

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 95 OF 2021

(Raising from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 26 of 2019, Originating from Misc. Land Application No. 251 of 2013.)

SARAH GEORGE MTOKA..... APPELLANT

VERSUS

GIANT FINANCE LTD..... RESPONDENT

JUDGMENT

11/08/2022 & 22/09/2022

Masoud, J

The appellant, being dissatisfied with the decision of the District Land and Housing Tribunal of Kinondoni District at Mwananyamala ("The Tribunal") in Land Application No. 26 of 2019, has appealed to this court on the following grounds: -

- 1. That the hon. Chairperson grossly erred in law and fact by setting aside ex parte judgment and decree dated 20/11/2015, before determining Misc. Land Application No. 26/2019 for extension of time to file an application to set aside ex parte judgment and decree out of time, rendering it time barred as it was heard and determined out*

of time as the Tribunal had not first pronounced itself on the said Misc. Land Application No. 26 of 2019 which was the only application it.

- 2. That hon. Chairperson grossly misdirected herself and misconstrued facts to arrive at a conclusion of setting aside the said ex parte judgment and decree referred to in the first ground herein without a substantive application to that effect, thereby occasioning a failure of justice on the appellant since, it deprived her of the right to be heard and condemned her unheard.*
- 3. That, the hon. Tribunal chairperson grossly erred in law and fact by entertaining the said Misc. Land Application No. 26 of 2019 which was incompetent before the Tribunal for non-citation of specific enabling provision of the law/ being preferred under a wrong enabling provision of the law.*

Based on the above reasons, the appellant asked the court to allow the appeal and set aside the said decision and decree. The appellant also prayed for the costs of the appeal.

The respondent neither entered appearance nor filed submission. As such, the court ordered the matter to proceed ex-parte against him. The appellant was represented by Daniel Oduor, Advocate. The appeal was

disposed of by way of filing written submission and the submission was filed as scheduled. Submitting in support of the appeal, Mr. Oduor decided to abandon the 3rd ground and proceeded to argue the 1st and 2nd grounds.

Submitting on the 1st ground, Mr. Oduor, argued that, Application No. 26 of 2019 concerned an application for extension of time for the applicant to file an application to set aside the ex parte judgment in Application No.251 of 2013 out of time. He added that, the prayers in the chamber application accompanied by the affidavit affirmed by the respondent's principal officer, one Jabir Seif, did not include an order for setting aside the ex parte judgment of the said application.

Mr. Oduor, submitted further that, it is trite law that, the court will not grant reliefs which were not prayed for. Therefore, the order to set aside the ex parte judgment was illegal and irregular for it was not prayed for in the chamber summons.

To support his argument, he referred the court to the cases of **James Funke Gwagilo vs Attorney General [2004] T.L.R 161** and **Hotel Travertine Limited & 2 Others vs National Bank of Commerce [2006] T.L.R 133** where the court held that:

"...It is elementary law which has been settled in our jurisdiction that the court will grant only a relief which has been prayed for and nothing else..."

Submitting on the 2nd ground, Mr. Oduor, submitted that because the order to set aside the ex parte judgment was given illegally, it means that the appellant was not given the right to be heard on the said issue. She was not accorded opportunity to respond to every fact, for there was no substantive application served to her for setting aside ex parte judgment. The court was thus told that what happened was contrary to Article 13(6)(a) of the United Republic of Tanzania of 1977.

I have gone through the appellant's submission, the records of the tribunal. The issue is whether the appeal at hand is meritorious.

I am going to merge and argue together the 1st and the 2nd grounds, as they interrelate. Having perused the records of this appeal particularly the chamber summons and affidavit supporting the Misc. Land Application No. 26 of 2019, I was not in doubt that the gist of the said application was for extension of time within which to file an application for setting aside the ex parte judgment in Land Application No. 251 of 2013.

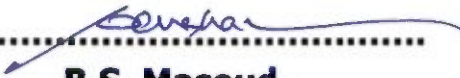
Going by the Tribunal's decision on the said application, the trial Chairperson decided on the matter which were not before her. As I have said earlier, the application was for extension of time and not for setting aside the ex parte judgment.

Thus, Mr. Oduor's was right in my considered view to submit that the decision entered on Application No. 26/2019 was illegal, as the trial Chairperson was required to decide on what was before her. Indeed, what was before her was an application for extension of time and not an application for setting aside the ex parte judgment.

Indeed, by deciding on the matter which was not before the Tribunal, the appellant was denied the right to be heard on the matter. The appellant was never served with summons on the matter which was decided by the Tribunal. Henceforth, the 1st and the 2nd ground have substance.

In the upshot of the foregoing finding, the appeal is allowed with costs. This is because the District Land and Housing Tribunal erred when it set aside the ex-parte judgment while what was before the tribunal was an application for extension of time. Consequently, the ruling and drawn order of the tribunal are hereby quashed and set aside. It is so ordered.

Dated at Dar-es-Salaam this 22nd day of September, 2022



B.S. Masoud.
JUDGE

