

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS LAND APPEAL NO. 5 OF 2022

ALBERT KALYALYA APPELLANT

VERSUS

MCHUNGAJI KASITU

KWA NIABA YA KANISA KKKT RESPONDENT

(Appeal from the ruling and Drawn Order of the District Land and Housing Tribunal for
Rukwa at Sumbawanga)

(J. Lwezaura, Chairperson)

Dated 16th day of March 2022

In

(Misc. Application No. 188 of 2021)

JUDGMENT

Date: 12/08 & 29/08/2022

NKWABI, J.:

This appeal is prompted by the dismissal of application number 188 of 2021 which sought setting aside the dismissal order of the application for extension of time number 145 of 2020 which was for extension of time within which to file a revision over judgment and decree in Land Application No. 5 of 2018. Application No. 145 of 2021 was dismissed for non-appearance of the appellant in this appeal in this Court.

In dismissing the application number 188 of 2021 which was for setting aside the dismissal order as indicated above, the District Land and Housing Tribunal had these in its holding:

"Wakili Gerald ameeleza kuwa sababu ya msingi iliyomfanya mleta maombi kushindwa kuhudhuria hapa Barazani mnamo tarehe 30.6.2021 kuendesha maombi yake namba 145/2020 ni kwa sababu alikuwa mgomjwa na ili kuthibitisha hilo nakala ya cheti cha daktari kilitolewa.

Nimepitia kwa kina cheti cha daktari na nikagundua kuwa cheti hicho kinaonekana kuwa kilitolewa mnamo tarehe 28.7.2021. Maombi Na. 145/2020 yamefutwa mnamo tarehe 30.6.2021. Imedaiwa na wakili wa mleta maombi kuwa kwa tarehe 30.6.2021 mleta maombi alikuwa mgomjwa. Kama madai hayo ni ya kweli kwa nini cheti cha daktari kitolewe tarehe 28.7.2021 na sio tarehe 30.6.2021 ambayo ndo siku mleta maombi ana dai kuwa alikuwa mgomjwa. Kwa misingi iyo nimefikia kuamini kuwa madai

*ya mleta maombi kuwa mgonjwa tarehe 30.6.2021
yalikuwa ni mawazo ya baadaye (afterthought).*

*Vilevile hati ya ugonjwa haloneshi kama mleta maombi
alikuwa amelazwa kwake wala hospitali. Kwa kuwa hati
ya ugonjwa iliyowasilishwa ilionyesha wazi kuwa mleta
maombi alikuwa akitibiwa kuanzia tarehe 28 mpaka
tarehe 30 June, 2021, kwamba alikuwa na uwezo wa
kwenda hospitali na kurudi nyumbani. Hivyo kwa kuwa
alikuwa na uwezo wa kufika hospitali basi alikuwa pia na
uwezo wa kumtuma mwakilishi kufika hapa Barazani
kumtolea taarifa.”*

The sole ground of appeal against the ruling is as follows:

*“That the Tribunal erred in law and facts by refusing to
set aside the order of dismissing Misc. Application No. 145
of 2020 on the ground that he did not advance sufficient
reason and the appellant’s reason that he was sick was
an afterthought.”*

Because of the above ground of appeal, the appellant is urging this court to grant him the following reliefs:

- a. The appeal be allowed with costs.
- b. That the Ruling and Order of the District Land and Housing Tribunal be quashed and set aside and order restoration of Misc. Application No. 145 of 2020.
- c. Any other order this Honourable Court shall deem fit and just to grant.

This appeal was heard by way of written submissions whereby the appellant drew-up the submission in chief for himself. Mr. Nyamoga learned counsel who advocated for the respondent did not file reply submission though was served with the submission of the appellant on 19th July 2022 thus the respondent is deemed to concede to the submissions of the appellant. That disposes the appeal in favour of the appellant, but I am inclined to comment on a few things regarding the ruling of the learned chairperson having recourse to the submissions made by the appellant. This is what the applicant submitted:

"When I started to feel well, I went to enquire on the status of my case only to be told that the same was dismissed.

