

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

LAND CASE APPEAL NO. 4 OF 2013

(From the decision of the District Land and Housing

Tribunal of Iringa District at Iringa in Misc.

Application No. 42 of 2012)

MIC (T) LTD. APPELLANT

VERSUS

AGUSTINO SANGA..... RESPONDENT

4/12/2014 & 6/3/2015

JUDGEMENT

MADAM SHANGALI, J.

The appellant above named, being aggrieved by the decision of the District Land and Housing Tribunal for Iringa in Misc. Application No. 42 of 2012 has lodged the instant appeal before this court. The appeal consists of two grounds as per the Memorandum of Appeal filed by the Appellant in this court, that:-

1. The Honourable Chairman erred in law and facts in failing to acknowledge that the ex-parte

judgement was tainted with material irregularity on the fact of it as the respondent failed to prove ownership of the disputed land.

2. The Honourable Chairman erred in law and facts in deciding that there was proper services to the applicant (sic).

Before this court Mr. Makaki Masatu, who was assisted by Mr. Emmanuel Ndanu learned counsels appeared for the appellant and Mr. Malangalila, learned counsel appeared for the respondent. By the order of this court dated 23rd September, 2014, which the parties observed accordingly, parties were ordered to argue the instant appeal by way of written submissions.

The background to this appeal is as follows. On 11/6/2009 the present respondent filed an Application No. 29 of 2009 before Iringa District Land and Housing Tribunal against the present appellant. When that matter started before the trial tribunal the respondent/applicant was represented by Mr. Malangalila learned advocate while the appellant/respondent was represented by Mr. Masatu, learned advocate.

The trial tribunal's record of proceedings indicate that

the appellant/respondent participated in the proceedings up to 9/2/2010 when parties were granted leave to argue the preliminary objection filed by the appellant/respondent by way of written submissions. The appellant/respondent duly complied with the schedule of filing written submissions but surprisingly thereafter he disappeared from the proceedings completely. The Ruling to that preliminary objection was delivered on 6/4/2011 in the absence of the appellant. The preliminary objection was dismissed and the trial tribunal ordered the case to proceed on merits.

Thereafter the matter was adjourned several times and summons issued to the appellant/respondent who was quite aware of his pending case before the trial tribunal. However, the appellant and his advocates decided to be no show persons. The appellant did not bother himself to inquire about the case from 9/2/2010 when it was adjourned. On 13/10/2011, Mr. Malangalila learned advocate representing the respondent/applicant requested the trial District Tribunal to allow him to proceed with the application/case exparte. That application was granted because the appellant was duly served and he was aware of the existing matter before the tribunal but yet decided to stay away. On 28/6/2012 the exparte judgemet was delivered in favour of the respondent/applicant.

It was during execution process when the appellant emerged and decided to break his silence with an application seeking for the following mixed main reliefs; **One**, Order for stay of execution of the Judgement and Decree dated 28/6/2012 pending the determination of the application for extension of time to set aside the exparte Judgement; **Two**, grant of extension of time to file an application to set aside an exparte Judgement; and **Three**, Order to set aside the exparte Judgement entered on 28/6/2012.

During the hearing of the application, and for the reasons not stated in the record of proceedings the parties concentrated their submissions on the application for order to set aside the exparte decision and the trial tribunal ruled on that part only. In its decision dated 1/3/2013, the application was refused with costs.

Aggrieved by that refusal decision the appellant has come to this court with the above stated two grounds of appeal. I had an ample time to thoroughly go through the length written submission filed by the parties in this appeal. On the first ground of the appeal the appellant's counsel expounded it to include issues touching on what he termed material irregularities namely, that the respondent's failure to prove ownership of the disputed land; that, the exparte judgement lacked points for determination in accordance to

the law; that the amount purported to be rental charges per month is unreasonable and not supported by any evidence; that the Hon. Chairman failed to observe that the respondent did not prove his claims to the required standard and that the issue of third party notice was not properly attended.

With due respect to the learned advocate for the appellant, it is unfortunate that he wasted much time in attacking the trial District Tribunal's exparte judgement on merits as if there is an appeal against exparte Judgement. The learned advocate also cited a good number of case authorities which has nothing to do with neither exparte decisions nor setting aside exparte decisions. It must be appreciated that what was before the trial District Tribunal is the application to set aside exparte decision. It was not an appeal against exparte judgement.

In application to set aside exparte decision the main duty of the applicant is to give sufficient reasons and explain why he was absent when the matter was called for hearing. Likewise, on appeal against refusal thereof, the main duty of the appellant is to show where and how the trial court or tribunal erred or failed to consider would be sufficient reasons for his absence. In my considered opinion, the appellant should not be let to argue an appeal against