

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

LAND APPEAL NO.43 OF 2022

(Arising from the District Land and Housing Tribunal for Temeke in  
Land Application No.109 of 2022)

MUSA ALLY NYAMSINGWA ..... APPELLANT

VERSUS

JUMA MTERE ..... RESPONDENT

JUDGMENT

*Date of last Order: 21.09.2022*

*Date of Judgment: 29.09.2022*

**A.Z.MGEYEKWA, J**

This appeal stems from the decision of the District Land and Housing Tribunal for Temeke in Land Application No. 109 of 2022. The matter of controversy between the parties arises from the Tribunal's order dated 5<sup>th</sup> May, 2022. The material background facts to the dispute are briefly as follows; the Tribunal delivered an *ex parte* Judgment against the appellant Dissatisfied the appellant lodged an application to set aside the *ex parte* Judgment. The Tribunal determined the application and decided in favour

the applicant. Thereafter the parties were ordered to appear before the Tribunal on 3<sup>th</sup> May, 2022. However, parties were not able to appear before the tribunal because the hearing was set on weekends. On 5<sup>th</sup> May, 2022, the respondent appeared at the Tribunal and the appellant was absent. Therefore the Chairman decided to dismiss the application based on the fact the appellant did not show appearance to use his opportunity as prayed. The Chairman went on to order Execution No. 298 of 2019 to proceed and he appointed a tribunal broker Jucaco Auction Mart Court Brokers & Debt Collectors Ltd.

In this appeal, the appellant has accessed the Court seeking to impugn the District Land and Housing Tribunal for Temeke decision through a memorandum of appeal premised on 4 grounds of grievance and 1 additional ground, namely:-

- 1. The tribunal Chairman erred in law and in holding that the tribunal cannot set aside its order dated 05.05.2022.*
- 2. The tribunal Chairman erred in law and in applying incorrect provision, being Regulation 13 of the Courts (District Land and Housing Tribunal) Regulations, G.N. No. 174/2003, despite being moved under the provisions of Regulation 11 of the Courts (District Land and Housing Tribunal) Regulations, G.N. No. 174/2003.*

3. *The trial Chairman erred in law and in fact for ignoring natural justice and failure to determine the application to its merits.*

4. *The trial tribunal erred in law and in fact in restoring an ex parte judgment which was already set aside.*

When the matter was called for hearing on 21<sup>st</sup> September, 2022, the appellant enlisted the legal service of Mr. Hosea Chamba, learned counsel and the respondent enjoyed the legal service of Ms. Cypriana William, learned counsel.

In prosecuting this appeal, the appellant's advocate opted to argue the first and second grounds together because they are interrelated. Except for the third and fourth grounds he argued them separately.

With respect to the first and second ground, Mr. Hosea submitted that the appeal originated from Misc. Land Application No. 109 of 2022. Mr. Hosea contended that on the last page of the Judgment of District Land and Housing Tribunal Judgment, the Chairman held that the Tribunal cannot set aside its order dated 5<sup>th</sup> June, 2022 because the law did not permit him to do so. The learned counsel for the appellant asserted that the Chairman relied on a wrong provision since Land Application No. 109 of 2022 was lodged under Regulation 11 (2) of the Land Disputes Court (District Land and Housing Tribunal) Regulations of 2013.

Mr. Hosea went on to submit that the application was lodged after the determination of Appeal No. 19 of 2019 *ex parte* and the tribunal allowed the appeal, hence the *ex parte* Judgment was set aside and the Chairman scheduled the hearing on 3<sup>rd</sup> May, 2022 to be heard interparties. Mr. Hosea went on to argue that 3<sup>rd</sup> May, 2022 was a holiday. Therefore, the Chairman scheduled a hearing on 5<sup>th</sup> May, 2022, however, the appellant did not appear in Court, as a result, and the Chairman dismissed the application to set aside the *ex parte* Judgment and restored the *ex parte* Judgment which was already set aside without even conducting the *ex parte* hearing.

The learned counsel for the appellant continued to argue that the appellant was aggrieved by the decision of the tribunal and hence decided to set aside the said order by invoking section 11 of the Land Disputes Court (The District Land and Housing Tribunal), Regulations, 2003. He contended that it was not correct for the Chairman to apply Regulation 13 of the Land Disputes Court (The District Land and Housing Tribunal), Regulations, 2003 and claim that he had no power to set his own order. It was his submission that Regulation 13 applies in a situation where the matter has been fixed for hearing but the advocate representing the respondent did not show appearance.

He added that Regulation 13 also applies upon satisfaction of four conditions as stated in the case of **Adam Mohamed Zuberi v Kulwa Mashaka**, Civil Application No. 175 of 2018 CAT (unreported). Mr. Hosea stated that the cited case contains similar facts to the present case. He asserted that in the case at hand, the matter was called for hearing interparties for the first time. The appellant went on to submit that on the second condition, the applicant's counsel explained the good cause but he did not consider the applicant's submission in his decision. He asserted that the third and fourth<sup>h</sup> conditions were not met. Mr. Hosea spiritedly argued that the cited case shows that if the said condition were not met then Regulation II is a proper provision to set aside the Tribunal orders. Mr. Hosea stressed that the Chairman applied an improper provision of the law.

On the third ground; the applicant's counsel lamented that the Chairman did not observe the Principle of Natural Justice because the appellant was not given the right to be heard and was not allowed to proceed to argue his case in person.

