

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

AT MWANZA

LAND APPEAL NO. 53 OF 2023

HAMADI OMARY UKWAJU ----- APPELLANT

VERSUS

MARIAM PAUL LYARUU-----1st RESPONDENT

RICHARD NKYA-----2nd RESPONDENT

JUDGEMENT

11th December, 2023 & 9th February, 2024

ITEMBA, J.

By chamber application, the appellant above invited the District Land and Housing Tribunal for Mwanza (the Tribunal) vide Misc. Land Application No. 143 of 2022 to set aside its dismissal order in Application No. 300 of 2021. The DLHT dismissed his application hence this appeal. Three grounds are for determination that, the Chairperson failed to consider the facts on record and consequently reaching into a wrong finding; that, Regulation 15 of the **Land Disputes Courts (District Land and Housing Tribunals) Regulations**, GN. NO. 174 of 2003 (the DLHT Regulations) was not well interpreted; and that, the chairman erred not to set aside the dismissal order dated 23/3/2022.

I ordered the appeal to be argued by way of written submissions following a prayer made by the 2nd respondent and conceded by the rest of the parties. The submissions were duly filed by Mr. Robert Rhobi Neophitus and Ms. Judith Nyaki for the appellant and respondents respectively. For the appeal, it was the submission of Mr. Robert that on 26/01/2022 when the appellant's application was dismissed for want of prosecutions, neither the appellant nor his counsel was present at the Tribunal and then, on 11/2/2022 the Chairman was absent. That, on 22/2/2022 the appellant was present but his advocate's brief was held by Advocate Deogratias Richard and on 23/3/2022 both the appellant and his counsel were absent. Following their absence, the matter was dismissed under Regulation 15 of GN No. 174/2003 (supra). That the said provision was erroneously invoked because essentially, there must be three consecutive months of absence. That, the Tribunal erroneously held the matter to be unattended on 22/2/2022 because Mr. Deogratias learned counsel was present and he held brief of the appellant's counsel.

In reply, Ms. Judith submitted that, on October 30th, 2023 she perused the original file. She noted from the file that the appellant and his advocate were absent on 20/1/2022, same as on 22/2/2022 and 23/3/2022. Following the absenteeism, the Tribunal dismissed the case. She emphasized that

court's proceedings need be trusted. She referred to the case of **Alex Ndaudya vs Republic**, Criminal Appeal No. 207 of 2018 (unreported) which held the courts records to be always presumed accurately representing what actually transpired. To her, Regulation 15 (a) of the Tribunal Regulations was correctly invoked.

In rejoinder, it was emphasized that they have certified record of proceedings of the Tribunal which show that Mr. Deogratus Richard was present holding brief of Mr. John Paul Kaunara.

From the above contentious arguments, I will now determine the appeal. It is cardinal principle that, the court can only restore the dismissed case upon good cause shown. See the case of **Rashid Othman Ramadhani vs Director of Public Prosecutions**, Criminal Application No. 20/15 of 2019; **Bahati Musa Hamisi Mtopa vs. Salum Rashid**, Civil Application No 112/07 of 2018; and Phares **Wambura and 15 others vs. Tanzania Electric Supply Company Limited**, Civil Application No. 186 of 2016 (all unreported).

As correctly submitted by parties, Regulation 15(a) of the Tribunal Regulations empowers the Tribunal to dismiss the application for want of prosecution if the matter remains unattended by the applicant for three months. Further, Regulation 11(1)(b) of the same law empowers the

Tribunal to dismiss the application for want of prosecution if the applicant is absent on the date of hearing.

"On the day the application is fixed for hearing the Tribunal shall-

*(b) When the applicant **is absent without good cause**, and had received notice of hearing or was present when the hearing date was fixed, dismiss the application for non-appearance of the applicant."*

(Emphasis added).

It is the rule of statutory interpretation that one provision of a statute cannot defeat another provision of the same statute unless it is impossible to reconcile them. See the case of **Trade Union Congress of Tanzania (TUCTA) vs. Engineering Systems Consultant Ltd and 2others**, Civil Appeal No. 51 of 2016 (unreported). It is also the law that, when the words used in a statute are clear and unambiguous, no further step is needed to identify the intention of parliament. See the case of **Game Discount World Tanzania vs the Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 22 of 2022 (unreported).

Therefore, in this matter at hand I will examine the records of the Tribunal to see whether the matter was unattended for three months or it was fixed for hearing on 23/3/2022. My reading to page 2 of the Ruling of the Tribunal it is clear that the matter was fixed for mention not hearing.

