

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND APPEAL NO.428 OF 2023**

(From Misc. Application No. 24 of 2023 Original Application No. 603 of 2018)

ABDALLAH ALLY MNG'AE APPELLANT

VERSUS

PAULINE AUGUSTINE MWANGA 1ST RESPONDENT

AMANA BANK LIMITED..... 2ND RESPONDENT

RULING

29/02/2024 & 23/4/2024

GWAE, J.

The appellant, Abdallah Ally Mng'ae is before the Court appealing against the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala (DLHT) through Application No. 24 of 2023 dismissing his application for extension of time to enable him set aside a dismissal order.

The brief background of this appeal is to the effect that, the appellant in this matter was the applicant in Application No. 603 of 2018 before the District Land and Housing Tribunal for Kinondoni. On the 23rd day of November 2022 when the matter was called on for hearing the

applicant now appellant did not enter his appearance. Following the appellant's non-appearance, the DLHT dismissed the matter for want of prosecution with costs.

Aggrieved by the said order, on the 30th day of January 2023, the appellant filed at the DLHT a Misc. Application No. 57 of 2023 for extension of time to file an application for setting aside a dismissal order dated 23rd November 2022. Upon deliberating over the matter, the DLHT dismissed the application on the ground that, the appellant failed to advance sufficient reasons for his delay. Therefore, he failed to account for each day of delay. The appellant is now before this court challenging the DLHT's decision on the following ground:-

"That, the Trial Tribunal erred in law and in fact in dismissing the appellant's application for extension of time to file an application to set aside dismissal Order in application no 603 of 2018 dated 23rd November, 2022 on account that, the appellant has failed to account for each day of delay under the circumstances of this matter."

By mutual agreement of the parties and the order of the court, the appeal was argued by way of written submissions. Mr. Phales Eliezer Mshana and Mr. Haji Sama, both the learned advocates, represented the applicant and 2nd respondent respectively. Subsequent to the Court's

leave, the applicant and 2nd respondent presented their submissions in support of the appeal. However, the 1st appellant did not enter his appearance in court, therefore the matter proceeded *ex-parte* against him.

Submitting in support of the appeal, Mr. Mshana Stated that, the order to dismiss the application was issued in contravention of the regulation 11 (1) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations. He stated that, when the matter was set for hearing on 18/10/2023, the appellant and his advocate were absent without notice of hearing date and were not present when the matter was fixed for hearing. He was of the opinion that, the trial Chairman could not have dismissed the matter but adjourn to another date and issue notice to the appellant. He stated that, the absence of the proof of service of notice of hearing to the appellant in his view is sufficient to account for each day of delay to the date he received notice of the dismissal order.

Further to that, Mr. Mshana faulted the trial Chairman's findings that, the applicant advanced three reasons for his delay in applying to set aside dismissal order and failed to account for each day of delay, while the applicant raised one ground that, he was unaware that, the

matter was dismissed. He prayed that the decision of the trial Tribunal be set aside and this appeal be allowed with costs.

In his reply, Mr. Sama referred to the DLHT's records and stated that, the appellant was present and aware of the hearing when the matter was scheduled for hearing to be on 26th August, 2023 but was absent without notice. To bolster his argument, he referred to the case of **Jenifa Barakael Lyimo vs CRDB Bank Limited and Kassimu Mwalongo**, Misc. Land Application No. 20 of 2018, High Court of Tanzania at Iringa, at page 8 which stated that:-

"There is no doubt that, the one who moves the court, shall make a close follow to know the scheduling of his case. It is not the duty of court to ensure that, the applicant appears before the court to prosecute his case."

On account for each day of delay, Mr. Sama referred to clause ii of the appellant's affidavit in the application for extension of time, which states that he became aware of the dismissal order on the 24th day of January, 2023. Which according to him, it is after expiry of 33 days and application No. 24 of 2023 was filed on 30th January, 2023 being 6 days after being aware of the dismissal order but did not account for the 6 days that he delayed to lodge the application. To bolster his argument,

he cited the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Appeal No.3 of 2007.

Regarding the appellant's submission that, the tribunal's Chairman misdirected himself when he hold that, the application was on three (3) grounds while the appellant raised only one ground that, he was not aware that the matter was dismissed and that the trial Chairman based on extraneous matter. Resisting this argument, Mr. Sama s that, the trial Chairman was correct to hold that the grounds of application were three and all the grounds were deduced from the Appellant's affidavit in chief as well as his written submission in support of his application. He stated that, the appellant failed to prove that he travelled and account for each day of delay. To support his argument, he referred to the case of **Morandi Rutakyamirwa vs. Petro Joseph** (1990) TLR 49 and prayed for the appeal to be dismissed with costs.

