

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 04 OF 2019**

(Arising from the decision of Ilala District Land and Housing Tribunal in Land application No.42 of 2018)

**MWIDINI HASSANI SHELA.....1<sup>ST</sup> APPELLANT  
SOPHIA JUMA NGASINDA.....2<sup>ND</sup> APPELLANT  
SALUM MOHAMED TINDWA.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**ASINAWI MAKUTIKA.....1<sup>ST</sup> RESPONDENT  
SAID ISSA NGOLA.....2<sup>ND</sup> RESPONDENT  
ALLY MOHAMED NGOLA.....3<sup>RD</sup> RESPONDENT  
ISSA MOHAMED NGOLA.....4<sup>TH</sup> RESPONDENT  
ADULI AUCTION MART LIMITED.....5<sup>TH</sup> RESPONDENT**

Date of Last Order: 17.07.2021  
Date of Judgment: 23.08.2021

**JUDGEMENT**

**V.L. MAKANI, J**

The appellants named above are appealing against the decision of Mkuranga District Land and Housing Tribunal (the **Tribunal**) in Land Application No.42 of 2018 (Hon. Mwakibuja, Chairman)

At the Tribunal the appellants among other things, applied for the Tribunal to set aside its dismissal order dated 12/04/2018. The application was dismissed for lack of merit. Being dissatisfied with the

decision of the Tribunal they have appealed to this court with two grounds of appeal which are reproduced hereinbelow as follows:

- 1. That the trial Tribunal erred in law and fact by determining the application inter-parties without taking into consideration to the effect that the 1<sup>st</sup> respondent lacked locus standi.*
- 2. That, the trial tribunal erred in law and facts by failure to consider reasons for non-appearance as contained in the applicants' affidavit.*

The appellant prayed for appeal to be allowed with costs and the order of the Tribunal be set aside, and costs of this appeal be granted.

The hearing of this appeal proceeded by way of written submissions, appellants and respondents personally drew and filed their submissions.

In their joint submission, the appellants arguing the first ground of appeal said that in this case the 1<sup>st</sup> respondent was seriously sick and did not appear for mentions or hearings at the Tribunal. He said the 1<sup>st</sup> respondent's son MWALAMI MAKUTIKA unlawfully appeared to prosecute the said application without any statutory justification. They said that under Order III Rule (1) and (2) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**) any recognized agent appearing in

court is required to hold Power of Attorney. That the said MWALAMI MAKUTIKA represented his father in the dismissed application without a Power of Attorney. They sought assistance from the case of **Hans Nargosen vs. BP Tanzania Limited [1987] TLR 175** where it was held that authorization to settle a claim is not the same as authorization to appear, apply or do any act in or to any court within the meaning of Order III Rule 1 of the CPC.

Submitting for the second ground of appeal, the appellants stated that at the Tribunal they successfully stated sufficient reasons to set aside the dismissal order, however the Chairman did not consider those reasons. That the Chairman dismissed the application on mere statements adduced by a person with no Power of Attorney. They said that the Tribunal went contrary to the principle of natural justice contrary to Article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. They prayed for the appeal to be allowed with costs.

In his reply the 1<sup>st</sup> respondent said that the records, from the Tribunal show that the 1<sup>st</sup> respondent orally argued his case in person. That he had *locus* and interest in Misc. Land Application No.32/2012. That

no records show that the 1<sup>st</sup> respondent's case was unlawfully prosecuted by his son MWALAMI MAKUTIKA.

On the second ground of appeal, the 1<sup>st</sup> respondent said that the appellant failed to prove his case at the Tribunal. That it was his legal duty to prove as he is the one who alleged. That the Tribunal well stated at page 3 of the last paragraph of the ruling that the applicants did not argue the reasons of their absence on the date when Application No.13 of 2017 was called for hearing.

In their reply the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents said that, on the material date the 1<sup>st</sup> respondent's son orally informed the Tribunal that his father was very sick and that he was representing him. That he had no Power of Attorney to justify his *locus standi*. They said they are surprised that the Chairman inserted the name of the 1<sup>st</sup> respondent's son in the coram without requiring him to produce a Power of Attorney or any relevant document to that effect.

