Chairperson was right to



proceed with entertaining the matter instead of recusing himself, as requested by the Appellant's Advocate. I say so because the Advocate had no genuine reason for the Chairperson to take that action. The Chairman's order of wanting the Applicant's Advocate to address the court/tribunal on the legality of his client's application is not an element of biasness, but a legal procedure.

It was held by the Court of Appeal in the cases of **Issack Mwamasika and 2 Others v. CRDB Bank Ltd, Civil Revision No. 6 of 2016, CAT at DSM** and **Standard Chartered Bank (Hong Cong) LTD v. VIP Engineering and Marketing Ltd, Civil Application No. 158 & 159 of 2011 (Unreported)** that in order for the Judicial Officer to disqualify, himself/herself from entertaining a case, there must be sufficient convincing reasons before he/she agrees to do so. Otherwise, as it was further stated in **Standard Chartered Bank (supra)** that the court will find itself in a position stated in the case of **The Registered Trustees of Social Action Trust Fund and Colman Mark Ngalo & Michael J.T. Ngalo (Receiver Manager) v. Messrs Happy Sausages Limited and 11 Others [2004] TLR 264**, that;

*"it is our considered view that it would be an abduction of judicial function and encouragement of spurious application for judicial officer to adopt the approach that he/she should disqualify himself or herself whenever requested to do so on application of one of the parties."*

In the instant case, the trial Chairperson's act of challenging competence of the Applicant's application, hence asking the Applicant's Advocate to address the tribunal on it, is not an element of biasness against the said Applicant. Hence, he was right to deny the recusal.

The appeal case like this one which is openly looked to have no merit, being filed and subsequently argued by the so called Learned Advocates is wastage of the appellate court's time and efforts. Further, keeping in mind that the lower court (DLHT) had just strike it out, which means that, it was just the matter of the said Advocates rectifying the same and re-file it before that same court, instead of causing such unnecessarily delay of justice. This is nothing but abuse of the court's processes.

In upshot the appeal is hereby dismissed for having no merit. The Appellant's Advocates, namely Mr. Edwin Aaron, the one who prepared and drew the pleadings (Memorandum of Appeal), and Mr. Paschal Joseph, who appeared

before the High Court to argue the said vexatious and frivolous appeal,  
should bear the costs.



A handwritten signature in blue ink, appearing to be "S.M. Kulita".

**S.M. KULITA**  
**JUDGE**  
**11/08/2023**

