

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 4843 OF 2024

(Originating from Land Application No. 21 of 2021, District Land and Housing Tribunal for Mbulu at Dongobesh)

CORNEL PANGA.....1ST APPELLANT

JEREMIA JOSHUA..... 2ND APPELLANT

CRESENT OMBAY.....3RD APPELLANT

ASHA RAMADHANI.....4TH APPELLANT

SAMWELI ZAKARIA.....5TH APPELLANT

DOROTEA QAMARA.....6TH APPELLANT

ADELINA TARIMO.....7TH APPELLANT

VERSUS

BARAZA LA WADHAMINI WA

CHAMA CHA MAPINDUZIRESPONDENT

JUDGMENT

21st May & 12th June, 2024

D. C. KAMUZORA, J.

Before the District Land and Housing Tribunal for Mbulu at Mbulu (hereinafter referred to as the trial tribunal), the Appellants sued the

Respondent for the following reliefs; a declaration that the Appellants are lawful tenants of the Respondent based on the lease agreement entered in 2008, a declaration that any lease agreement entered by the Respondent without involving the Appellants is null and void, an order for injunction against the Respondent, its agent or any person acting on the Respondent's instruction from interfering or disturbing the Appellants from using the suit premises, general damages and loss as may be assessed, costs of the suit and any other relief the trial tribunal deemed fit to grant.

According to the Appellants, sometimes in the year 2008 they entered into 20 years agreement with the Respondent. That, they agreed for the Appellants to construct shops at their own costs on the land owned by the Respondent situated at Hydom within Mbulu District. That, the Appellants were to use the constructed shops and pay monthly rent of TZS 5000/= for the period of contract. The Appellants claimed that, sometimes in 2018 the Respondent informed the Appellants that were required to pay monthly rent of TZS 20000/= to TZS 40,000/=.

Following such abrupt change of rent payable, there were several meetings in attempt to reach amicable settlement but, in vain. The Appellants therefore stopped paying the initial rent of TZS 5000/= waiting for agreement between the two sides. The Appellants claimed that

sometimes in 2021 the Respondent through its agents decided to shut down the shops for the reason that the Appellants had huge rent arrears. The Appellants therefore decided to file a suit before the trial tribunal claiming for the above reliefs.

It is on record that, on 15/5/2023 when the matter was fixed for hearing, only the 5th Appellant entered appearance and informed the trial tribunal that his advocate was appearing before the High Court at Arusha and prayed for another date of hearing. The prayer for adjournment was contested by the Respondent and the trial tribunal required the 5th Appellant to proceed with hearing in the absence of his advocate. The 5th Appellant was not ready to proceed without his advocate hence, the trial tribunal invoked its powers under Regulation 13(2)(3) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations GN No. 174 of 2003 (hereinafter referred to as the Regulations) and proceeded on dismissing the application.

The Appellants were aggrieved with the trial tribunal's decision hence, they preferred the instant appeal on four grounds as follows;

- 1. That, the trial chairperson erred in law and in fact for dismissing the Appellants' application without availing them opportunity to find another advocate of their choice to take over proceedings as a result, the Appellants were condemned without the right to proper legal representation.*

2. *That, the trial chairperson erred in law and in fact for dismissing the Appellants' application while the 5th Appellant was present in person.*
3. *That, the trial chairperson erred in law and in fact for dismissing the Appellants' application while the Respondent filed two different written statements of defence on different dates with different contents and thus, the matter ought to have been scheduled for necessary orders and not dismissing the suit.*
4. *That, the trial chairperson erred in law and in fact for dismissing the Appellants' application and condemned the Appellant unheard without reasonable ground.*

When the appeal was called for hearing, the Appellants were represented by Mr. Manyota, learned advocate while the Respondent was represented by Ms. Hamida Msangi, learned advocate. The appeal was argued orally. In his submission in support of the appeal, Mr. Manyota argued jointly the 1st and 4th grounds, while the 2nd and 3rd grounds were argued separately.

On the 1st and 4th grounds, the learned advocate submitted that the trial tribunal denied the Appellants the right to be heard or right to be represented by another advocate of their choice. That, the trial tribunal was required to give the Appellants right to engage another advocate to take over the proceedings which were abandoned by the Appellants' advocate. That, since the 5th Appellant did not know the legal procedures, the only right he was expecting is representation by his advocate. He

argued that, failure to give the Appellants chance to engage another advocate denied them their right to be heard contrary to the Constitution of the United Republic of Tanzania of 1977, under Article 13 (6)(a) (hereinafter referred to as the constitution) which requires parties to be accorded right to be heard before the decision is made. The learned advocate referred the case of **Mbeya Rukwa Autoparts and transport limited Vs. Jestina Mwakyoma**, [2003] TLR, 251, in which it was observed that the right to be heard is fundamental constitutional right.

Submitting for the 2nd ground, the learned advocate faulted the trial tribunal for dismissing the Appellants' application while the 5th Appellant was in attendance. He submitted that the 5th Appellant informed the trial tribunal that their advocate was not present and since there were legal issues raised before that date, the 5th Appellant was not in a position to respond to those legal issues. That, it was therefore necessary for the matter to be adjourned to another date to allow the 5th Appellant to engage an advocate to address those legal issues.

