

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. LAND APPEAL NO. 63 OF 2021

(Originating from Land Appeal No. 20 of 2021 of the District Land and Housing Tribunal for Iramba at Kiomboi and Land Case No. 2 of 2021 of the Kyengege Ward Tribunal)

IBRAHIM NOGIGWA.....APPELLANT

VERSUS

ULUMBI GONGA.....RESPONDENT

JUDGMENT

11/08/2022 & 20/10/2022

KAGOMBA, J

In this appeal, IBRAHIM NOGIGWA ("the appellant") is aggrieved with the entire proceedings and subsequent order of the District Land and Housing Tribunal for Iramba at Kiomboi ("Kiomboi DLHT") in Land Appeal Case No. 2 of 2021 which dismissed his appeal.

According to the petition of appeal, there are two grounds of appeal whose contents are, however, not easily comprehensible. According to the petition of appeal, the same were drawn and filed by the appellant who

appears to be a lay person. Thus, in order to comprehend the imports of the grounds of appeal, the court had to consider the same alongside the appellant's submissions and the proceedings of the Kiomboi DLHT.

Reading the above records in context, it has been realized that the appellant having lodged his appeal against the decision of Kyengege Ward Tribunal ("trial Tribunal") before Iramba DLHT, the same was dismissed under Order XXXIX Rule 17 of the Civil Procedure Code, [Cap 33 R.E 2019] ("the CPC") for non-appearance of the appellant. Thus, the appellant is now challenging such dismissal order contending that on 25/10/2021 when the appeal was dismissed for non-appearance, he was attending traditional treatment at one Doctor Mtikira as per ground no. 2 of the petition of appeal.

During hearing, the appellant, who appeared in person without legal representation, twisted the story. He contended that the appeal was called earlier before the scheduled date, hence his non-appearance led to the dismissal of the appeal. It was his contention that the appeal was scheduled for hearing on 10/11/2021 but unfortunately it was called on 25/10/2021.

The respondent, ULUMBI GONGA, on reply he countered what was submitted by the appellant. She contended that the proceedings of the Iramba DLHT are clear as they show how the appellant defaulted appearance.

It appears from the records of the Iramba DLHT that the appellant defaulted appearance in two consecutive dates without notifying the Tribunal of his absence, hence dismissal of the appeal for non-appearance. The proceedings reveal that, in first place, the appeal was scheduled for hearing on 16/8/2021 but couldn't proceed because the appellant wasn't ready. Hence it was adjourned to 11/10/2021. On 11/10/2021 the appellant didn't appear before the Iramba DLHT, then the appeal was adjourned to 25/10/2021 and the appellant again didn't appear. Hence, the Iramba DLHT was moved to dismiss the same for non-appearance under Order XXXIX Rule 17 of the CPC, and granted the prayer accordingly. The cited provision of Order XXXIX rule 17 reads;

*"17. Where on the day fixed or on any other day to which the hearing may be adjourned, **the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed**".*

[Emphasis Added]

From the above background, the issue is whether the appellant's appeal is properly before this court. Since the appeal was dismissed by the Iramba DLHT for non-appearance, the appropriate remedy for the appellant to take was not to file this appeal, but to apply for re-admission of the dismissed appeal to the same Iramba DLHT subject to Rule 19 of Order XXXIX of the CPC which provides that;

"Where an appeal is dismissed under sub-rule (2), of rule 11 or rule 17 or rule 18, the appellant may apply to the Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit".

[Emphasis Added]


If the appellant had taken the route provided for under the above cited provision of the law, the Iramba DLHT would determine whether the appellant had adduced sufficient cause for re-admission of the appeal or not.

If, in that determination, the Iramba DLHT would refuse the appellant's application for re-admission of the appeal, then the appellant could have a room to appeal to this Court subject to the provision of Order XL Rule 1(t) of the CPC. The proceedings do not show if the appellant did apply to the Iramba DLHT for re-admission of his appeal. By frog-jumping the above stated procedure, this appeal becomes premature.

For the above reason, the appeal is rendered incompetent. Consequently, the appeal is struck out. No order as to costs.

Dated at Dodoma this 20th day of October, 2022.




ABDI S. KAGOMBA

JUDGE