As to the fourth ground; the learned counsel for the appellant argued that the Chairman erred in law in restoring his *ex parte* Judgment and ordered the Land Application No. 19 of 2019 to be heard interparties. Mr. Hosea argued the Chairman had a duty to conduct a fresh hearing instead of

restoring a Judgment which was already been set aside. He insisted that it is a material error and in totality prejudiced the appellant.

On the strength of the above submission, the appellant's Advocate stated that in the circumstances at hand, he urged this Court to allow the appeal and order the parties to be heard interparties.

In reply, the counsel for the respondent's confutation was strenuous. Ms. Cyriana combined the first and second grounds. She argued that the Chairman was correct to set aside the Order date 5<sup>th</sup> May, 2022 because he already ordered the matter to be determined interparties. To support her submission, she referred this Court to page 5 of the Tribunal Judgment and stated that the counsel and his client did not appear on 19<sup>th</sup> April, 2022 at the Tribunal, and again, they did not show appearance on 5<sup>th</sup> May, 2022. The learned counsel for the respondent went on to argue that the counsel for the appellant claimed that he was sick but he did not go to the hospital, and the applicant did not show appearance. She added that had the applicant appeared in person at the Tribunal then the Chairman could have adjourned the matter. The learned counsel for the respondent further asserted that the counsel for the applicant did not inform the Tribunal of the whereabouts of the applicant.

Arguing for the second ground; the learned counsel for the respondent insisted that the learned advocate did not show sufficient cause for his

non-appearance and therefore, the appellant did not move the Tribunal to set aside its order. To fortify her submission she cited the case of **Hussein Tara and Jamila Ibrahim**, Misc. Land Application No. 175 of 2016, whereas the advocate and client did not show appearance, therefore the Court dismissed the matter for failure to adduce sufficient cause.

Submitting on the third and fourth grounds, the learned counsel for the respondent contended that the advocate and the applicant are the ones who made the Chairman dismiss the application because they did not show appearance. Ending, the learned counsel for the respondent urged this Court to dismiss the appeal with costs for failure to adduce sufficient reasons.

In his brief rejoinder, the counsel for the appellant reiterated his submission in chief. He submitted that the tribunal in its findings did not state that the appellant did not show an appearance twice on 19<sup>th</sup> April, 2022, and 5<sup>th</sup> May, 2022. He added that the interparties hearing was scheduled on 3<sup>rd</sup> May, 2022, however, it was a holiday. He lamented that the tribunal did not consider the appellant's reasons for non-appearance. The counsel urged this Court to allow the appeal and restore the Land Appeal No. 19 of 2019 to be heard interparties.

After a careful perusal of the submissions made for and against the appeal by both learned Advocates and after having gone through the court

records, I have come to the following firm conclusions. In determining this application the main issue calling for determination is *whether or not the appellant has shown good cause to warrant this court to grant his appeal.*

In my determination, I will consolidate the first and fourth grounds together because they are interrelated. Except for the second and third grounds which will be argued separately.

On the first and fourth grounds, the appellant is complaining that the tribunal erred in law in holding that he cannot set aside the order dated 5<sup>th</sup> May, 2022 and that the Chairman faulted himself in restoring the *exparte* Judgment which was already been set aside. It is settled law that an applicant who seeks to set aside a dismissal for want of prosecution must adduce sufficient reasons. In the matter at hand, the Chairman determined and allowed the appellant's application to set aside an *exparte* Judgment. Thereafter, the Chairman scheduled the hearing interparties on 3<sup>rd</sup> May, 2022.

The record shows that on 3<sup>rd</sup> May, 2022 was a holiday, thus, the hearing was scheduled for hearing on 5<sup>th</sup> May, 2022. The Chairman was furious after noting that the appellant did not show appearance when the matter was called for hearing on 5<sup>th</sup> May, 2022, therefore, he dismissed the application. The Chairman main reasons for dismissing the application was because the appellant had not furnished the court with sufficient



reasons for nonappearance when the suit was called for hearing on 5<sup>th</sup> May, 2022. The appellant tried to set aside the dismissal order dated 5<sup>th</sup> May, 2022 without success.

It is undisputable fact that the appellant did not show appearance on 5<sup>th</sup> May, 2022, however, as I have pointed out earlier, the Chairman scheduled the matter for hearing on 3<sup>rd</sup> May, 2022 on which it was a public holiday. In my view I find that the default to appear was not on the date set by the Tribunal. The records are silent whether parties were notified that the hearing was scheduled on 5<sup>th</sup> May, 2022. In my opinion, I find that the Chairman could have acted leniently and adjourned the hearing. Considering the fact that the date which was set for hearing was a holiday.

Moreover, the Chairman misdirected himself to order the execution to proceed while the records reveal that the Chairman issued an order to set the *ex parte* judgment which means there was no any pending judgment before the tribunal. Therefore it was not correct for the Chairman to issue further orders.

Under the circumstances, I find the appellant's contention on the first and fourth grounds meritorious. I will therefore detain myself in evaluating and analyzing the remaining grounds of appeal doing so will be an academic exercise.

In sum, I quash and set aside the decision of the District Land and Housing Tribunal in Land Application No.109 of 2022. I order Land Appeal No. 19 of 2019 to be restored for continuation from where it stopped when it was dismissed for want of prosecution. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 23<sup>rd</sup> September, 2022.



  
A.Z.MGEYEKWA

**JUDGE**

23.09.2022

Judgment delivered on 23<sup>rd</sup> September, 2022 in the presence of Mr. Hosea, counsel for the appellant, and Ms. Cypriana William.



  
A.Z.MGEYEKWA

**JUDGE**

23.09.2022

Right of Appeal fully explained.