

IN THE HIGH COURT OF ZANZIBAR

HELD AT TUNGUU

CIVIL APPEAL NO. 55 OF 2022

(FROM CIVIL CASE NO. 26 OF 2020)

REMIDUIS EDINGTON KISASI APPELLANT

VERSUS

MUSTAFA MZEE AND 4 OTHERS.....

RESPONDENTS

RULING

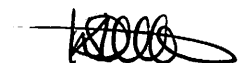
DATE OF RULING: 9TH APRIL, 2025

BEFORE: K. SHAMTE J.

The Appellant, Remiduis Kisasi was aggrieved by the decision of the Land Tribunal Vuga at Zanzibar concerning Civil Case No. 26 of 2020. The circumstances leading to this appeal involve the Appellant's assertion of ownership over a parcel of land located in Shakani, within the West "A" District of Unguja, which he purportedly purchased in 1989. The Appellant contends that the Respondents have unlawfully entered the aforementioned land, removed trees, and commenced construction activities. In response, the Respondents claimed ownership of the disputed land. The Land Tribunal Vuga ultimately ruled in favor of the Respondents.

Aggrieved with the tribunal's decision, the Appellant has submitted an appeal to this Court on the following five grounds:

- (a) The land tribunal committed an error in law and fact by failing to adequately analyze the evidence and render a proper decision.
- (b) The tribunal erred in law by neglecting to conduct a survey.
- (c) The tribunal erred in law and fact by awarding relief to the Respondents.
- (d) The tribunal's decision was flawed in law and fact as it did not adequately consider the Appellant's evidence, which was more compelling than that of the Respondents.



- (e) The tribunal erred in law and fact by making incorrect considerations and delivering a judgment in favor of the Respondents.

During the appeal hearing, the Appellant was represented by different counsels at different times (Counsel Ibrahim Naftal Mdeme and Counsel Emmanuel Hasama), while the Respondents were represented by learned Counsel Slim Abdalla.

The matter was scheduled for hearing in various sessions; however, neither the Appellant nor his Counsel appeared. On the hearing date, Mr. Slim submitted that the Respondents consistently appeared before the court, whereas the Appellant did not. In support of the appeal, Counsel Slim argued that the Appellant failed to appear, with no reason recorded for this absence on the scheduled dates and the hearing date. Mr. Slim prays the court to dismiss the appeal.

Upon the Respondents' Counsel raising the issue, the Court conducted a review of the records and identified that the Appellant failed to appear on multiple occasions, including the scheduled hearing on 6th November 2024. After a thorough examination of the records and consideration of submissions, the primary issue for determination is whether the Appellant provided a good cause and justification for his non-appearance.

Starting with the records; the sequence and schedule of this appeal are as follows:

20 th March 2024	-	The matter was scheduled.
20 th March 2024	-	Counsel Mdeme appeared for the Appellant.
16 th April 2024	-	Absent.
9 th May 2024	-	Absent.
13 th June 2024	-	Counsel Mdeme appeared for the Appellant.
4 th July 2024	-	Counsel Hasama appeared for the Appellant.
5 th September 2024	-	Absent.
8 th October 2024	-	Absent.
6 th November 2024	-	Absent.
16 th January 2025	-	Absent.
26 th February 2025	-	Absent.

The proceedings clearly indicate that the Appellant did not appear before the Court for his appeal. His Counsel appeared on three occasions and subsequently ceased to appear. There is no record or evidence explaining the Appellant's absence on the critical date before this Court.

In addressing this issue, it is appropriate to revisit the provisions governing the non-appearance of parties before the Court as stipulated in the Civil Procedure Decree, Cap 8 Laws of Zanzibar. Upon determining that the Appellant's absence occurred when the matter was called, this Court proceeded to restore the matter, effective from 20th March 2024. I reviewed the trial court records to ascertain whether the Appellant had developed any medical condition or other issue contributing to his non-appearance, but found no such record.

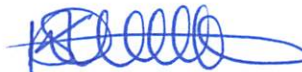
Conversely, the issue of non-appearance in civil suits is comprehensively addressed under Order XI of the Civil Procedure Decree, Cap. 8 of the Laws of Zanzibar. This order stipulates that if a suit is instituted and scheduled for hearing, but neither party appears, the suit will be dismissed. Furthermore, if the defendant appears and the plaintiff does not, the suit will also be dismissed. Conversely, if the plaintiff appears and the defendant does not, the suit will be heard ex parte.

In all these scenarios, the court issues orders without hearing the parties, and the right to be heard is not in question. However, remedies are available: the plaintiff may file a new suit or apply to the court to restore the suit. In the case of an ex parte hearing, the defendant may apply to the court to set aside the ex parte order, allowing the hearing to continue inter partes.

I concur with the learned Counsel for the Respondents that the Appellant failed to appear on multiple specified dates. It is upon determining that the Appellant has not advanced a good cause for non-appearance where the appeal was brought before this court.

Since the filing, there has been no appearance despite several court-scheduled dates, and even the Appellant's advocates have not appeared appropriately when the matter was called. I have evaluated the arguments for and against the application as presented. Given that the Appellant has not provided a valid reason, I am firmly of the opinion that this appeal cannot be sustained. Accordingly, I dismiss the appeal with no costs.

It is so ordered.



**KHADIJA SHAMTE
JUDGE**

Dated this 9th April, 2025