

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

LAND APPEAL NO. 433 OF 2023

(Originating from Misc. Land Application No. 238 of 2023,
District Land and Housing Tribunal for Kinondoni)

**HELENA BENARD IKUYUMBA (As administratix of the Late
BENARD DAUDI IKUYUMBA.....APPELLANT**

VERSUS

MRS. LEAH TUMBO.....RESPONDENT

JUDGMENT

9TH to 21ST February, 2024.

E.B. LUVANDA, J

The Appellant above mentioned having being dissatisfied by the decision of the Tribunal dated 19/06/2023 refusing to set aside the dismissal order dated 19/04/2023, appealed to this Court on the following grounds: One, the trial Chairman grossly erred in law and fact in dismissing the Appellant's case on 19/06/2023 (sic, 19/04/2023) when it was fixed for mention not hearing and that the same came up for first time before the Honourable trial Chairman, thus leading to injustices; Two, the Honourable trial Chairman erred in law and fact in holding that the Appellants' sickness on the date her case was dismissed for want of prosecution is not sufficient ground for setting aside the dismissal order;

Three, the Honourable Trial Chairman erred in law and fact in dismissing the Appellant's case when it was fixed for mention, thus condemning the Appellant unheard against the principles of natural justice: Four, the Honourable trial Chairman erred in law and fact in failure to state the reasons behind Honourable Chenya – Chairman to disqualify himself from the conduct of the matter leading the same to be assigned to him (Hon. J. Sillas – Chairman) as required by law. The Appellant abandoned ground number four, The Appellant submitted that on 19/06/2023 when the case was dismissed by the new presiding Chairman the same came up for mention and not hearing. She submitted that it is now trite law that a case cannot be dismissed on the day fixed for mention, citing **NBC vs. Grace Sengela** [1982] TLR 284; **Matango S. Magambo vs. Easy Network Limited**, Misc Land Application No. 844/2022 Land Division; **Oliva Kabakobwa vs. Akiba Commercial Bank (T) Ltd & Another**, Land Appeal No. 12/2021 HC Mwanza. She submitted that when the matter giving rise to this appeal was dismissed on 19/06/2023 the same came up for mention and not hearing, arguing it was wrong for the Tribunal to dismiss or make other orders that substantially bring a case to finality on a day fixed for mention. Ground number two, the Appellant submitted the trial Chairman was wrong to dismiss the Appellant's application when it came up for mention still yet the trial Chairman was wrong to disregard the reasons stated by the Appellant, arguing

that illness of the Applicant is sufficient to constitute good cause. She cited the case of **Jehangir Aziz Abdulrasul vs. Baloz Ibrahim Abubakar & Another**, Civil Application No. 79/2016 (C.A.T); **Richard Mlagala & Nine Others vs Aikael Minja & Two Others**, Civil Application No. 272/2015 CAT DSM. She insisted that her case could not be dismissed by the trial Chairman since it came up for mention and the Appellant was prevented by sickness to attend her case on the date it was dismissed for want of prosecution.

Ground number three, the Appellant submitted in replica to the previous grounds, that in the present matter giving rise to this appeal, the case was dismissed when it was scheduled for mention and not hearing, citing **Oliva Kabakobwa** (supra).

In reply, the Respondent combined ground number one and three, she submitted that the Appellant failed to demonstrate how she was prejudiced by the act of the Tribunal to deliver a ruling on a date when it was scheduled for mention. She submitted that the irregularity in the proceedings does not occasion any failure of justice, citing section 45 of the Land Disputes Courts Act Cap 216 R. E. 2019.

For ground number two, the Respondent submitted that the Appellant medical certificate was unreliable and incredible, arguing it failed to show the name of the registered medical practitioner who examined him (sic) and issued that

medical certificate. She submitted that the omission denied her (Respondent) right to make inquiry of illness alleged, or bring (sic, summon) the doctor in question before the Tribunal to counter the illness alleged. She submitted that there is a high probability that the Appellant was not ill. She submitted that no patient can be examined without a doctor, arguing identification of the doctor who examined the Appellant was a paramount fact to be proved.

On rejoinder, the Appellant submitted that the Respondent's reply submission were filed out of time and schedule of the court, it was filed on 14/02/2024 instead of 31/01/2024. She submitted that the same was filed without obtaining leave of the court. She submitted that apart from a fact that the Respondent's submission was filed out of time, the same contains no legal merits at all. She submitted that the Respondent conceded that on 19/06/2023 when the case was dismissed by the new trial Chairman the same came up for mention and not hearing. She submitted that the matter was fixed for mention on 19/06/2023 for the Respondent to file a counter affidavit.

She submitted that on 19/06/2023 the presiding Chairman disqualified himself where the matter was placed before a new presiding Chairman Hon. J. W. Sillas who proceeded to dismiss the application the same date to wit on 19/06/2023, arguing it was fixed for mention not hearing.

It is true that the Respondent filed her reply out of time scheduled by the Court and no condonation was made to explain the delay or leave sought to have it be filed out of time. I am saying the Respondent did not make condition, because it is undisputed fact that during the period of January 2024 there was a challenge in filing document in the system, where later litigants were told to present manually, no wonder the Respondent's submission indicate she signed on 30/01/2024 but was received at the Registry on 02/02/2024. However, I have failed to have it accommodated for want of condonation certifying that it was presented on time but delayed on filing due to technical challenges on electronic filing or generation of control number for payment.

To my view, even if the Respondent's reply is discarded as I hereby do, the appeal and submissions by the Appellant are not free from ambiguity.

