

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

PC CIVIL APPEAL NO. 116 OF 2004

ZAINURI RAMADHANIAPPELLANT

VERSUS

GODFATHER MOLARESPONDENT

J U D G M E N T

ORIYO, J.

Parties to the appeal had an intimate relationship which ended due to rival claims on the ownership of a house at Kiwalani, Dar es Salaam. They became involved in a multiplicity of suits starting from a ward Tribunal, two (2) suits at the Ukonga Primary Court, one suit and an appeal at the District Court of Ilala at Samora and this appeal. Actually this appeal was wrongly titled “(PC) Civil Appeal” because it did not arise from a Primary Court case but originated from the Civil suit filed at the District Court of Ilala in its original jurisdiction. The

appeal arose from the decision of the District Court in Civil case No. 84 of 2002 in which the Respondent, Godfather Molla, sued the appellant, Zainuri Ramadhani , for restitution of the house and other properties and for damages. The trial Court held that the house was a jointly acquired matrimonial property. Further the house was distributed such that the respondent was entitled to 60% and the appellant 40%. The appellant was ordered to compensate the respondent with 60% of the value of the house; failure of which the house would be auctioned.

Dissatisfied with the District Court decision, the appellant preferred this appeal.

Parties argued the appeal by way of written submissions. As I studied the submissions, it became apparent that the dispute had already been determined by the Kitunda Ward Tribunal . When the parties appeared before me on 15/11/2005; they unanimously confirmed that the dispute had been determined by the Ward Tribunal in favour of the appellant. The respondent did not prefer any

appeal against the Ward Tribunal decision; he filed a fresh suit Cc 84/2002 at the District Court.

The issue for initial determination here is whether the District Court had jurisdiction to hear and determine the dispute afresh in Cc 84/2002. The Ward Tribunals Act, Cap 206 R.E. 2002, provides for the jurisdiction, powers , practice and procedure of Ward Tribunals. SECTION 3 provides for the establishment of a Ward Tribunal for every Ward in Tanzania. SECTION 8 provides for their jurisdiction as follows :-

“ (3) in relation to all matters and disputes arising under all laws and directives passed by the appropriate authority”

The statute provides for appeals in SECTION 20 thereof :-

“(1) Subject to subsection (2), a person aggrieved by a decision of a Tribunal may within sixty days appeal in writing to a Primary Court.

(3) Except on points of law where the final appeal lies to the District Court, decision of a Primary Court on any appeal made to it shall be final and conclusive”.

From the above legal provisions, it is clear that whoever was aggrieved by the Ward Tribunals decision was required to appeal to a Primary Court. In the absence of an appeal against the decision of the Kitunda Ward Tribunal in favour of the appellant; that decision still stands unchallenged and parties are obliged to respect and abide by that decision. Under these circumstances, the District Court of Ilala at Samora had no jurisdiction to hear and determine Cc 84/2002 as the same was not properly before the Court. The dispute in Cc 84/2002 was resjudicata having been heard and determined by the Ward Tribunal. I therefore quash and set aside the proceedings, judgment, decree and orders of the District Court of Ilala at Samora in Cc 84/2002.

In the upshot , the appeal succeeds but for reasons other than those contained in the grounds of appeal. The appellant is awarded the costs of the appeal.

K.K. Oriyo,

JUDGE

4/01/2006