

TANZANIA / JUDGMENT

PETER PETER JUNIOR scanned

COURT
TANZLII

DECIDED
31 July 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND APPEAL NO. 4311 OF 2024 (An appeal from the Ruling and Drawn Order in Mise.
Land Application No. 523 of 2022 in the District Land and Housing Tribunal of Kinondoni, Hon.
Sillas Chairperson dated February 2024) 1st APPELLANT PETER PETER
JUNIOR..... RASHID KHAMIS ABDALLAH..... 2nd
APPELLANT VERSUS EUNICE MBWANA KIHAMIA.....
1stRESPO ELIZABETH CHARLES KIHAMIA..... 2ndRESPO ROZY
CHARLES KIHAMIA..... 3rdRESPON

JUDGMENT

24" & 31st July, 2024 L HEMED, J, The appellants, Peter Peter Junior and Rashid Hamis Abdallah were aggrieved by the ruling and drawn order of the District Land and Housing Tribunal of Kinondoni, in Mise. Land Application No. 523 of 2022, in which the presiding chairman Hon. Sillas, granted leave to the 1st and 2nd respondents herein, Eunice Mbwana Kihamia and Elizabeth Charles Kihamia to apply to set aside exparte judgment out of time. In the said ruling, which was delivered on 14th February 2024, Rozy Charles Kihamia i was also the 3rd Respondent. According to the impugned ruling, application to set aside exparte judgment was to be filed within 10 days. The Appellants herein challenged the said decision by advancing four grounds namely: - '7. That, the Honourable trial Tribunal erred in law and facts for failure to analyse the evidence and submissions presented in opposing the application for extension of time hence forth arrived into an erroneous ruling and drawn order.

2. That, the trial chairperson erred in law by misusing its discretion power on relying on hearsay evidence submitted by the 1st and 2nd Respondent counsel without any corroborating evidence from the 1st and 2nd Respondents contrary to the requirements of the laws and good practice hence forth arrived into an impugned ruling and drawn order.
3. The trial tribunal erred in law by granting extension of time despite the fact that the 1st and 2nd Respondent failed to account for the delay of each day before filling the application for extension of time contrary to the requirement of the laws.

4. The trial Tribunal erred in law by reaching to finding that the 1st and 2nd Respondent (sic) were never summoned to appear before the Trial (sic) 2 Tribunal while the evidence on record reveals that the same were summoned through different means and were eager to comply with the same." Both parties argued the Appeal by way of written submissions. Mr. Mlyambebele Abedinegeo Levi Ng'weli, learned advocate acted on behalf of the appellants while the 1st and 2nd respondents enjoyed the service of Mr. Eraneus P. Swai, advocate. In the course of composing judgment at hand, is when I came to realize that what the appellants are trying to challenge is the ruling to allow the 1st and 2nd respondents herein to file an application to set aside *ex parte* judgment in Application No. 224 of 2021. On 24th July 2024, I invited the learned counsel for both parties to address the court whether the impugned ruling is appealable. The learned counsel committed themselves to address the court by way of written submissions. Both submissions were filed on 30th July 2024. I have thoroughly gone through the submissions filed by both advocates and found them being on one page that the impugned ruling is not appealable as it is an interlocutory one. I have also revisited the procedural law governing proceedings in the District Land and Housing 3 Tribunal, that is the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, GN. 174 of 2003 and found that under regulation 22, it is provided thus: - "22. The Chairman shall have powers to determine:
- (a) Preliminary objections based on point of laws;
 - (b) Applications for execution of orders and decrees;
 - (c) Objections arising out of execution of orders and decrees;
 - (d) Interlocutory applications. Provided that a ruling on a preliminary point of law or any interlocutory application which have no effect of finally deciding the case shall not be appealable. "[Emphasis added] The question that arises out of the above provision is what is an interlocutory decision? According to the Essential Law Dictionary, Amy Hackney Blackwell, 2008 at page 257, the word interlocutory order has been defined as follows: - 'Interlocutory order. An order issued by the court while a trial is still in process, determining and intermediate issue before coming to a final decision for the entire case.' 4 The court of Appeal of Tanzania in *Zamzam Yusuf Mushi vs. Abubakari Khalid Hajj Gemaco Auction Mart International Frank Lionel Marialle*, Civil Application No. 55 of 2020, stated the test for determining whether a decision is interlocutory or final. It held thus: "Whether the order or judgment as made finally dispose of the rights of the parties and if it does, then it ought to be treated as final order but if it doesn't, it is then an interlocutory order." [Emphasis added]. The above authorities confirm that interlocutory orders or decisions are not appealable unless such orders conclude the determination of the parties' rights. As aforesaid, in the instant matter, the appellants are in attempt to challenge the decision of the trial tribunal to grant leave to the 1st and 2nd respondents to file an application to set aside *ex parte* judgment out of time. The question is whether such decision is an interlocutory one. In fact, the grant of the application for leave to apply to set aside *ex parte* judgment implies reopening of the proceedings at the trial Tribunal. In other words, the order for extension of

time to file an application to set aside exparte judgment, is interlocutory to the proceedings to set aside exparte judgment. In that regard, I find this Appeal to be premature before this court. It 5 deserves to be struck out. This being the case, I have opted not to determine the grounds of Appeal as the point raised by the court suffice to dispose of the appeal. The entire appeal is struck out with no orders as to costs. Order accordingly. 6

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Prepared on 14 October 2026 · Esheria