

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

**ARUSHA SUB-REGISTRY**

**AT ARUSHA**

**LAND APPEAL NO 13 OF 2023**

*(From the Ruling and Order of Arusha District Land and Housing Tribunal. Hon. F. Mdachi, Chairman in Misc. Land Application No. 141 of 2022 originated from Application No. 76/2020)*

**ISRAEL LOTH MEIBUKO..... APPELLANT**

**VERUS**

**DATIVA CHACKY GODBOUT .....1<sup>ST</sup> RESPONDENT**

**GODSON LENDIM MOLLEL.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

17<sup>th</sup> November, 2023

**D.D.NDUMBARO, J.**

The appellant was dissatisfied with dismissal ruling No. 76 of 2020 and order No. 06/02/2023 made by the District Housing Land Tribunal for non-appearance and hence lodged an appeal in this court.

The appellant claimed to have attended before the court on dismissal day, but he could not hear the calling pronounced by the court clerk,

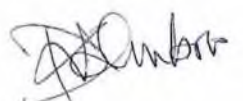


whereby the District Housing Land Tribunal Chairman dismissed the matter for non -non-appearance. Applicant instituted application No. 06/02/2023 to set aside the order on the same tribunal, but it was refused on reasons that, no sufficient reasons adduced for failure to attend. Dissatisfied with the ruling and order No. 06/02/2023, lodged two grounds of appeal;

1. The Learned trial chairman grossly erred in law and fact and failed to evaluate reasons adduced by parties
2. The learned trial chairman grossly erred in law and fact by failing to consider the previous conduct of the appellant

On the first and second grounds applicant argued that the trial tribunal did not consider his previous attendance. The appellant claimed to have attended all previous sessions that is on 3/03/2021;14/07/2021;21/11/2022;21/03/2022 all scheduled for hearing. Ther after the case was fixed on 1/08/2022 he attended but he could not hear a call by the court clerk.

The tribunal dismissed a matter for want of prosecution without considering his previous good attendance supporting his argument he cited the case of **Deo Kazen Mbwambo vs Godson Kazier Mollel**, Land Appeal No. 64 of 2019 page 2 the court should consider determining the matter on



merit and he cited the case of **Mount Meru Flowers, TZ Ltd vs Box Board Tanzania Ltd.**

He argued appellant attended on a fixed date, thereafter he got to know that the case was called he decided to write a letter to the chair informing that he was present but he could not hear the calling made by the court clerk.

In reply, the respondent contended that when the case was calling all parts were together there was no way that he could not hear the calling. The intern (one Robert) was around but the appellant did not disclose that he sent an intern. The letter presented to show that he was present was not brought before the tribunal and further, it does not explain what happened to move the tribunal to set aside the order.

Respondent further argued that, on all three dates that is 14/07/2021, 2/11/2021 and 1/08/2022 appellant did not attend which is why the tribunal rejected his application we cited the case of **Deo Kanin Bwambo** Supra the reasons adduced not sufficient.

He further faulted that, if the court clerk called and could not hear, he could make an effort to go to the chair to let him know that he was around or he was required to summon the court clerk to testify. He supports his



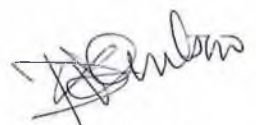
argument by citing a case of **Tanzania Eclectic Company Limited**, Civil Appl. No. 186 of 2016.

He further faulted, in the case of **Mount Meru Supra**, it is distinguishable, it is about what time can parts file WSD as per or 4 R1(a)(b) & 08 R1(1)(2) the appellant in person was having duty in person to make follow up on his case, this is explained in the case of **Lim Han Yung and Lim trading Co. Ltd vs Lucy**, Civil App no, 219 of 2019

In rejoinder respondent argued that the appellant attended all the time fixed for the hearing but last he could not hear and prayed to this court to consider his application.

Going through the party submission and evidence on court record I found the applicant attended all sessions except the date of dismissal, despite his non-attendance yet took the trouble to write on the same day informing the court that he was around, the effort should have have not to be ignored, supporting this with the case of **In Shocked & Another v Goldschmidt and Others [1998] 1 All ER372**

*it was stated that the applicant's conduct before the alleged nonappearance should be taken into consideration in an application of this nature. Ms Kumbukeni, the respondent's counsel was present in*



*court on 12th July 2022 when the matter was scheduled for mention, and the tribunal scheduled a hearing on 21st September 2022. On the said date, Mr. Eliamin Daniel appeared at the tribunal and the matter was scheduled for hearing on 27th October, 2022. Mr. Lutufyo, counsel appeared for the applicant and Mr. Eliamani Daniel appeared for the respondent. Mr. Lutufyo was ready for hearing but Mr. Daniel prayed for an adjournment. The tribunal scheduled a hearing on 15th November 2022. However, on 15th November 2022, the applicant and his counsel appeared in court for the hearing. The record reveals that Mr. Daniel wrote a letter informing the tribunal four days before the hearing date that on 15th November 2021 he will appear before Hon. Biswalo, J. In my considered view, I find that the Advocate appearing in superior courts and officially notifying the tribunal is one of the good grounds which may justify setting aside an ex parte decision*

The nature of the above case is almost similar to the one at hand, the appellant appeared on all assigned dates, and on the date of failure, he wrote a letter on the same date. His conduct should not be ignored.

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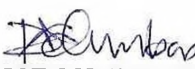
Going through the submission of the parties and court records shows that, the appellant is with a good record in attending sessions, further his effort to inform the court on the same date of failure should not be ignored.

Considering that, and for the interest of justice I quash and set aside ruling No. 76 of 2020 and order No. 06/02/2023 made by the District Housing Land Tribunal, I remit the record to the Trial Tribunal and order to continue to conduct proceedings.

Each part shall bear its own costs.

**DATED** at **ARUSHA** on this 14<sup>th</sup> day of November 2023.



  
**D.D NDUMBARO**  
**JUDGE**