On the second ground of appeal, they said that they were acquainted with the reasons adduced by the appellant as on the hearing date the advocate for the appellant phoned to inform the trial Chairperson in

respect of the delay of his Legal Officer but it was in vain, that regardless of his delay he showed his diligence by appearing before the Chairperson and explain the reasons for delay but it became futile as the case was dismissed for want of prosecution. They prayed for the appeal to be allowed without costs and insisted that the issue of *locus standi* of the first respondent's son is very material for the court to allow this appeal.

In rejoinder appellants reiterated their main submission.

The main issue for determination is whether this appeal has merit. I will start with the second ground of appeal. The question is whether the appellants adduced sufficient reasons for the Tribunal to set aside its dismissal order dated 12/04/2018. Before answering that issue, I find it important to trace back the Tribunal's records on how the dismissal order was granted. The records are clear that the applicants in Land Application No.13 of 2017 are the appellants herein. On 18/01/2018 the matter was adjourned for the last time and the hearing date was set for 18/04/2018, however on the date of hearing all the applicants (appellants) were absent and the matter was dismissed for want of prosecution. The applicants (appellants) filed

Misc. Application No.42 of 2018 praying for the Tribunal to set aside the dismissal order in Land application No.13 of 2017. But the said application was dismissed. Misc. Land Application No.42 of 2018 is the subject of this appeal.

It is trite law that powers to set aside dismissal order are in the discretion of the court, however the applicant should furnish sufficient reasons to enable the court to exercise its discretionary powers. Now, did the appellants herein supply sufficient reasons at the Tribunal? Mr. Lutufyo Mvumbagu, Advocate who swore the affidavit for the applicants (appellants) at the Tribunal stated at paragraph 5 and 6 of the said affidavit that on the date of hearing he was attending Annual General Meeting of the Tanganyika Law Society and that he sent his Legal Officer to notify the Tribunal of his absence. However, there is no proof on record of his absence such as tickets or any travel document to the said General Meeting. Again, there is no record that the alleged Legal Officer showed the notice of the absence of Mr. Mvumbangu or the applicants (appellants) to the Chairman. There are allegations that the Legal Officer was in court but there is no affidavit on record to prove that fact. Worst enough, on the date of hearing of the application to set aside the dismissal order, all the applicants and

respondents present argued on the legality of the demolition of the houses. In essence they did not bother to argue sufficient reasons for their absence on the hearing date in Land Application No.13 of 2017, instead they argued the merit of the dismissed application. On such circumstances it would have been difficult for the Chairman to attempt to set aside the dismissal order given that no sufficient reasons were adduced by the applicants. Therefore, in my considered view, the Chairman was not at fault in dismissing the application. I therefore find the second ground of appeal with no merit.

As for the first ground of appeal on the *locus standi* of the 1<sup>st</sup> respondent. The records show that the 1<sup>st</sup> respondent was ASINAWI MAKUTIKA. On the date of hearing MWARAMI MAKUTIKA was in place for the 1<sup>st</sup> respondent and gave his submission on behalf of the 1<sup>st</sup> respondent. On that day of hearing the appellants herein were present but did not raise any objection. It is after the dismissal of the application that the appellants are raising the issue of *locus standi*. This is indeed is an afterthought as they had an opportunity to do so at the Tribunal, but they decided to raise it after the dismissal of the application. In any case, as established hereinabove, that the applicants (appellants) did not manage to furnish sufficient reasons

for their non-appearance the alleged ground of *locus standi* of MWARAMI MAKUTIKA is watered down because even if ASINAWI MAKUTIKA had appeared in person, still the application would have been dismissed for failure by the applicants (appellants) to adduce sufficient reasons to set aside the dismissal order. The merit of this ground of appeal is also wanting.

For the reasons above, it is the finding of the court that the appeal lacks merit, and it is subsequently dismissed with costs.

It is so ordered.



**V.L. MAKANI**  
**JUDGE**  
**23/08/2021**



THE HIGH COURT OF TANZANIA  
LAND DIVISION