**THE UNITED REPUBLIC OF TANZANIA**

**(JUDICIARY)**

# THE HIGH COURT- LAND DIVISION

**(MUSOMA SUB REGISTRY)**

**AT MUSOMA**

**LAND APPEAL No. 35 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in Misc. Application No. 458 of 2019 & originating from Land Application No. 110 of 2016)*

**MASINDA NG'ARITA** ..... **APPLICANT**

***Versus***

**ABDI OMARI** ..... **RESPONDENT**

## RULING

**16.03.2023 & 17.03.2023**

**Mtulya, J.:**

Regulation 11 (2) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations,** 2003 GN. No. 174 of 2003 (the Regulations), provides that:

> *A party to an application may, where he is dissatisfied with the decision of the Tribunal under sub- regulation (1), within 30 days apply to have the orders set aside, and the Tribunal may set aside its orders if it thinks fit to do so and in case of refusal appeal to the High Court.*

It is unfortunate that the provision in Regulation 11 of the Regulations is silent on a party to an application who is against the restoration order for *inter-parte* proceedings. The appellant in the present appeal is against the restoration order for *inter-*

*parte* hearing pronounced by the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Misc. Application No. 458 of 2019** (the misc. application), originating from **Land Application No. 110 of 2016** (the application). The tribunal in the misc. application on 12th April 2021, had ruled that:

> *In view of the foregoing, I see that the applicant has assigned good and sufficient cause behind the delay consequently the ex-parte judgment in Application No. 110 of 2016 is vacated so as the applicant opens his defence so that justice is done to the parties.*

Being aggrieved by this order, the appellant had approached this court and lodged **Land Appeal No. 35 of 2021** complaining that the appellant had failed to account on every day of the delay. However, before the hearing could take its course, **Mr. Daud Mahemba**, learned counsel for the respondent lodged a point of law resisting the mandate of this court. In his opinion, the appeal is incompetent before this court as it challenges interlocutory order of the tribunal in the misc. application, which did not determine the merit of the case to the finality.

In order to persuade this court to strike out the appeal, Mr. Mahemba cited the authorities in Regulation 11 (2) of the

Regulations; section 74 (2) and Order XL Rule (1) & (2) of the Civil Procedure Code [Cap. 33 R.E. 2019] (the Code); and precedents in **Managing Director Sauza Ltd v. Riaz Gutamali & Another** [1998] TLR 175 and **University of Dar Es Salaam v. Sylvester Cyprian & 210 Others** [1998] TLR 175, which held that appeals against interlocutory orders which have no effect of finality on the rights of the parties in suits are barred.

In Mr. Mahemba opinion, the present appeal is similar to those related to extension of time in the tribunal where a party who is against an award for enlargement of time is barred from filing an appeal as the order of enlargement of time is interlocutory. In support of his submission Mr. Mahemba cited the decision of this court in **Christopher Moremi Wambura v. Charles Musyangi,** Misc. Land Appeal No. 10 of 2022 and Court of Appeal decision in **Celestine Samora Manase & Twelve Others v. Tanzania Social Action Fund & Attorney General**, Civil Appeal No. 318 of 2019, which held that impugned decision granting the application to set aside *ex-parte* judgment is not appealable.

In reply of the submission of Mr. Mahemba, the appellant submitted that the delay in filing an application for enlargement of time and setting aside *ex-parte* judgment was caused by negligence of the respondent's learned counsel, which is not a

sufficient cause in enlargement of time and setting aside *ex-parte* judgment of the tribunal. In justifying his claim, the appellant cited the authorities in Order VIII Rule 13 (2) of the Code; and precedents in **Maulidi Hussein v. Abdallah Juma**, Misc. Civil Application No. 20 0f 1988 and **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017.

The practice of this court in interpreting the provisions of Regulation 11 (1) & (2) is displayed in the precedent of **Leonidas Karani Kitambi v. Gregory Mushaijaki**, Misc. Land Application No. 38 of 2021 pronounced on 25th October 2021. In the precedent this court had invited a bundle of enactments and precedents of this court and Court of Appeal to arrive at its conclusion. The enactments contained: section 41 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019]; item 21 Part III of the Schedule to the **Law of Limitation Act** [Cap. 89 R.E 2019] (the Limitation Act); section 70, Order IX Rule 13 (1) of the **Civil Procedure Code** [Cap. 13 R.E. 2019 (the Code); section 53 (1) of the **Interpretation of Laws Act** [Cap. 1 R.E. 2019]; article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E 2002] (the Constitution).