Because of that, I went back to the hospital where I was treated to obtain medical report and proceeded to ask my advocate to prepare the application for restoration, the reason being sickness, only to be told by the Tribunal that sickness was an afterthought on the ground that I attended hospital on 30.06.2021 but medical report was obtained on 28.07.2021, and the Honourable Chairperson further stated that because I was treated from 28.06.2021 to 30.06.2021 but not hospitalized, I was capable of sending someone to notify the Tribunal of my sickness. In the premises, my application was refused, hence this appeal before this Honourable Court.”

The appellant cited the case of **Jumanne Chakupewa Mchondo v. Bahebe Rutubisha & 4 others**, Misc. Land Application No. 41 of 2021, H.C. (unreported).

In further submission, the appellant forcefully asserted that this is a fit case to be restored (setting aside the dismissal order), because firstly, he filed the application for restoration within time prescribed by law. Secondly, in the

application for extension of time to enable him to file application for revision of the judgment of Kipande Ward Tribunal, he raised serious irregularities and illegalities, one of them being locus standi of the respondent in this appeal. To wit; Mchungaji Kasitu kwa niaba ya kanisa la KKKT". Mchungaji Kasitu had no and has no standi to sue for and on behalf of Kanisa la KKKT. KKKT can sue or be sued through registered trustees. So, if restoration of his application for extension of time is not granted, contended the applicant, the illegality and others shall remain intact without being corrected.

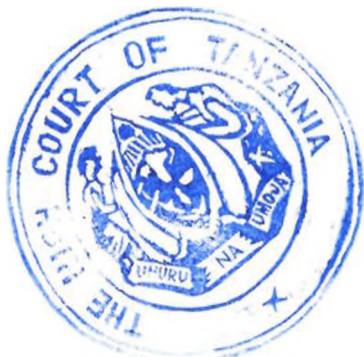
With the greatest respect to the learned chairperson of the District Land and Housing Tribunal, I totally agree with the submissions of the appellant that I have referred herein above. Admittedly, a court of law has the duty and power legally to enforce its orders including that orders parties to appear on a specific date for any orders, hearing, ruling or judgment. As indicated above, that should be in accordance with the law. Had the learned District Land and Housing Tribunal Chairperson considered the application for setting aside the dismissal order in the light of the submissions of the appellant, I believe, would have come to a different conclusion. She would have granted the application for the appellant had given sufficient reasons for setting aside


the dismissal order. He provided a medical report for his sickness at the particular time. He would have not predicted that his case would be dismissed to request the medical report in advance. Further for the reason that the proceedings and judgment of the trial tribunal are tainted with fatal irregularity that is apparent on the face of the record which has to be rectified. The appellant was not a party to the proceedings in the trial tribunal thus he could not appeal but to have the impugned decision of the trial tribunal revised.

For the above reasons, I find that the appeal is merited. I allow it with costs. Application number 145 of 2020 in the District Land and Housing Tribunal for Rukwa is hereby restored. The same has to be heard by another chairperson of competent jurisdiction.

It is so ordered.

DATED at SUMBAWANGA this 29th day of August, 2022




J. F. NKWABI
JUDGE

Date - 29/08/2022
Coram - Hon. M.S Kasonde, DR
Appellant - Present in person
Respondent - Mr. Fredrick Nyamoga, Advocate
B/C - Zuhura

Mr. Fredrick Nyamoga, Advocate: This matter comes for Judgment and we are ready.


Appellant: I am prepared too.

Court: Judgment delivered this 29th day of August, 2022 in the present of the appellant and Mr. Fredrick Nyamoga, Advocate for the respondent.

Sgd: M.S. Kasonde
Deputy Registrar
29/08/2022

Right of appeal fully explained.




M.S. Kasonde
Deputy Registrar
29/08/2022