

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**LAND APPEAL NO. 5053 OF 2024**

*(Originating from Misc. Land Application No. 400 of 2023 which arises from Land Application No. 2020)*

**ELIZABETH REUBEN MHENYA.....APPELLANT**

**VERSUS**

**LUCAS GILLYA.....1<sup>ST</sup> RESPONDENT**

**GILLYA COMPANY LIMITED.....2<sup>ND</sup> RESPONDENT**

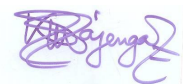
**CRDB.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

*22<sup>nd</sup> March & 25<sup>th</sup> April, 2024.*

***Kilekamajenga, J.***

The appellant appeared before this court challenging the decision of District Land and Housing Tribunal at Mwanza in Misc. Land Application No. 400 of 2023. The gist of the case is as follows: the appellant filed Land Application No. 152 of 2020 which was later dismissed for want of prosecution on 10<sup>th</sup> October 2023. The appellant filed Misc. Land Application 400 of 2023 before the same tribunal seeking an order to vacate the dismissal order and restore the main case. His application was further dismissed with costs on the reason that despite the notice of absence of the appellant's advocate on the date of hearing, the appellant was supposed to appear. The appellant coined five grounds of appeal to challenge the decision to reject the prayer to restore the case. The grounds are:



- 1. That, the tribunal erred in law and in fact by dismissing the case on the grounds of non-appearance without adequately considering the sufficient case presented by the appellant for their absence, which was due to a pre-scheduled engagement in a leadership meeting of the Tanganyika Law Society (TLS), which was beyond their control.*
- 2. That the tribunal failed to apply the principle of 'sufficient cause' as required, interpreting it narrowly rather than giving it a wide and liberal interpretation to encompass all reasons or causes outside the appellant's control, contrary to established legal precedents.*
- 3. That the tribunal's decision to dismiss the case without considering the appellant's reasons for absence denied the appellant a fair hearing, contrary to the principles of natural justice and the right to be heard.*
- 4. That the tribunal committed a procedural irregularity by not properly considering the appellant's prior notice of absence, which was communicated through a letter by the appellant's lawyer; thus failing to adhere to the procedures for adjournment.*
- 5. That the tribunal's decision to dismiss the case has caused significant prejudice to the appellant, affecting their property rights and interests without a substantive hearing on the merits of the case.*

The appeal was finally for hearing, the counsel for appellant, Mr. Steven Kitale appeared for the appellant whereas the respondent was absent despite being served with the summons to appear. This court received the affidavit in proof of the summons to the respondents and ordered the appeal to proceed in the absence of the respondents. In expounding the grounds of appeal, the appellant's counsel combined the grounds of appeal and confined the discussion on the third ground

which is on the principle of right to be heard. Addressing the third ground, Mr. Kitale argued that, it is evident that, the chairman misdirected himself to dismiss the case while there was enough evidence that the counsel for the applicant was attending the Tanganyika Law Society meeting. The appellant's counsel filed a notice of absence before the DLHT. However, the chairman of the tribunal erroneously dismissed the case for want of prosecution contrary to the principle of the right to be heard. In his view, the dismissal of the case had two implications; first, the dismissal of the case denied the applicant with the right to be heard. Second, the chairperson did not afford the applicant the right to be heard on this matter. If the chairperson had heard the applicant, he could not have reached that decision. The counsel urged the court to set aside the decision of the District Land and Housing Tribunal and order the restoration of Land Application No.152 of 2020.

In this case what seems to be evident is, the Land Application No. 152 was filed in 2020 and remained in the registry of the District Land and Housing Tribunal until in 2023 when it was dismissed for want of prosecution. On the date of hearing the case, the appellant's counsel filed a notice of absence informing the trial tribunal that he will be attending the Tanganyika Law Society meeting. That was the major reason on the absence of the appellant's counsel. However, despite the notice of absence, the trial tribunal dismissed the case. When the appellant filed

Misc. Land Application No. 400 of 2023 seeking to restore the dismissed case, the trial chairman dismissed the application reasoning that failure by the applicant together with his counsel to appear on the date of hearing was laxity. The trial tribunal went further arguing that, even though the advocate was attending a meeting, the appellant was supposed to appear. Hence, the case was dismissed. In my view, the fact that the appellant's advocate notified the trial tribunal on the reason for the absence, it was not proper for the tribunal to demand the presence of the appellant. Demanding the presence of the appellant who was represented takes away his right to representation. The absence of the appellant's advocate was justified and the trial tribunal had no reason to dismiss the case on the mere reason that the appellant ought to have attended to the case. As rightly argued by the appellant's counsel, the appellant has been denied the right to be heard and his right cannot be taken away by merely dismissing the case for want of prosecution whereas the tribunal was informed about the absence. I hereby allow the appeal and order the restoration of Land Application No. 152 of 2020. The restored case should expediently be heard before another chairman. No order as to costs because the respondent did not appear.

Order accordingly.

**DATED** at **Mwanza** this 25<sup>th</sup> Day of April, 2024.



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**25/04/2024**



**Court:**

Judgment delivered this 25<sup>th</sup> Day of April 2024 in the presence of the appellant's counsel Mr. Steven Kitale but in the absence of the respondent. Right of appeal explained to the parties.

**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**25/04/2024**

