

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**LAND APPEAL NO. 37 OF 2019**

(Original District Land and Housing Tribunal for Singida in Misc. Land Application no. 67  
of 2018)

**ARON ABDI BAKARI ..... APPELLANT**

**VERSUS**

**JULIUS MAKALA** (Administrator of the estate  
of the late Gerson M. Makala) .....**RESPONDENT**

**JUDGMENT**

*22/7/2021 & 23/8/2021*

**MASAJU, J**

The background to this appeal is that one Gerson Mkumbo Makala in 2009 vide Application No. 39 of 2009 unsuccessfully sued Zantel Tanzania and the Appellant Aron Abdi Bakari, then the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively before the District Land and Housing Tribunal for Singida at Singida seeking to be declared the lawful owner of the land on which Zantel Tanzania had erected its telecommunication Tower. The trial tribunal in its

judgment dated the 16<sup>th</sup> day of July, 2010 declared the Applicant lawful owner of the Suitland and that there should be a lease agreement between him and Zantel Tanzania.

Gerson Mkumbo Makala unsuccessfully applied for Review of the said judgment since his Application No. 39 of 2009 (sic) between the parties was dismissed by the trial-tribunal on the 19<sup>th</sup> day of November 2010. Gerson Mkumbo Makala appealed to the Court vide Land Appeal No. 2 of 2011 against Zantel Tanzania and the Appellant. But on the 19<sup>th</sup> day of March 2013 he withdrew the said appeal from the Court. He then filed another Application for Review No. 39 of 2009 (sic) before the trial tribunal. The said Application for Review between the same parties was entertained by the trial tribunal. It was heard *ex parte* and granted accordingly thereby turning upside down its judgment on the 9<sup>th</sup> day of June, 2015 by the same trial tribunal chairman (S.H. Wambili) who had all along been presiding over the Application No. 39 of 2009 (main suit) and the two Applications for Reviews thereof, the Application equally cited No. 39 of 2009 one decided on the 19<sup>th</sup> day of November, 2010 and the other on the 9<sup>th</sup> day of June, 2015.

The Applicant allegedly became aware of the subsequent another decision of the trial tribunal in 2018 when he was served with summons for decree execution. He unsuccessfully filed Application No. 67 of 2018 against the Respondent Julius Makala (as administrator of the estate of the late Gerson Mkumbo

Makala) before the District Land and Housing Tribunal for Singida (The trial tribunal) for extension of time to file Application for setting aside the *ex parte* order, hence this appeal to the Court against the trial tribunal's Ruling thereof.

The Appellant's Petition of Appeal was made up of three grounds including the 2<sup>nd</sup> ground that there were material irregularities which were also good cause to grant the extension of time to set aside the *ex parte* order dated the 9<sup>th</sup> day of June, 2015.

When the appeal was heard in the Court on the 1<sup>st</sup> day of June, 2021 the layman Appellant appeared in person and adopted the grounds on his Petition of Appeal to form part of submissions in support of the appeal in the Court. He argued that he was not aware of the subsequent Application for Review because he had not been duly served. That, the Respondent had a land adjacent to his residence he could therefore had served him with the chamber summons application thereof, rather than substituted service through UHURU Newspaper. The Applicant prayed the Court to allow the appeal with costs.

The Respondent, through the service of the learned counsel, Isaya Edward Nchimbi, contested the appeal arguing, *inter alia*, that the Appellant was duly served with the Application for Review vide UHURU Newspaper dated the 3<sup>rd</sup> day of March, 2015. That, his ignorance of the law was not a defence for his non-appearance before the trial tribunal, hence *ex parte*

order against him. That, the Appellant first appealed to the Court vide Land Appeal No. 310 of 2015 against *ex parte* order, but his incompetent appeal was struck out of the Court that is when he filed Application for extension of time to set aside *ex parte* order. The Respondent prayed the court to dismiss the appeal for want of merit with costs. That is all by the parties.

In the first place, the Court has not been able to see in the original record the alleged chamber summons Applications for Reviews. That being the case, the Court cannot be in a position to establish as to whether or not there was evidence to the effect that the Appellant was avoiding service of the said chamber summons Application for Review hence substituted service in UHURU Newspaper. The Court therefore cannot decide that the Appellant had abused his right to be heard so provided for under Article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977 [2005 Edition].

Secondly, indeed, there was material irregularity when the trial tribunal chairman heard and decided the 2<sup>nd</sup> Application for Review of judgment when he had already heard and decided another Application for Review of judgment on the same matter and parties. The trial tribunal should consider, whether or not by the time the chairman entertained the 2<sup>nd</sup> Application for Review, he was *functus officio*. This alleged procedural material irregularity, if any, by the trial tribunal was a merit to this appeal.

Thirdly, if at all the layman Appellant, upon his learning of the *ex parte* order filed incompetent Land Appeal No. 31 of 2015 to the Court which appeal was struck out of the Court, he should not be condemned, for there is section 21 of the Law of Limitation Act, [Cap 89 RE 2019] which can be brought into play when the court considers Application for extension of time made under section 14 (1) of the law of Limitation Act, [Cap 89 RE 2009].

That said, the meritorious appeal is hereby allowed. The Ruling of the trial tribunal dated the 12<sup>th</sup> day of April, 2019 and the Drawn order thereof are hereby severally and jointly quashed and set aside accordingly. The intended Application for setting aside the impugned *ex parte* order shall be filed in the trial tribunal within thirty (30) days of this judgment.

The parties shall bear, their own costs accordingly.

  
GEORGE M MASAJU

JUDGE

23/8/2021