

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 407 OF 2023

(Originating from the Order of the District Land and Housing Tribunal of Kigamboni at Kigamboni in the Land Application No. 02 of 2023 delivered on 18th August, 2023 by Hon. L. Rugarabamu- Chairman)

M/S FIRIGIA SOPA APPELLANT

VERSUS

HUSSEIN SALEHE KISALALA 1ST RESPONDENT

ZAKARIA DAUDI NUNDI 2ND RESPONDENT

Date of Last order 29/11/2023

Date of the Ruling 12/12/2023

JUDGMENT

A. MSAFIRI, J.

This is an appeal lodged by M/S Firigia Sopa, the appellant after having been aggrieved by the order of the District Land and Housing Tribunal delivered on 18/08/2023 by Hon. L. R. Rugarabamu, Chairperson in Land Application No. 02 of 2023.



The brief history of the matter is that, the appellant had instituted Land Application No. 02 of 2023 in the District Land and Housing Tribunal for Kigamboni at Kigamboni (herein the trial Tribunal).

The Application was initially before Hon. Wambili, Chairperson before recusing himself from continuing to hear the matter at the request of the applicant on 10.07.2023 when the matter had come for hearing.

On 18.8.2023 the matter was placed before another Chairperson i.e. Hon. Rugarabamu who dismissed the Application for failure of the applicant to prosecute. The applicant was aggrieved by that decision and has lodged this appeal on two grounds namely;

- 1. That the Honourable Trial Chairman erred in law and fact by struck out (sic) the case before the Tribunal instead of adjourning the same till the determination of her appeal against the refusal of admission of her rejoinder.*
- 2. That the Honourable Trial Chairman erred in law and fact in holding that the appellant was not ready to be held on her case contrary to the reality.*

The appellant is praying for the appeal to be allowed and the restoration of her case before the trial Tribunal.

The hearing was conducted orally and both the appellant and respondents were in person. In her submissions, the appellant stated that

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she was denied the right to be heard by the trial Chairperson. That even her documents were not admitted and later her case was dismissed without any sufficient reasons.

She prayed that the decision of the trial Tribunal in Land Application No. 02 of 2023 be quashed and set aside and the Application be restored before the trial Tribunal and be heard on both parties for the interest of justice. She prayed further that the respondents bear the costs of this appeal,

On reply, the 1st respondent opposed the appeal on the ground that the appeal does not concern him as it is the trial Tribunal which refused to admit the appellant's documents and not the 1st respondent. He prayed that this appeal be dismissed with costs.

The 2nd respondent submitted briefly that the appeal is misconceived and false contrary to the trial Tribunal's decision. He prayed that the Appeal be dismissed with costs.

On rejoinder, the Appellant added that the 1st respondent has interest on this appeal since he was a part in the trial and that it is true that the matter was not heard on merit as it was in the stage of exchange of pleadings. *Alle.*

Having gone through the rival submission of the parties, the major issue is whether this appeal has merit. Having read the proceedings and decision of the trial Tribunal, it shows that the Application was set for hearing after the exchange of pleadings between the rival parties. The applicant who is now the appellant has filed an amended Application. The respondents also filed their written statements of defence and the matter was set for hearing on 10/7/2023. On the scheduled date, the applicant asked the presiding Chairperson to recuse himself on reason that the Chairperson has refused her prayers to file reply to the written statement of defence. The Chairperson Wambili withdrew from the hearing of the matter. After that, the matter was placed before Chairperson Rugarabamu.

On 18.08.2023 the matter was set for hearing. The applicant stated that she was not ready to proceed with the hearing until she appeals against the trial Tribunal's decision to refuse to grant her request to file reply to the written statements of defence of the respondents. Following that, the Chairperson dismissed the matter for the reason of applicant's failure to prosecute her case.

In the proceedings, it shows that the Chairperson refused to grant the appellant the order to file the reply to the WSD (or rejoinder) under

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Regulation 8(1) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003. GN. No.174 published on 27.06.2003.

Reading from the provision above, it provides as follows;

*"Where the written statement of defense or counter affidavit has been filed in any proceedings, the chairman shall proceed to fix a hearing date for the application or chamber application as the case may be **and no further pleadings shall be entertained.**" (emphasis added).*

Basing on the above provision of the law, I find that the Chairperson was right according to the law to refuse the so called rejoinder as requested by the appellant as allowing the same will be in contravention of the law. The proper procedure was for the appellant (then applicant) to continue with hearing of the Application on merit and not resisting the proceedings as she did. Since the appellant was the one who has instituted the matter she had an obligation to prosecute the same and refusing to do so amounted to failure to prosecute her case.

Since the two ground of appeal are interrelated, I have consolidated them and I hold that since the appellant who was the applicant refused to proceed with the hearing of the matter which was set for hearing, then the trial Chairperson was correct in dismissing the matter for want of

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prosecution. In that regard, I find the two grounds of appeal to have no merit.

The appeal is dismissed. I issue no order as to the costs.

A handwritten signature in blue ink, appearing to read 'A. Msafiri', with a long horizontal stroke extending to the right.

A. MSAFIRI

JUDGE

12/12/2023