The Appellant throughout her submission in chief in all three grounds of appeal, dwelled on much complaining that her case was dismissed on 19/06/2024 when it was merely fixed for mention.

With due respect that was a gross misconception and confusion on her part. According to the records of the Tribunal on 19/06/2023 it is when the impugned ruling refusing to set aside the dismissal order, was delivered.

The records of the Tribunal reflect that on 05/06/2023 parties appeared for the first time in Misc. Application No. 238/2023 subject of this appeal, where the

matter was fixed for mention on 19/06/2023. On 19/06/2023 the presiding Chairman Hon. Chenya, made a recusal, then the matter was re assigned to Hon. Sillas, who mounted the same for hearing where the Appellant herein who was the Applicant therein, argued for her case Application No. 40/2014 to be restored, on the ground that when her case was dismissed she was indisposed, hence failed to appear. The Respondent opposed the argument and prayer for restoration of Application No. 40/2014 for reason that the matter has taken long and the Appellant orchestrated the delay. Thereafter, the learned Chairman made a ruling instantly on the spot, with an order refusing to set aside the dismissal order dated 19/04/2023 in Application No. 40/2014.

Therefore, the Appellant confused herself on the date of dismissal of Application No. 40/2014 which was disposed off by dismissal on 19/04/2023 when the Appellant allege was indisposed and a date of delivery of a ruling in Misc. Application No. 238/2023 dated 19/06/2023 (subject of this appeal). Be as it may there was no any prejudice which was occasioned to the Appellant for a prompt and hasty disposal of Misc. Application No. 238/2023, on 19/06/2023 unless she is saying she intended for the same to remain pending for many years ahead without being disposed. Infact, the presiding Chairman Honourable Sillas should be hailed and acclaimed for a good job and for being determined for fast tracking disposal of matters, regard being this matter in aggregated has

been pending in court and tribunal with a chequered history since its inception at the Tribunal on 03/02/2014. But the records of the Tribunal depict further that parties herein have been lingering in court corridors over this dispute since 1999 where Benard Ikuyumba (now deceased) sued Mrs. Leah Tumbo (Respondent herein) at the Resident Magistrate's Court of Dar es Salaam at Kisutu in RM Civil Case No. 411/1999 where the Appellant procured an *ex parte* judgment on 25/01/2002. Thereafter all orders were quashed vide Civil Revision No. 4/2014 HC DSM.

It is when the Appellant sued the Respondent in Application No. 40/2014 which was determined on merit on 19/03/2021. The Appellant successfully challenged it via Extended Land Appeal No. 21/2021, on the ground that when Hon. Lung'wecha took over from Hon. Mlyambina did not assign reasons for taking over, hence this Court ordered retrial from there.

When the matter was remitted back at the Tribunal on 21/11/2022, the Appellant appeared, where the matter was scheduled for mention on 01/12/2022. On that date the Appellant did not appear, instead one Felister Ikuyumba appeared on her stead, it is when the presiding Chairman slotted the matter for hearing on 18/01/2023 where the Appellant did not attend but with an excuse. The matter was scheduled for hearing on 28/02/2023, where the Appellant attended, but informed the Tribunal that her lawyer one Adolf Mahay

Advocate was indisposed and asked for another date. The matter was then scheduled for hearing on 19/04/2023 and the Tribunal made an order tasking the Appellant to inform Advocate Adolf Mahay to appear on the hearing date. On 19/04/2023, neither the Appellant nor her advocate one Adolf Mahay, appeared, hence the Tribunal dismissed the suit for want of prosecution. In the application for restoration, the Appellant grounded that on 19/04/20023 she was sick and she was attended at Regency Medical Centre Ltd as per a report dated 19/04/2023. The trial Chairman dishonoured it being a mere paper prepared at the hospital, and does not contain the name of the medical practioner who attended the Appellant.

To my view, the reasoning of the learned Chairman was a genuine and valid. The alleged medical form is too vague. On the first place, doesnot depict at what time the Appellant reported there or was attended. Two, the form merely indicate the Appellant is under treatment but did not disclose a specific illness for which the Appellant was under diagnosis. Neither mention any plan or prescription administered to the Appellant. The form merely indicate the Appellant was excused to attend work for five days. To my view, a mere fact that the form in question bears logo and rubber stamp of Regency Medical Centre Ltd, in absence of the above details and credentials, it cannot be taken as a conclusive proof that indeed the Appellant on the material date was sick

and a fact that she actually visited at the facility and was attended thereat. Non disclosure of the credentials name or even registration or all number of a medical practioner who attended the Appellant, create a serious doubt if at the Appellant had fallen sick or visited and was attended at the facility.

Above all the records of the Tribunal reveal the matter was scheduled for hearing to take place at 3:30 hours, but delayed up to 5:30 hours, yet still the Appellant or her advocate did not show up. An argument by the Appellant that she did not have a lawyer, is unmerited, because on 28/02/2023 she informed the Tribunal that she is represented by Adolf Mahay Advocate.

Therefore the ground by the Appellant that the matter was dismissed on the date of mention is misleading and a ground of illment was not proved. Even in the affidavit in support of application at the Tribunal, the Appellant did not state specifically the type of illness, merely said she was serious sick.

Therefore the appeal is without substance. The verdict of the Tribunal is upheld.

The appeal is dismissed with costs.



E. B. LUVANDA
JUDGE
21/02/2024

Judgment delivered in the presence of Frank Bernard Ikuyumba who appeared on behalf of the Appellant and the Respondent. The Appellant retain a right of further appeal to the apex Court.



E. B. LUVANDA
JUDGE
21/02/2024