Regarding precedents, this court had considered a bunch of decisions which had resolved on the status of *ex-parte* decisions and the right of appeal (see: **Amir Moshi Textile Mills v. B.J. De Voest**

[1995] LRT 17, **Harsen Khan v. Sheo Baksh Sigh** [1885] Cal. 6.11. 237, **Balakrishma v. Vasudeva** [1974] 44.1, **Subzali Garage Ltd v. Building Hardware & Electrical Supply Co. Ltd** [1974] LRT 40 and **Tambueni Abdullah & 89 Others v. National Social Security Fund**, Appeal No. 33 of 2000; **The Registered Trustees of the Pentecostal Church in Tanzania v. Magreth Mukama** (a minor by her next friend Edward Mukama), Civil Appeal No. 45 of 2015; and **Tanzania Rent Car Limited v. Peter Kimuhu**, Civil Appeal No. 226 of 2017

Finally, this court resolved that:

> *It is a well settled principle of the statutory interpretation that where a statute is enacted in plain, clear and unambiguous terms, it does not need interpretation and no need to resort to the rules of construction... In short, this court will be asked on interpretation of the law when the words are unclear and unambiguous...*

In brief, from the indicated precedent of **Leonidas Karani Kitambi v. Gregory Mushaijaki** (supra), Regulation 11 is a procedural provision intended for better carrying out of the businesses of the district tribunals and this court. It require parties who do not appear and *ex-parte* orders are issued against them to seek for setting aside orders of the tribunal, of course after producing relevant materials substantiating their non-appearance on the hearing date.

According to the precedent, the application of Regulation 11 (2) of the Regulations must interpreted as whole with Regulation 11 (1) (a), (b), and (c) of the Regulations. The Regulation therefore gives mandate to a party who has been refused an order to set aside an *ex-parte* judgment or order. For a party who is aggrieved by restoration judgment or order has to withstand with the restoration judgment or order as he has no a right of appeal. If he has any grievances will be heard and determined in an appeal against the merit of the case. This is from the fact that the order is interlocutory and once the suit is restored, there remains nothing to be appealed against. In short, there is no substance of the matter to contest in an appeal.

In other words, the appellant has to exhaust all available remedies in the tribunal according to the law. That is why the enactors of the Regulation had declined enactment of specific regulation warranting a right to appeal for decisions which set aside *ex-parte* judgment or orders. The Court of Appeal in the precedent of **Celestine Samora Manase & Twelve Others v. Tanzania Social Action Fund & Attorney General** (supra), at page 9 of the decision made it clear that: *the impugned decision granting the application to set aside the ex-parte judgment is not appealable*.

The reasoning of the Court of Appeal is found at page 8 of the decision that: *first, it promote an expeditious administration of justice; and second, it affords both parties in the case an equal opportunity to be heard at the full trial.* This thinking is appreciated in a number of precedents (see: **Paul A. Kweka & Another v. Ngorika Bus Service and Transport Co. Ltd**, Civil Appeal No. 129 of 2002; **Tanzania Posts Corporation v. Jeremiah Mwandi**, Criminal Appeal No. 474 of 2020; **Peter Noel Kingamkono v. Tropical Pesticides Research**, Civil Application No. 2 of 2009; and **Murtaza Ally Mangungu v. The Returning Officer of Kilwa & Two Others**, Civil Application No. 80 of 2016)

Having said so, it is obvious that the present appeal did not exhaust available remedies in the tribunal and was brought in this court without good reasons. The appeal is, therefore, incompetent before this court and I am moved to strike it out without costs.

Ordered accordingly.


F.H. Mtulya

**Judge**

17.03.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the appellant, **Mr. Masinda Ng'arita** and in the presence of Mr. Daud Mahemba, learned counsel for the respondent.

F.H. Mtulya

**Judge**

17.03.2023