THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISC. LAND APPEAL NO. 34 OF 2019.

(Originating from The District Land and Housing Tribunal for Mbeya, at Mbeya, in Land Application No. 13 of 2019, from Mlangali Ward Tribunal, in Land Case No. 1 of 2018).

NOWA SHIBANDA.....APPELLANT

VERSUS

MWAJUMA MWAKONDE.....RESPONDENT

JUDGMENT

30/04 & 29/07/ 2020.

UTAMWA, J:

The appellant in this appeal, NOWA SHIBANDA challenged the decision of the District Land and Housing Tribunal for Mbeya, at Mbeya (the DLHT) in what he termed as Land Application No. 13 of 2018. The matter originated in Land Case No. 1 of 2018 before the Ward Tribunal of Mlangali (the trial Tribunal).

The brief background of this matter according to the record goes thus: the respondent (in this appeal), MWAJUMA MWAKONDE MPEMBELA initiated proceedings before the trial Tribunal against the applicant for a piece of land. The trial Tribunal decided in favour of the respondent. Aggrieved by that decision, the appellant (in this appeal) appealed to the

DLHT. The appeal was registered as Appeal No. 13 of 2019. The appeal was dismissed for want of prosecution since the appellant did not enter appearance on the date when it was called upon for hearing. He then applied through a chamber summons to set aside the dismissal order and restore the appeal. The respondent resisted the application. Upon hearing the parties on the application, the DLHT also dismissed it for lack of merits. The appellant was not contented by that dismissal of the application. He is now appealing against the ruling of the DLHT dated 11/06/2019 (hereinafter called the impugned ruling).

The petition of appeal is based on the following three grounds of appeal which I reproduce word-perfect for a readymade reference:

"PETITION OF APPEAL

1. That, the trial chairman of the Mbeya District Land and Housing tribunal erred totally in law in dismissing the Misc. Land Application No. 13/2019 basing on fabricated evidence.
2. That, the trial chairman of the district land and housing tribal for Mbeya erred in law in its decision by ignoring the evidence adduced by the appellant.
3. That, the trial chairman of the district land and housing tribunal for Mbeya erred in law in its decision that favoured the respondent who adduced no valid evidence in disputing my prayers in Misc. land application no. 13/19."

Owing to the above grounds of appeal, the appellant urged this court to grant him the following reliefs; to allow the appeal, an order to restore the dismissed appeal of the District Land and Housing Tribunal for Mbeya by striking out the dismissal order of the trial tribunal, costs of this appeal be in course and any other relief this court may deem fit and just to grant. The respondent resisted the appeal at hand.

Both parties in this appeal are lay-persons and are not legally represented. When the appeal was called upon for hearing, the appellant had nothing to add to his grounds of appeal. On her part, the respondent

only declared that, she objected the appeal since the parties had been properly heard by the DLHT.

In deciding this appeal, I take note from the reliefs sought by the appellant that, though he is essentially appealing against the impugned ruling that dismissed his application for restoring the dismissed appeal, the three grounds of appeal he paraded are couched as if he is appealing against a judgment of the DLHT which decided the appeal on merits. However, in essence, the DLHT made no any judgment on merits of the appeal before it. As shown previously, it only dismissed the appeal for want of prosecution following the absence of the appellant. In my view, the grounds of appeal listed above were resulted from the appellant's misconception of the law for being a layman. The respondent did not also raise any concern against the way the grounds of appeal are couched, probably for the same reason of ignorance of law.

Another factor which contributed to the confusion of the parties in this matter is, in my opinion, that, the DLHT did not assign to the application any separate serial number from that of the main appeal before it. This is the reason why, even the impugned ruling is titled "LAND APPEAL NO. 13 OF 2029" thought in fact, it was basically deciding on issues arising from the chamber summons filed by the appellant as shown above.

Despite the misconception of the parties for being lay persons, I will proceed to consider this appeal as being against the impugned ruling. I will do so by considering the merits or demerits of the said impugned ruling of the DLHT according to the record, the law of the land and justice. I will take this course since I consider the anomalies in the record and those resulting from the parties' state of being laypersons as not fatal to this matter. They will thus, not obstruct me from dispensing substantial justice to the parties. This is, in fact, the duty of a court of law, whether or not the parties before it are legally represented. A court of law is duty bound to dispense substantial justice and ignore procedural technicalities, like the ones involved in the case at hand (mentioned above). This is the very spirit

embodied under section 45 of the Land Disputes Courts Act, Cap. 216 R. E. 2019 as underscored by a decision of the Court of Appeal of Tanzania (the CAT) in the case of **Yakobo Magoiga Kichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza** (unreported). In that precedent, the CAT underlined the principle of "Overriding Objective." The principle was recently accentuated in the Written Laws (Miscellaneous Amendments Act) (No. 3) Act, No. 8 of 2018. It essentially requires courts to deal with cases justly, speedily and to have regard to substantial justice.

