

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO.18 OF 2023

(Arising from Land Application No. 210 of 2021 at the District Land and Housing Tribunal for Mkuranga, originating from Kisege Ward Tribunal in Case No. 94 of 2022)

JIORI SAMSON YAMUNGU 1ST APPELLANT
LABANI 2ND APPELLANT
MBWANA NASORO MWILONDO 3RD APPELLANT

VERSUS

HUSENI SAIDI UPINDE 1ST RESPONDENT
RAMADHANI MUHAMED NJECJELE 2ND RESPONDENT
SAID SELEMANI KAWAMBWA 3RD RESPONDENT
RAMADHAN SAID MKWEME 4TH RESPONDENT
JUMA SAID MKWEME 5TH RESPONDENT
SAIDI MOHAMED MKWEME 6TH RESPONDENT
MZEE KINGALU 7TH RESPONDENT
SULTANI KASIM UPINDE 8TH RESPONDENT

JUDGMENT

Date of last Order: 13.03.2023

Date of Judgment: 11.04.2023

A.Z.MGEYEKWA, J

The appellants have lodged the instnat appeal against the Ruling of the District Land and Housing for Mkuranga (DLHT) in Land Application No.94 of

2022. The material background facts of the dispute are not difficult to comprehend. They go thus: the appellants filed an application for restoration at the (DLHT) for Mkuranga in Misc. Land Application No. 94 of 2022, The DLHT determined the matter and dismissed it with costs.

The appellant was not happy with the decision of the DLHT for Mkuranga, hence, he preferred this appeal on one ground of grievance; namely:-

1. That, *Honourable Chairman of DLHT for Mkuranga erred in law and fact for dismissing the Application to set aside the exparte judgment without considering that the Applicants were erroneously denied the right to be heard.*

On the material date, the appellants appeared in person and the respondents had the legal service of Mr. Maneno Mbunda, learned counsel. By the Court's consent, the appeal was argued by the way of written submission whereas both parties complied with the Court order save for the appellant who waived his right to file a rejoinder.

Getting off the ground, the appellants started to narrate the genesis of the matter which I am not going to produce in this appeal. Submitting on the sole ground of appeal. They contended that it is a cardinal principle in law that after a suit has been instituted, the summons must be issued to the respondents.

They claimed that they were not notified about the proceedings of the Ward Tribunal. They added that there is no scintilla of evidence showing the appellants were also notified about the date of the Judgment as required by the law. The appellants argued that failure to properly effect the service of the summons renders the Tribunal to set aside the Judgment. To buttress his contentions the appellant cited the case of **Mohamed Nassoro v Ally Mohamed** (1991) TLR 133. They went on to claim they were not given an opportunity to be heard thus their rights to be heard were violated and subsequently, they were denied to defend themselves contrary to Article 13 (6) of the Constitution of the United Republic of Tanzania. To fortify their submissions they cited the cases of **Mbeya Rukwa Auto Parts & Transport Ltd v Jestina Geroge Mwakyoma** [2003] TLR 251.

The appellants continued to argue that the trial tribunal's proceedings do not reveal that the appellants were notified that the date of the deliverance of Judgment. Fortifying their submissions they cited the case of **Margwe Error & 2 Others v Mosho Bahalulu**, Civil Appeal No.111 of 2014. They insisted that issuance of the notice is important as parties are notified the outcome of the decisions to enable them to take further steps. Supporting his submission he cited the cases of **The Editor Nipashe Newspaper & another v Matin**

Nashikongwa & another, Misc. Land Application No. 23 of 2014 (unreported).

In conclusion, the appellants beckoned upon this Court to allow the appeal with costs.

In reply, the respondent began to narrate the genesis of the matter which I am not going to reproduce in this appeal. The respondents valiantly argued that the appellants have lodged an appeal on a matter which was never been determined on merit at the DLHT for Mkuranga.

