

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOROGORO SUB-REGISTRY

AT MOROGORO

LAND APPEAL NO. 10980 OF 2023

(Arising from Misc. Land Application No. 36 of 2023 before the District Land and Housing Tribunal of Morogoro at Morogoro)

**ALLY ALMAS MLIGITE (Administrator of
the estate of the late ALMAS MLIGITE) APPELLANT**

VERSUS

REHEMA NASSORO 1ST RESPONDENT
ABDALLAH ADAM KUDUKO 2ND RESPONDENT
DEMESTICIA MAIYANI 3RD RESPONDENT
LUSIA MNG'ONG'O..... 4TH RESPONDENT
MUSSA KOKA 5TH RESPONDENT
SALUMU KIDENGE 6TH RESPONDENT
STEVEN GWASSY 7TH RESPONDENT
HUSSEIN KINONGONA ZINGA 8TH RESPONDENT
**MWANAIKI SHOMARI KABOA (Administrator
of the estate of the late DADI KAMBI) 9TH RESPONDENT**

JUDGEMENT

05/06/2024 & 06/06/2024

KINYAKA, J.:

The appellant instituted a suit against the respondents at the District Land and Housing Tribunal of Morogoro at Morogoro, herein after "the Tribunal" *vide* Land Application No. 170 of 2019. During the preliminary stages of the

suit, the appellant was ordered to serve summons upon the respondents which he managed except for the 3rd, 7th, 8th and 9th respondents. On 17th January 2023, when the suit was called, the appellant failed to submit to the Tribunal evidence of service of the summons upon the 3rd, 7th, 8th and 9th respondents which led the Tribunal to the dismiss the suit for want of prosecution.

Aggrieved by the dismissal order, the appellant applied to the same Tribunal for setting aside the dismissal order *vide* Miscellaneous Land Application No. 36 of 2023. In the affidavit in support of the application sworn by Abdul Ally Bwanga, the then learned Counsel for the appellant, it was contended that the delay was occasioned by lack of cooperation from the street government officials and the delay by the process server for few minutes to submit the returned summons to the Tribunal on 17th January 2023. It was further stated that the summons were brought when they were still before the Tribunal but the Tribunal maintained its order dismissing the application.

On the other hand, the 1st, 5th, 6th, and 9th respondents resisted the application.



After hearing both parties, the Tribunal dismissed the application based on the appellant's failure to provide good or sufficient reason to warrant the Tribunal to set aside the dismissal order.

Dissatisfied with the decision, the appellant knocked the doors of this Court advancing four grounds of appeal as reproduced herein below:-

1. That the Honourable trial Tribunal Chairman erred in law and facts in finding that the appellant does not have sufficient reasons while he provided sufficient reasons in his application for restoration;
2. That the Honourable trial Chairman erred in law and fact in finding that the Miscellaneous Application No. 36 of 2023 was brought under the wrong provision of the law;
3. That the trial Tribunal misdirected itself on the facts to deny the appellant right to be heard; and
4. That the trial Tribunal erred in law to disregard the admission of the other respondents that the matter be disposed of on merit hence denial of justice.

At the hearing of the appeal, Ms. Salma Jafari, learned advocate appeared to represent the appellant, Mr. Christopher Mgalla, learned advocate appeared for the 1st respondent, while the 5th, 6th and 9th respondent appeared in persons unrepresented. The matter proceeded *ex parte* against

the 2nd, 3rd, 4th, 7th, and 8th respondents for their failure to appear before the Court despite being served with summons.

Before submitting on the grounds of appeal, in addition to the grounds of appeal preferred by the appellant, I asked parties to address the Court on propriety of the dismissal order for want of prosecution against the 1st, 2nd, 4th, 5th, 6th and 9th respondents. This was after noting from the record in Land Application No. 170 of 2019 that when the suit was dismissed for want of prosecution on 17th January 2023, the 1st, 2nd, 4th, 5th, 6th and 9th respondents were duly served by the appellant to the satisfaction of the Tribunal, and both the appellant, the 1st, 5th and 9th respondents were present before the Tribunal for hearing, and for those who were duly served and did not appear, the Tribunal had previously ordered the suit to proceed *ex parte* against them.

Ms. Salma Jafari, learned advocate for the appellant was the first to address the Court on the propriety of the dismissal order made by the Tribunal on 17th January 2023. She admitted that the dismissal for want of prosecution made by the Tribunal in Land Application No. 170 of 2019 was improper and against the law. She contended that prior to the order of re-service of summons, the applicant had already exercised his duty to serve the



summons to all the nine respondents but some of them attended and others did not attend.

She explained that the Tribunal had previously made an order to proceed with hearing and ordered *ex parte* hearing order for all the respondents who did not appear. She stated that it was the new Chairperson who came for special clearance session who asked for re-service of summons to the respondents. She added that the appellant encountered challenges in serving some of the respondents which prompted the Tribunal to dismiss the suit.

She argued that the dismissal order was improper as there was already an *ex parte* hearing order for all the respondents who did not appear despite being served with summons. She prayed for the Court to restore the Land Application No. 170 of 2019 so that the parties can be heard on merit for the interest of justice. She informed the Court that the issue raised by the Court is on point of law sufficient to dispose of the present appeal, and thus she refrained to submit on the appellant's remaining grounds of appeal.

On his part, Mr. Mgalla, learned advocate for the 1st respondent joined hands with the appellant's counsel on her position that the Tribunal erred to dismiss Land Application No. 170 of 2019. He added that though the Land Application No. 170 of 2019 was dismissed for want of prosecution, the record reveal

that the appellant was attending the Tribunal and on the date when the suit was dismissed, he was present and attended the proceedings before the Tribunal. He viewed the dismissal was based on the Hon. Chairperson's emotions by his failure to apply Regulation 11(1)(b) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003 hereinafter "the Regulations" which require dismissal of a suit when the applicant fails to appear.

