

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

LAND APPEAL NO. 38 OF 2023

(C/F District land and Housing tribunal for Arusha vide Misc. Land Application No. 159 of 2022, which originated from Misc. Land Application No. 406 of 2021)

MAGRETH NDELIO.....APPELLANT

VERSUS

MAGDALENA FABIAN RESPONDENT

JUDGMENT

07/11/2023 & 19/12/2023

GWAE, J

Before the District Land and Housing Tribunal of for Arusha at Arusha (trial tribunal), the appellant, Magreth Ndelio filed an application for extension of time within which to an appeal against the ruling of the Songoro Ward Tribunal vide Miscellaneous Land Application No. 406 of 2021.

On the 21st day of July 2022, her application was dismissed for want of appearance under Regulation 11 (1) (b) of GN. No. 174 of 2003. Desiring to have the dismissal order set aside, she filed an application for extension of time to file an application for setting aside the said dismissal order on 14th November 2022. However, that application was dismissed

for want of showing sufficient cause on 20th March 2023 for the days of her delay. The trial tribunal delivered its ruling in the presence of the appellant.

Dissatisfied by the decision of DLHT, the appellant has preferred an appeal and physically filed the same on 2nd June 2023. She is armed with the following grounds;

1. That, the tribunal erred in law and in fact by holding that the appellant did not give reasons as to why she failed an application to set aside the dismissal order
2. That, the tribunal erred in law and in fact by making its ruling basing on the reason that, the appellant herein failed to attach the copy of the letter to request of an order
3. That, the tribunal erred in law and fact by not considering the evidence adduced by the appellant

On 7th November 2023 when this appeal was called for hearing, the appellant appeared in person, unrepresented whereas the respondent did not enter her appearance as was the case before trial tribunal in the appellant's application for extension of time (Misc. Application No. 159 of 2022). The hearing proceeded ex-parte as there was proof of service to the respondent.

Nonetheless, the appellant when given opportunity to verbally argue her appeal. Nonetheless, she had nothing to except reliance on the above grounds of appeal.

The issue before the court is, whether the trial tribunal was justified in dismissing the appellant's application for want of good cause. I am aware that there is no requirement to attach a copy of the dismissal order for filing an application before DLHT, which issued the order and I am alive of the principle that, who alleges an existence of a certain bears a burden of proof as per section 110 of TEA.

Nevertheless, I have looked at the fact that the dismissal order was entered after the appellant's default to enter appearance for one day. In that situation, I think it is prudent and just to avail her an opportunity to explain as to why she defaulted appearance on the date the matter was set for hearing. I have considered that the appellant have been exempted from paying legal fees. Thus, It was not very possible for her to easily secure an advocate or any lawyer to draft her application for setting aside dismissal order.

Similarly, I have considered the appellant's absence of one day, her age, her financial constraint as exhibited by letters from the Deputy Registrar of the Court exempting her from paying the requisite court's

fees and above all the real need of occasioning substantive justice for both disputants.

Consequently, the appellant's appeal is allowed. The trial tribunal's ruling is quashed and set aside. The appellant is given 14 days from the date of this order within which to file her application to set aside the dismissal order dated 21st July 2022, each party shall be her costs, if any.

It is so ordered.

DATED at DAR ES SALAAM this 19th December 2023




MOHAMED R. GWAE
JUDGE