Regarding whether the matter was unattended for three months, at page 4 of the ruling of the Tribunal in Misc. Land Application No. 143/2022 the chairman said;

"Kwa mantiki hiyo sasa kitendo cha wakili na mteja wake kutofika mbele ya Baraza kuendesha kesi yao tarehe 11/2/2022, tarehe 22/2/2022 na tarehe 23/3/2022 ni wazi kwamba hawakuwa na nia ya kuendelea kuendesha shauri lao..."

Further, at page 2 of the said ruling the chairman reproduced the submissions of the respondent's advocate which reads;

*"Kwa upande wake wakili wa Wajibu Maombi wakili maomi Mwamsiku alieleza kuwa mnamo tarehe 26/1/2022 Mleta Maombi hakuwepo wala wakili wake, tarehe 11/2/2022 mleta maombi hakuwepo na kwa kuwa mwenyekiti hakuwepo basi tulipewa tarehe. **Tarehe 22/2/2022 Mleta Maombi hakuwepo na wakili Deogratius (sic) Richard alishika mikoba ya wakili John Paul Kaunara** kwa taarifa kuwa yupo msibani...Wakili akaendelea kueleza kwamba mnamo tarehe 23/3/2022 Mleta Maombi wala wakili wake hawakufika Barazani ndipo wajibu maombi wakaomba maombi yafutwe chini ya Kanuni ya 15 ya GN. No. 174 ya mwaka 2003" (Emphasis added).*

As correctly submitted for the respondents, courts records bear unquestionable sanctity. They are presumed to be accurate and authentic. See the case of **Selemani Juma Masala v Sylivester Paul Mosha and**

another, Civil Reference No. 13/2018 (unreported); and **Alex Ndendya v the Republic** (supra).

Applying the same principle, it is my findings that the Tribunal was not justified to dismiss the application for three reasons. **One**, assuming that appellant and his advocate did not attend on 11/2/2022, 22/2/2022 and 23/3/2022 consecutively. All three consecutive days were fixed within two months of February and March. Therefore, the Tribunal was not justified, by law to dismiss the application under Regulation 15.

Two; from the submissions of the counsel for the respondents before the Tribunal, which were reproduced at page 2 of the ruling, the respondents agree with the appellant that Mr. Deogratias Richard appeared on 22/2/2022 to hold brief for the appellant's counsel. In the case of **Selemani Juma Masala v Sylivester Paul Mosha and another**, (supra) it was held inter alia at page 14 that;

"...court record cannot be impeached easily as it is taken to be authentic until the contrary is proved." (Emphasis added)

Therefore, even if the proceedings of the Tribunal tell that Mr. Deogratias did not appear, by the submissions of the respondent's counsel, the contrary has been proved that he in fact appeared on material date.

Three; the applicant's application before the Tribunal was supported by three affidavits of Johnpaul Nicholaus Kaunara, Hamadi Omary Ukwaju and Deogratias Richard Rumanyika. The joint counter affidavit of the respondents only countered the affidavit of Johnpaul Nicholaus Kaunara in exclusion of other two affidavits. It is the law that, matters not controverted on oath, are deemed to be admitted. See the case of **Martin D. Kumaliya and 117 others v Iron and Steel Ltd**, Civil Application No. 20/18 of 2018; **East African Cables (T) Ltd v Spencon Services Limited**, Misc. Application No. 61 of 2016; and **Editor Msanii Africa Newspaper v Zacharia Kabengwe**, Civil Application No. 2 of 2009 (all unreported).

Therefore, the fact that Mr. Deogratias appeared before the Tribunal and that they made no appearance before the Chairman due to his absence but they read next fixed date on the notice board, remained uncontroverted by oath.

In upshot, the appeal has merit. the Tribunal was not justified by law not to set aside its dismissal order in Application No 300 of 2021. Henceforth, I quash the decision of the Tribunal in Misc. Land Application No. 143 of 2022. The proceedings in Application No. 300 of 2021 are hereby restored to proceed before another Chairman of competent jurisdiction. Costs shall

follow the outcome of the main case. It is so ordered. Right of appeal is fully explained to the parties.

DATED at **MWANZA** this 9th Day of February, 2024.



**L. J. ITEMBA
JUDGE**

Judgement delivered in chambers this 9th Day of February 2024, in the presence of Mr. Steven Muhoja holding brief for Robert Neophetus counsel for the appellant and Ms. Gladys Mnjari RMA and in the absence of the respondent.

**L. J. ITEMBA
JUDGE**