

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB – REGISTRY OF MANYARA**

**AT BABATI**

**LAND APPEAL NO 26495 OF 2023**

*(Originating from Application No 16 of 2023 in the District Land and Housing Tribunal for Babati District at Babati)*

**LEO MARTINI AKONAAY ..... APPELLANT**

**VERSUS**

**EMANUEL PETER TIMOTEO ..... 1<sup>ST</sup> RESPONDENT**

**THERESIA NEAY..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*7<sup>th</sup> and 8<sup>th</sup> March 2024*

**MIRINDO J.:**

The appellant Leo Martini Akonaay instituted a land case against Emmanuel Peter Timoteo and Theresia Neay, the respondents, before Babati District Land and Housing Tribunal in February 2023. He consistently appeared before the Babati Tribunal from 1<sup>st</sup> March 2023 to 19<sup>th</sup> September 2023 but hearing did not take place. When on 16<sup>th</sup> November 2023, the respondents appeared through Advocate Lundu, Leo stated that he was not ready for hearing because “he had forgotten his advocate,” the Tribunal ruled that Leo was not ready for hearing. He struck out the application without costs.



Leo has appealed to this Court on the grounds that his case was “dismissed” in violation of the principles of fair hearing. In his argument at the hearing of the appeal, Leo stated that the Babati Tribunal was biased because the delay in hearing the case was occasioned, not by him, but the respondents. Responding to the appeal, the respondents argued that they never failed to appear before the Babati Tribunal and the case was dismissed due to Leo’s failure to bring witnesses all the time when they appeared before the Babati Tribunal.

As I stated at the beginning, the record is inexplicably silent as to why hearing could not take place from the first hearing date, that is 15<sup>th</sup> May, 2023 to 19<sup>th</sup> September 2023. To be fair to Leo, on 15<sup>th</sup> May 2023 when the case was called for hearing, he appeared but both respondents were absent and the case was simply adjourned. On subsequent dates up to 19<sup>th</sup> November 2024, he consistently appeared while both respondents were either absent or only the first respondent was present. In all these dates, the Babati Tribunal merely adjourned the hearing. No reasons were given for not hearing Leo and neither is Leo recorded to have failed to produce a witness.

As regards Leo’s refusal to continue with the hearing on 16<sup>th</sup> November 2023, it was upon the Babati Tribunal to give him a chance to procure services of counsel. It is clear from the record that this was the only time that Leo presumably sought for adjournment. Given that the Tribunal granted several *sua*



*sponte* adjournments to the respondents, it was disproportionately unfair to deny the adjournment to Leo.

I am satisfied that the order made by Babati District Land and Housing Tribunal cannot be allowed stand and I would allow the appeal with costs. I quash the order striking off the application by Leo Martini Akonaay and restore it before the Babati District Land and Housing Tribunal. The application by Leo Martini Akonaay is hereby remanded to Babati District Land and Housing Tribunal for hearing before a different chairperson according to law with the direction that the Tribunal summon both parties for hearing before it forthwith after the return of records of appeal from this Court.

It is so ordered.

DATED at BABATI this 8<sup>th</sup> day of March 2024



A handwritten signature in blue ink, appearing to read 'F.M. Mirindo', is written over a circular stamp.

**F.M. Mirindo**

**JUDGE**

**8/3/2024**