

TANZANIA / JUDGMENT

20191004 TZHC Mbeya

COURT
TZHCDECIDED
4 October 2019

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/ THE UNITED REPUBLIC OF TANZANIA JUDICIARY) IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA) ATMBEYA LAND APPEAL NO 73 OF 2016 (From the District
Land and Housing Tribunal for Mbeya at Mbeya in Misc. Application No.1 3C of 2013 and Land
Appeal No. 13 of 2016) STEVEN SIMKONDA APPELLANT
VERSUS SOLOMON SIMTENDA RESPONDENT

JUDGEMENT

Date of Last Order : 25/07/2019 Date of Judgement: 04/10/2019 MONGELLA, J. The Appellant filed in the District Land and Housing Tribunal an application to set aside the ex parte decision passed against him. He did not succeed and thus has appealed to this Court against the ruling of the DLHT. In his memorandum of appeal, the Appellant raised four grounds to wit: That the trial Tribunal erred in law and facts when it did not consider the application for inter-parties to set aside ex-parte judgment in order the matter be resolved in merits. That the trial Tribunal erred in law and facts for not considering that the Applicant was notified for mention dated 23rd day of Feru,yy Page 101 6 2013 and that the Appellant did not attend due to transport problem, thereafter there was no date for hearing which the) Appellant was served, instead date of ruling was set. That the trial Tribunal erred in law and facts when it failed to consider that the Appellant was not given the right to be heard in Misc. Civil Application No. 13 of 2013. That the trial Tribunal erred in law and facts when it argued that Misc. Civil Application No. 16 of 2013 is the same as Misc. Civil Application No. 13 of 2013 while No. 16 of 2013 did not appear in the Ruling and that there are different parties from Misc. Application No. 13C of 2013. The appeal was argued by written submissions whereby the Appellant got the assistance of "Haki za Raia no Msaada wa Ushauri wa Kisheria" in drafting the submissions and the Respondent was represented by Mr. Leonard Elias Magwayega, learned Advocate. On ground one, two and three, the Appellant submitted that he was denied his right to be heard in Misc. Application No. 13C of 2013 in order to set aside the ex parte judgment in Land Appeal No. 13 of 2013. He argued that the matter was determined secretly without notifying the Appellant (the Respondent in the DLHI). That he was notified of the matter at the end of the case in which he was not able to defend. He concluded that the DLHT contravened the principles of natural justice by denying him the right to be heard in Misc. Civil Application No. 13 of 2013. Page 2 of 6 The Appellant argued further that he was not served with a summons notifying him to attend the Tribunal on a mention or hearing of the case. The Appellant submitted the Respondent fabricated the evidence filled in the

summons by stating that the Appellant failed to attend before the Tribunal due to transport problems something which was not true. He claimed to have not received any summons regarding the case. On the 4th ground the Appellant argued that the Tribunal erred in ruling that Misc. Civil Application No. 13 of 2013 and Case No. 16 of 2013 are one and the same. He argued that the two cases are different and involving different parties. The said Case No. 16 of 2013 did not even appear in the ruling of the Tribunal. It was struck out and parties were ordered by the Tribunal to start the case afresh. Responding to the Appellant's submissions, Mr. Magwayega argued that the Appellant in his submissions submitted something contrary to the contents of the DLHT's ruling in respect of Misc. Application No. 13C of 2013 which originated from Land Application No. 13 of 2013. He argued so giving reasons that in the Appellant's memorandum of appeal he has shown that this appeal originates from "Misc. Application Land Appeal No. 13C of 2013 and 13 of 2016 in the DLHT for Mbeya." Mr. Magwayega argued that this alone makes the appeal before this Court to be defective as it is not clear as to whether the Appellant appeals against the Trial Tribunal's ruling in Misc. Application No. 13C of 2013 or Misc. Application No. 13 of 2013, or Misc. Application No. 13 of 2016. He further argued that neither the extract Order in respect of the ruling in Misc. Application No. 13C of 2013 nor decree in respect of the purported LQnd Page 3of6 Application No. 13 of 2016 have been attached in the Appellant's memorandum of appeal to substantiate his appeal as required under Order XXXIX Rule 1 of the Civil Procedure Code, Cap 33 R.E. 2002 (CPC) which makes the appeal incompetent before this Court. Arguing on the grounds of appeal, Mr. Magwayega submitted that the trial Court was correct in its decision because it was satisfied that the Appellant was aware of the existence of Land Case No. 13 of 2013 but he willfully did not appear to defend his case. He also added that the Appellant filed the application to set aside the ex parte judgment after the lapse of twenty one days provided under the law, that is, Order IX Rule 13(2) of the CPC. The Appellant's application was thus defective for two reasons, one that it was omnibus for seeking for more than one unrelated orders and two, it was filed out of the time limitation of twenty one days. Lastly, Mr. Magwayega declined to respond on grounds 2, 3, and 4 on the Appellant's memorandum of appeal on the reason that they go directly to the main suit being land application No. 13 of 2013 rather than Misc. Land Application No. 13C of 2013. In rejoinder, the Appellant almost reiterated what he stated in his submission in chief, but clarified that this appeal is with respect to the ruling of the DLHT in Misc. Application No. 13C of 2016 which the trial Tribunal prejudiced the rights and interests of the Appellant in Application No. 13 of 2013. Page 4 of 6 I have considered the rival submissions from both parties. First of all I must say I am also confused as to which matter the Appellant is referring to in this suit. In the title of the memorandum of appeal and of his submission in chief and rejoinder he referred to "Misc. Application Land Appeal No. 13C of 2013 & 13 of 2016 of the District Land and Housing Tribunal for Mbeya at Mbeya." In the contents of his submission in chief he referred to Misc. Application No. 13C of 2013 and Case No. 13 of 2013 and stated that Land Appeal No. 13 of 2016 was struck out and parties were ordered to file the case afresh. However, while giving clarifications in his rejoinder he kept referring to Misc. Land Application No. 13C of 2016 throughout. I therefore wonder which matters the Appellant is exactly referring to for this Court to examine and determine upon. As already decided in this court in Richard Asumile Mwakoba v. Rize Philip Mwakikosya & 2 Others, Misc. Land Application No. 70 of 2017,

what introduces to the Court in the first place about the decision of the lower court/tribunal it is called upon to deal with in an application or appeal is the title of the document filed in Court. The Appellant in his memorandum of appeal and written submissions referred to Application No. 13 of 2016 which is in fact non-existent as no judgment thereof has been attached. While responding to the arguments advanced by the Respondent's counsel with respect to the case numbers, the Appellant referred to Misc. Application No. 13C of 2016 which is also non-existent and was never mention anywhere in the previous documents. I therefore find that the Appellant is not certain as to which particular decisions of the Tribunal he intends for this Court to examine and decide upon. As well I agree with Mr. Magwayega that by including a non-existent case, that is, No. 13 of Page 5 of 6 2016 in the title of the documents filed in this Court on appeal, this appeal becomes incompetent before this Court. With the above observations I struck out the appeal for being incompetent. Costs are awarded to the Respondent. The Appellant is at liberty to file a fresh appeal subject to limitation of time. Dated at Mbeya on this 4th day of October 2019 L. I ELLA JUDGE 04/10/2019 Right of appeal to the Court of Appeal has been duly explained. L. M ELLA JUDGE 04/10/2019 Court: Judgement delivered in Mbeya in Chambers on this 41h day of October 2019 in the presence of both parties. (U5k JUDGE 04/10/2019 ZI Page 6of6

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Prepared on 14 October 2026 · Esheria