They went on to submit that the instant appeal is a new case that is brought at the appellate stage hence this Court lacks jurisdiction to entertain it. The respondent contended that the appellant at the DLHT filed an Application for an extension of time while before this Court the appellants are complaining about the erroneous decision of the DLHT for dismissing their Application to set aside an *ex parte* Judgment while such kind of Application was not determined at all. They further went on to submit that the Tribunal in its decision found that the appellants did not account for the days of delay and in doing so the Tribunal was guided by the decision of **Vedastus Raphael v Mwanza City Council & others**, Civil Application No, 594/08 of 2021 (unreported).

The respondents continued to argue that the Tribunal in its decision did not determine the issue of summons instead, the DLHT was trying to show the appellants' habits of maliciously disobeying Court summons.

Regarding the ground of the right to be heard, the respondents contended that the Tribunal exercised its right to be heard but the appellants refused and disobeyed the service of the summons thus the Appellants' rights to be heard were denied. Supporting their submissions they cited the case of **Omari R. Ibrahim v Ndege Commercial Service Ltd at DSM**, Civil Application No. 83 /01 of 2020 (unreported). They went on to argue that the appellants have raised a new ground, that summons is done by the process server. In their view, this is a new issue that was not raised anywhere. The respondents stridently argued that this court cannot determine new issues which were not raised at the lower courts. To bolster their submissions, they cited the case of **James Funke Gwagilo v The Attorney General [2004] TLR 161**.

The respondents continued to submit that this Court cannot take judicial notice on a matter which is improperly raised before this Court because the same was required to be determined by the trial tribunal. The respondents contended that the appellants were summonsed three times to appear at the tribunal on 1st June 2018, 1st October 2018, and 8th October 2018. The

appellate tribunal in its decision stated that there is no illegality in the issue of summons, hence the appellants had no good reasons to convince the tribunal. Cementing on their submissions they referred this Court to the case of **Omari R. Ibrahim** (supra). They distinguished the cited case of **Mohamed Nassoro** (supra) since the case at the trial tribunal and appellate tribunal was an application for an extension of time.

On the strength of the above submission, the respondents beckoned upon this court to dismiss the appeal with costs.

In their rejoinder, the appellants submitted that they are appealing against the decision of Mkuranga DLHT in Land Application No. 94 of 2022. They submitted that there is an error in referring to an application to set aside *ex parte* Judgment instead of an application for extension of time to appeal out of time. In their view, the omission is not fatal since it does not affect the merits of the case. The appellants reiterated their submissions in chief. They insisted that they were not aware of the existence of any pending case against them, hence they were denied the right to be heard. Ending they urged this Court to allow the appeal with costs.

Having heard the parties' contending arguments, the Court's duty is determined as to *whether the appeal is meritorious*.

In their sole ground of appeal, the appellants are faulting the District Land and Housing Tribunal for Mkuranga for refusing to extend the time to file an appeal out of time. I understand that the appellants' ground was referring to an application to set aside an *ex parte* Judgment but in their reply, the appellants managed to set clear the record that their appeal before this Court is concerning extension of time to appeal out of time whereas the DLHT refused to grant their application.

After scrutinizing the records and specifically the impugned Ruling of the DLHT in Misc. Land Application No. 94 of 2022, I noted that the Chairperson in her Judgment specifically on page 6 referred to the summons concerning the pending Application for Execution in respect to Misc. Application No. 55 of 2022, instead of referring and analysing the summons issued by the Kisegese Ward Tribunal. The said findings led the Chairperson to find that the appellants had no any good reasons to warrant the tribunal to extend time.

As rightly submitted by the appellants in their written submission, it was improper for the DLHT to craft its findings based on the pending Application for Execution while the appellants' complaints were not concerning the pending Application for Execution.

In such circumstances, I fully subscribe to the appellants' submission that it was improper for the DLHT to rely on the application which was not a subject matter in the said Application which was before him.

That said and done, I hold that appeal is meritorious, thus, I quash and set aside the ruling of the DLHT for Mkuranga and remit the file to DLHT for Mkuranga to determine Misc. Land Application No. 94 of 2022 afresh and compose a fresh Ruling. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 11th April 2023.




A.Z.MGEYEKWA
JUDGE
11.04.2023

Judgment delivered on 11th April 2023 in the presence of all appellants and Mr. Mbunda, learned counsel for the respondents.




A.Z.MGEYEKWA
JUDGE
11.04.2023