In the course of composing the judgment, the court *suo motto* observed some irregularities namely; fixing of a date of hearing of the Application No. 603 of 2018 after the institution Misc. Application No. 379 of 2022 by the 1st respondent aimed at setting an order of ex-parte hearing against him (Pauline). The said Misc. Application was against the appellant and 2nd respondent.

Briefly, the DLHT's records reveal that, on 20th February 2020, the trial Tribunal issued an ex-parte order against the 1st respondent after being satisfied that, she defaulted to file the Written Statement of Defence. Aggrieved by the said order, on 1st July day of 2022, the 1st respondent filed before the Tribunal, Miscellaneous Application No. 379 of 2022 for extension of time to set aside an order *ex-parte* hearing made against her.

The records further show that, while Misc. Application No. 379 of 2022 was yet to be determined, on 23rd November, 2022 the trial Tribunal dismissed Application No. 603 of 2018 for want of prosecution. Upon such observation, the court invited both parties to address the court on the question raised on the appropriateness of the proceedings of the trial Tribunal for dismissing Land Application No. 603 of 2018 while Miscellaneous Land Application No. 379 of 2022 was still pending before it.

Only the appellant and his counsel appeared and addressed the court on such pertinent issue. The appellant informed the court that at the Tribunal he was represented by Mr. Mgonja, learned and not, Mr. Mshana, who is representing him in the instant Appeal. He stated that, the two applications being Application No. 603 of 2018 and Miscellaneous Application No. 379 of 2022 were assigned to different

chairpersons. While the former matter was before Hon. Rugarabamu, Chairperson, the later was before Hon. Sillas, Chairperson. He stated further that, on the 24th day of January 2023, when he appeared before the Tribunal for Miscellaneous Application No. 379 of 2022, it was submitted by the counsel for the 1st respondent that, Application No. 603 of 2018 was dismissed for want of prosecution. As the result, the appellant filed Misc. Application No. 24 of 2023 for extension of time to file an application for setting aside the dismissal order, which is the subject of this appeal.

Having gone through the proceedings in both applications, I find a lot of confusions in the proceedings of the trial Tribunal in respect of Land Application No. 603 of 2018 and Miscellaneous Application No. 379 of 2022. In my observations, I have found that, Application No. 603 of 2018 was dismissed in terms of Regulation 15 (a) of GN. 174 of 2003 on the 23rd November 2022, while Misc. Application No. 379 of 2022 was still pending before the same Tribunal. It was until 13th February, 2023, when the later was struck out for being overtaken by event that is dismissal order in main application dated 23rd day of November, 2022 for want of prosecution.

As a matter of practice, once a Miscellaneous Application is filed in a court or quasi-judicial body, where there is a proceeding of a main

case or application, hearing of such suit or application has to be suspended pending a hearing and determination of a Miscellaneous Application. The rationale behind of this practice is to the effect that, the determination of the Miscellaneous Application may have an effect in the Application or main case, which may render duplicity or repetition or retaking the same evidence. Our courts and disputants abhor such acts as the same are likely to cause a failure to dispense justice timely. Hence, common practice and prudence requires stay of proceedings in the main case/ Application as the case may be, until determination of the Miscellaneous or interlocutory Application.

In the instant matter, after the 1st respondent filed before the Tribunal a Misc. Application No. 379 of 2022 for extension of time, Land Application No. 603 of 2018 was supposed to be suspended until Miscellaneous Application No. 379 of 2022 was heard and determined on merit. That being the case, the Appellant's Application, in my considered view, could not be appropriately dismissed at that stage. For avoidance of confusions between the parties, both applications were to be assigned before one Chairperson who would be aware of the progress of the applications before him or the parties or their respective counsel would have notified the DLHT.

It is in my opinion that, if the proceedings in main application were stayed immediately after Miscellaneous Application No. 379 of 2022 was filed, this confusion would have been avoided. It is also common grounds that cases, should be heard and determined on merits instead of mere technicalities. I have further considered the fact that six days of delay on the part of the appellant does not constitute an inordinate delay since he was required to reorganize in order to get rid of the dismissal order.

That being the case, I am therefore justified to invoke the power bestowed to the Court by virtue of section 43 of the Land Disputes Courts Act, Cap 216, Revised Edition, 2019 to nullify the proceedings and set aside the dismissal order dated 23rd November, 2022. For the interest of prompt dispensation of justice especially avoidance of further delays in the intended hearing and determination of the parties' dispute, the DLHT's order for ex-parte hearing against the 1st respondent is quashed and set aside.

In the same vein, the 1st respondent is granted leave to file her written statement of defence pertaining Application No. 603 of 2018 **within fourteen (14)** days from the date of this order. I further direct that, Application No. 603 of 2018 be remitted to the DLHT before another Chairperson and hearing and determination of the matter be

expeditiously conducted. Taking into consideration that, the matter was raised by the Court *suo motto*, I make no order as to costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 23rd day of April, 2024.




M. R. GWAE
JUDGE