

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

LAND APPEAL NO. 74 OF 2023
(Originated from Misc. Land Application No. 488/2022
Kinondoni District Land and Housing Tribunal)

GOODLUCK LYIMO.....APPELLANT

VERSUS

LEOPARD JOSEPH MLAI.....RESPONDENT

JUDGMENT

12th to 20th July, 2023

E.B. LUVANDA, J

In the memorandum of appeal, the Appellant above mentioned grounded that; the trial tribunal erred in law and fact by issuing an order for dismissal of the Appellant's application for extension of time to appeal against the judgment and orders delivered by Hon. Asha Dyamwale (Chairman sic, Chairperson) of 06/10/2011 in Land Dispute No. 33 of 2011 at Mwananyamala Ward Tribunal, without considering that, the Applicant had a right to legal representation as he submitted a prayer before the trial chairman.

At the hearing of this appeal, both parties were unrepresented.

The Appellant submitted that the trial chairman dismissed his case despite a fact that he intimated a need for representation. He submitted that when his case was called for hearing for the first time on 15/02/2023 he informed the chairman that his Advocate is appearing before Hon. Mgwembe, J at Morogoro, as such failed to attend. He submitted that at first his case was mistakenly, scheduled on 17/12/2022 which was Saturday, he made a follow up to the court clerk who made an apology and informed him it was scheduled on 17/11/2022, but was adjourned till on 15/02/2023. That when he appeared on 15/02/2023 he asked the matter to be adjourned to a date when his advocate will be available to assist him, instead the chairman composed an order dismissed his case. He submitted that rule 13(1) G.N. 176 (sic, G.N. 173) and Cap 216 allow litigants to be represented not only by an advocate rather even sibling or children. He prayed for the court to set aside the injustice decision of the trial Chairman in order to be heard on the merit of his case.

In reply, the Respondent submitted that the chairman had asked the Appellant if he will proceed with his case or not, where the Appellant responded that he will not proceed with a case, while the Appellant is the one who sued but refused to proceed with his case as such he gave blessing to the Chairman to decide. He submitted that the case has taken long since

2011, and execution was granted. He submitted that he is being inconvenienced and disturbed on something obvious which was ruled according to the law. He argued for the court to restrain the Appellant from further disturbing him while aging.

On rejoinder, the Appellant submitted that he asked the chairman to adjourn the matter so that he can have a representation, but dismissed his case, while rules allow representation by an advocate, sibling or wife.

Essentially the argument of the Appellant that the law allow a wider range and option of representation of the party in proceedings before the District Land and Housing Tribunal to be either in person, by an advocate, relative or any member of the house hold or authorized officer of a body corporate, is a correct stance of the law, see section 30 of the Land Disputes Court Act, Cap 216 R.E 2019 and rule 13(1) of the Land Disputes (The District Land and Housing Tribunal) Regulations G.N. 173 of 2003.

Herein the Appellant allege that the matter was called for the first time on 15/02/2023. However, the available records reveal that the matter was scheduled previously on 17/11/2022 where neither the Appellant nor his advocate appeared. Basically the Appellant was contradicting himself, at first said that he was informed that the matter was scheduled on 17/12/2022

which was Saturday and upon further inquiring to the court clerk, the later readily conceded a mistake and informed him that it was on 17/11/2022 then was adjourned to 15/02/2023. Meaning that the matter was scheduled for the first session on 17/12/2022 then second session on 15/02/2023.

Now I wonder why the Appellant is saying on 15/02/2023 the matter was called for a first day. Actually the Appellant was concocting stories to dilute a fact that the matter was slated on 17/12/022 then adjourned to 15/02/2022 being two consecutive sessions. It is the rule that when an advocate^p fail to appear for two consecutive sessions without good cause, the Tribunal may require the party to proceed himself and if is not cooperative, dismiss his case.

Rule 13(2) of G.N. 173 (supra) provide, I quote,

"Where a party's advocate is absent for two consecutive dates without good cause and there is no proof that such advocate is in the High Court or Court of Appeal, the Tribunal may require the party to proceed himself and if he refuses without good cause to lead the evidence to establish his case, the Tribunal may make order that the application be dismissed or make such other orders as may be appropriate"

Herein, the Appellant alleged to had hired an advocate to represent him although did not say as to when exactly he engaged the lawyer. Be as it may, the records suggest that his lawyer defaulted to appear for two consecutive sessions on 17/11/2022 without any cause and on 15/02/2022 when was alleged appearing before Hon. Ngwembe, J at Morogoro. The law governing proceedings before the trial tribunal appreciate a fact that an advocate might be engaged to appear before superior courts. However, the law require proof for any appearance before superior court.

Rule 13(3) of GN 173 (supra) provide,

"Where a party's advocate is absent for the reasons of attending the proceedings in the High Court or Court of Appeal, the Tribunal shall not believe any other evidence as a proof for being in the superior courts other than by producing summons to the advocate and cause list from such court's"

The Appellant had no proof whatsoever but wished the Tribunal to believe his oral explanation. Indeed the Appellant did not mention even a case number or particulars and credentials of parties to the alleged case before Hon. Ngwembe, J.

The records of the lower Tribunal indicate that the Appellant was not cooperative, even when he was asked and invited by the Tribunal to lead

explanation for his case but was recorded to had refused to prosecute his case. As such the trial Chairman was justified to dismiss his application.

In totality, this appeal is without substance.

The appeal is dismissed. However, I make no order for costs.



E.B. LUVANDA
JUDGE
20/07/2023