The major issue before me is therefore, *whether or not the DLHT erred in dismissing the appellant's application for restoration of his appeal that had been dismissed for want of prosecution.* As shown above, on the date set for the hearing of this appeal both parties had nothing substantial to tell this court. Nonetheless, the record of the DLHT speaks louder for the parties. It is clear from the affidavit supporting the application before the DLHT that, the appellant had failed to appear on the date of hearing for his appeal on the following grounds: that, he was sick and had gone to a traditional healer for treatment. He could not thus, timely appear before the DLHT. He had also sent a person to pray for adjournment of the appeal. Nonetheless, his representative was also late on that hearing date, hence the dismissal of the appeal by the DLHT.

On her part, the respondent objected the application before the DLHT by filing a counter affidavit. She essentially maintained that the applicant's sickness was not proved.

In the impugned ruling, the DLHT dismissed the application on the ground that, there was no any proof that the appellant was sick. That was because; there was no any medical certificate showing that he was sick. There was also no any affidavit by the purported traditional healer to that effect though such affidavit of the healer was material to the issue before it. The DLHT supported its stance of law by a decision of this court in **Toga Fueta v. Eva Pwele, PC Civil Appeal No. 26 of 1983, High Court of**

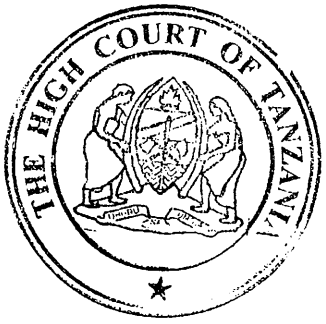
Tanzania (HCT), at Dar es Salaam (unreported) that followed the case of **John Chuwa v. Antony Giza [1992] TLR 233.**

In my view, the DLHT cannot be faulted for reaching into the decision mentioned above. This is because, in applications for restorations of dismissed matters for want prosecution (i. e. for failure to appear on the hearing date), there must be proof by evidence for reasons that obstructed the applicant from appearing on the date of hearing the matter. Otherwise, parties will default appearance without any good reason and cases will be adjourned endlessly and they will never come to an end. Justice requires cases to be adjourned only for good reasons, and not for the sake of parties' whims.

Indeed, in law, illness of a party can constitute a sufficient reason for adjournment or for restoring a dismissed matter if it was the cause of the failure to appear by the applicant. However, such illness must be proved evidence. Medical records are good scientific proof of such illness. Nonetheless, any other evidence may also prove the same depending on the circumstances of each case. Lack of medical record or any other proof for sickness creates doubts. Mere averment by the applicant for restoring a dismissed matter that he had been unable to appear on the hearing date for his/her illness are, in my view, insufficient. If such unfounded averments are accepted by courts blindly, dishonest defaulters will hide under such loophole and cases will never end as I hinted earlier. I am fortified in this stance by the decision of the CAT in the case of **Christina Alphonce Tomas (as Administratrix of the late Didass Kasele, Deceased) v. Saamoja Masingija, Civil Application No. 1 of 2014, CAT at Mbeya** (unreported). In that case, the CAT refused to adjourn the hearing of an application on the ground of illness that was not supported by any medical report. It then discouraged such adjournments for illness which is not proved at all.

Having observed as above, I find that, the DLHT was justified in dismissing the appellant's application through the impugned ruling. I thus,

answer the major issue negatively that, the DLHT did not err in dismissing the appellant's application for restoration of his appeal that had been dismissed for want of prosecution. I consequently find that, this appeal lacks merits. I accordingly dismiss it with costs. It is so ordered.



J.H.K. Utamwa

JUDGE

29/07/2020.

29/07/2020.

CORAM; HON. JHK. Utamwa, Judge.

Appellant: present in person.

Respondent; present in person.

BC; Mr. Patric Nundwe, RMA.

Court: Judgment delivered in the presence of the parties in person, in court, this 29th July, 2020.

J.H.K. UTAMWA

JUDGE

29/07/2020.