On the 3rd ground, the learned advocate for the Appellants submitted that, before 15/05/2023 the Respondent had already served the Appellants with two copies of written statement of defence with two different facts. That, the first written statement of defence was received by the tribunal on 27/01/2023 and the second written statement of

defence was received on 02/03/2023. He argued that, it was not decided as which among the written statements of defence was proper before the tribunal or whether the same complied with the order of the trial tribunal issued on 23/01/2023. He claimed that, by 15/05/2023 when the application was dismissed there was uncertainty in the pleadings based specifically, the written statement of defence. He was of the view that, the trial chairperson should not have dismissed the application since the pleadings were not complete. He therefore urged this court to allow the appeal and quash the decision of the trial tribunal.

In reply, Ms. Msangi opposed the appeal and submitted on the 1st and 4th grounds that the Appellants were accorded right to be heard. She argued that, subject to Regulation 13 (2) and (3) of the Regulations, the Appellants were heard through the 5th Appellant who appeared before the trial tribunal. That, the provision is clear that where the advocate does not appear for two consecutive dates, the party will be required to proceed with the matter alone and if he refuses, the case will be dismissed. That, the Appellants denied themselves their right to be heard as they were not ready to proceed with the matter. That, if there is one to blame, it should be the Appellants' advocate because he knows the procedure on what to do where he cannot appear before the tribunal.

On the second ground that the Appellants were denied right to engage an advocate of their choice, Ms. Msangi submitted that such claims lack basis because the 5th Appellant was present but did not inform the court if he intended to engage another advocate. The learned advocate for the Respondent maintained that, the chairman was correct in dismissing the Appellants' application.

On the 3rd ground, Ms. Msangi submitted that, there were three written statements of defence filed by the Respondent because there were issues raised before the trial tribunal and the Respondent was ordered to amend the written statement of defence. That, the final written statement of defence was filed on 02/03/2023 and it came up after amendment ordered by the trial tribunal. She therefore prayed for this court to find the decision of the trial tribunal proper and uphold the same.

In rejoinder, Mr. Manyota essentially reiterated his submission in chief. In my perusal to the grounds of appeal, I discovered that they are interrelated as they raise a common complaint against the trial tribunal's order in dismissing the Appellants' application. Hence, the issue is whether the trial tribunal was justified in dismissing the Appellants' application.

As pointed out before, the learned trial chairperson invoked the provision of Regulation 13(2) and (3) of the Regulations and dismissed

the Appellants' application. For purposes of clarity the said provision reads;

"13 (2) where a party's advocate is absent for two consecutive dates without good cause and there is no proof that such advocate is in the High Court or Court of Appeal, the tribunal may require the party to proceed himself and if he refuses without good cause to lead the evidence to establish his case, the tribunal may make an order that the application be dismissed or make such orders as may be appropriate.

3) where a party's advocate is absent for the reason of attending the proceedings in the High Court or Court of Appeal, the tribunal shall not believe any other evidence as a proof for being in the superior courts other than by producing summons to the advocate and cause list from such courts."

Being guided by the above provision, the trial tribunal invoked it by dismissing the application. The question is whether the above circumstances were demonstrated before the tribunal opted to dismiss the application. I have keenly gone through the record and it is true that the Appellants' advocate was absent for two consecutive dates; on 17/4/2023 and on 15/5/2023. Even in his submission, Mr. Manyota did not deny the fact that he was absent for the two consecutive dates. It is on record that on 15/5/2023 the 5th Appellant was in attendance and he

informed the trial tribunal that their advocate was appearing before the High Court at Arusha. In his submission Mr. Manyota did not state the whereabouts of the advocate by 17/4/2023 and 15/5/2023. The above provision requires the advocate alleging to attend another case before the High court or Court of Appeal to produce evidence to that effect. It was therefore expected for the Appellants to submit before the trial a tribunal a cause list or summons showing that their advocate was appearing before the High Court at Arusha. Even in this appeal, nothing was brought by the learned advocate to justify non-appearance before the trial tribunal.

On the argument that the 5th Appellant was denied chance to engage another advocate, I agree with Ms. Msangi that the records are silent on whether the 5th Appellant requested for time to engage another advocate. In that regard, the arguments by Mr. Manyota that he was denied right to engage another advocate of his choice, lack basis.

Having considered the circumstance of the matter, I am satisfied that although non-appearance by the Appellants' advocate was not actuated by good cause as I have pointed above, I find that dismissing the matter was a far-reaching consequence. I hold so because, the trial tribunal was informed that the 1st and 2nd Appellants were attending the funeral of their uncle while the 6th Appellant was reported sick. The


learned chairman of trial tribunal did not reason the right of the absent parties before he dismissed the application. In my view, before dismissing the matter, the chairman should have considered the reasons advanced for other Appellants who were absent if they constituted good reason for adjournment or not. I therefore find that there was violation of the right to be heard by the trial tribunal.

It must be noted that dismissing the matter is not the only remedy available under Regulation 13 of the Regulations. The trial tribunal had option of making any other appropriate order which was either to adjourn the matter or order adjournment with costs or order all parties to appear and proceed with hearing of the matter. In that regard, I am of the settled view that, the trial tribunal erred in dismissing the Appellants' application.

In the circumstance, I quash and set aside the trial tribunal's order dated 15/5/2023 and order restoration of Application No. 21 of 2021. I therefore allow the appeal but in considering the circumstance of this appeal, I will not make order as to costs.

DATED at BABATI this 12th Day of June, 2024.




D. C. KAMUZORA
JUDGE