He concluded by praying for the Court to make appropriate orders so that the suit is restored in order for the parties to be heard on merit of the suit before the Tribunal.

Both the 5th, 6th and 9th respondents informed the Court that they join hands for the suit to be restored and heard by the Tribunal on merit.

Following the closure of the parties' submissions, I am enjoined to determine whether it was proper for the Honourable Chairperson to dismiss the appellant's Land Application No. 170 of 2019 for want of prosecution under the then prevailing circumstances.

In answering the above issue, I have revisited the proceedings of the Tribunal in Land Application No. 170 of 2019, the proceedings in Misc. Land Application No. 36 of 2023 and the submissions of the parties in the present appeal. The record of the Tribunal in Land Application No. 170 of 2019 reveal



that the appellant had previously served all the respondents and the suit was scheduled to proceed with hearing in the absence of the respondents who failed to appear and defend the suit. However, when the matter was scheduled in the special clearance session, the subsequent presiding Honourable Chairperson ordered re-service of summons to the respondents. Within the shortest period, the appellant managed to serve upon the 1st, 2nd, 4th, 5th, 6th and 9th respondents and delayed to return proof of service of summons to 3rd, 7th and 8th respondents. In the presence of the appellant and the 1st, 5th and 9th respondents, the Hon. Chairperson dismissed the suit for want of prosecution.

I agree with both Ms. Salma Jafari and Mr. Christopher Mgalla, learned Counsels that it was improper under the then prevailing circumstances for the Tribunal to dismiss the application for want of prosecution.

My inclination to the Counsel's position is based on the fact that the dismissal order for want of prosecution was made while the appellant was present the Tribunal together with the 1st, 5th and 9th respondents for hearing. Regulation 11(1) (b) and (c) of the Regulations empowers the Tribunal to dismiss an application for want of prosecution when the applicant fails to appear without good cause on the date the suit is fixed for hearing. Likewise, the Tribunal



may order an *ex parte* hearing when the respondent fails to appear before the Tribunal on date fixed for hearing without good cause.

Regulation 11(1) (b) and (c) of the Regulations provide:-

11(1) On the day the application is fixed for hearing the Tribunal shall-

- (a) N/A;*
- (b) where 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;*
- (c) where the respondent is absent and was duly served with notice of hearing or was present when the hearing date was fixed and has not furnished the Tribunal with good cause for his absence, proceed to hear and determine the matter ex-parte by oral evidence.*

From the above authority, it is clear that the Honourable Chairperson acted contrary to the dictates of the above provisions of the law when she dismissed the application in the presence of the appellant; refrained from issuing an order for *ex parte* hearing against the respondents who failed to appear and defend the suit; but dismissed the suit for want of prosecution. Another reason for the Tribunal's impropriety is that despite the appellant's failure to submit proof of service of summons upon the 3rd, 7th and 8th respondents, the dismissal order should have been on the appellant's failure

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to prosecute his suit against the 3rd, 7th and 8th respondents and not all the respondents. It is on record that the 1st, 2nd, 4th, 5th, 6th and 9th respondents were duly served by the appellant to the satisfaction of the Tribunal, and both the appellant, the 1st, 5th and 9th respondents were present before the Tribunal for hearing.

I am of a settled mind that the trial Tribunal's hurriedly dismissal of the suit was a result of the desperate measure the Honourable Chairperson opted to take in order to dispose the case which was to be cleared in the special clearance session. In the case of **Simon Pius Mwachilo v. Gratian Thadeo Mutashobya Others, Civil Appeal No. 286 of 2021 [2023] TZCA 17495 (11 August 2023)**, the Court of Appeal observed:-

"Time immemorial, the phrase "Justice delayed is justice denied" has often been used to emphasize the importance of timely and efficient delivery of justice. This is in realization that when a legal system fails to provide justice in a timely manner, it can lead to frustration, loss of faith in the system, and even further injustice. Conversely, "Justice hurried is justice buried" in the sense that, a rush in the delivery of justice can also lead to incorrect and unjust outcomes. Hence, the later phrase is used to caution against hasty decisions in the name of expediency, bearing in mind that speed is good but justice is better and the spirit of justice does not



reside in hasty decision but rather in just decision."

[Emphasis added]

In view of the above observations and authorities, there is no gainsaying that it was erroneous for the trial Tribunal to dismiss the application for want of prosecution in the then prevailing circumstances. I hold that it was incorrect for the Tribunal to uphold its dismissal order in Misc. Land Application No. 36 of 2023 despite the impropriety committed by the Tribunal in dismissing the Land Application No. 170 of 2019 for want of prosecution. It follows the present appeal succeeds to the extent demonstrated above.

Based on the impropriety committed by the trial Tribunal, proceeding with the determination of the remaining grounds of appeal challenging the decision of the Tribunal in Misc. Land Application No. 36 of 2023 is uncalled for.

Consequently, I hereby set aside the dismissal order dated 17th January 2023 issued by the District Land and Housing Tribunal for Morogoro at Morogoro in Land Application No. 170 of 2019. The District Land and Housing Tribunal of Morogoro at Morogoro is ordered to proceed with determination of Land Application No. 170 of 2019 from the stage it was before the dismissal order was made on 17th January 2023 expeditiously.

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As the respondents conceded to the appeal which has greatly saved the time and resources of this Court and the parties, I order each party to bear its own costs.

It is so ordered.

Right of appeal fully explained.

DATED at **MOROGORO** this 6th day of June 2024.



H. A. Kinyaka
H. A. KINYAKA

JUDGE

06/06/2024