

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT SONGEA**

**LAND APPEAL NO. 14 OF 2013**

**(From the Decision of the District Land and Housing Tribunal of SONGEA  
District at SONGEA In Land Case No. 56 of 2013)**

**KIDANILE FUNGO & OTHERS.....APPELLANT**

**Versus**

**ALIMU HAJI NGAPONA.....RESPONDENT**

**Last Order: 03<sup>rd</sup> December, 2013**

**Date of Ruling: 18<sup>th</sup> February, 2014**

**RULING**

**FIKIRINI, J:**

The respondent Alimu Haji Ngaponda hereinafter referred as an applicant had raised a preliminary point of objection, to the effect that the appeal filed by the appellants is incurably defective since it neither bears the names of other

appellants nor their signatures. The application was contested by the appellants, and specifically Kidanile Fungo who signed the petition of appeal.

Parties opted to file written submissions in this regard. The application was granted and schedule as to when each party should submit their written submissions was set. Both parties filed their submissions timely. Briefly, it was the applicant's/respondent's submission that the petition of appeal filed by the appellants contravened the provisions of **Order VI Rule 14** of the Civil Procedure Code, Cap 33 R.E. 2002. The order requires that every pleading shall be signed by the party and his advocate if any. As for the petition filed only the appellant Kidanile Fungo had signed the petition. More so, there is no indication or appearance of other names or their signatures or the statement that Kidanile Fungo was representing them or was their advocate. It was thus the applicant's/respondent's submission that the present appeal was in respect of Kidanile Fungo and not the other two appellants. The court can therefore not entertain them and against them the objection should be upheld and against the two other appellants the appeal should be dismissed with costs.

Reacting to the submission, the appellants submitted that the applicant/respondent is the one who started using the word "**others**" he

therefore cannot come back and claim otherwise as he is barred by "*volent non fit injuria*." As for the provision of the law cited, it was the respondents'/appellants' submission that the applicant/respondent had misled himself in interpreting the provision of the law. It was their further submission that Kidanile Fungo pursuant to **Order VI Rule 14 & 15** of the CPC, had been authorized to sign on their behalf. Further in reacting to the submission, the appellants cited **Article 107 A (2)** of the Constitution of the United Republic, 1977, that justice should be dispensed without the courts being tied up with technicalities.

Otherwise, the appellants contended that the applicant/respondent must be aware that there is more than one appellant and that is why he indicated that copies to be served to the appellants. According to the respondents/appellants that act is acknowledging that there is more than one appellant. From a different angle the respondents/appellants argued that if the applicant/respondent does not recognize the existence of the other appellants it therefore means he conceded to their claim that they are the legal owners of the disputed land, he should therefore surrender the same to the appellants.

I have gone through the record and the submissions by the parties. Let me start by looking at the argument raised regarding the use of the word “**Others**”. Kidanile Fungo has in his submission argued that the use of the word “**Others**” was introduced by the applicant/respondent and they just followed him. According to Kidanile Fungo the applicant/respondent cannot therefore bring it as an issue. I do not share Kidanile’s argument. *First*, I don’t think parties should just follow what others are doing even if what they were doing is wrong. *Second*, I did not see the problem of the use of the word “**Others**” This word is used when there is more than one party as it is in the present appeal, where there are three appellants. The applicant/respondent must have known that there were three appellants involved in the case, this being an appeal. Those who were parties to the now appealed decision can be and are those presently referred as “**Others**” There is in my view no valid basis on this point. I therefore dismiss this point as baseless.

Coming to **O VI Rules 14 & 15(1)** of the CPC cited by the parties, I think both have a point. Under rule 14 it has been clearly stated:

*“Every pleading shall be signed by the party and his advocate (if any); provided that where a party pleading is, by reason of absence or for other good cause,*

*unable to sign the pleading, it may be signed by any person duly authorized to sign the same or to sue or defend on his behalf"*

From the above quoted provision there are in my view condition to be fulfilled in order for the pleading to be properly before the court. And that is signing of the same by the party or his advocate if any. Exception to this requirement is signing of the pleading by any other person, but this can only happen if the party is absent or for good cause unable to sign the document. The person signing on behalf of the party must however be duly authorized.

But is **O VI R 14** cited the governing provision when one is filing an appeal? In my view the answer is matters of a civil nature appeals are governed either by a specific law place regarding the area such as land or generally by CPC. In ordinary civil matters appeals are governed **O XXXIX Rule 1 (1) and (2)** of the CPC, while in land matters appeals are governed by **s. 38 (1) (2) and (3)** of the Land Disputes Courts Act, No.2 of 2002 and **Rule 24** of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation, 2003 or GN No. 174 of 2003. Under **O XXXIX R (1)** the requirement is the memorandum of appeal had to be signed by the appealing party or parties or their advocate. Though under both **s. 38 (1) of Act, No. 2 and R 24 of GN. No. 174 of 2003**, it was not clearly specified as to how a petition of appeal should

look like but I am inclined to believe that any appeal filed should have the signature or signatures of the appealing parties or their advocate. Likewise in this appeal, that is the standard I would hold the appellant Kidanile Fungo to. He indeed signed on the petition of appeal filed but since he was with two other appellants, I was expecting them to sign as well. In case they have authorized Kidanile Fungo to do so on their behalf, then that ought to have been reflected. That is however, presently not the case.

The appellants in their submission resorted to rule 15 (1) (2) & (3) but for the purposes of this application will only examine the relevant provision which in this instance is rule 15 (1) which states as follows:

*(1) Save as otherwise provided by the law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.*

From the provision there is a room for one of the parties signing on behalf of the others as well as any other person provided the court has proved that such person is acquainted with the facts of the case. The appellant Kidanile Fungo is in my view acquainted to the facts of the case, since he is one of the

parties. The only question is did he have authority of doing so on behalf of the rest? My response to that is no. It is no because there was no any such proof and since this was not a representative suit. I am thus hesitant to agree to his self given authority. I am taking this position based on what is on the record. When the appellants were appealing the Lilambo Ward Tribunal decision, all three appellants signed in the petition of appeal dated 18<sup>th</sup> July, 2012 though filed at the tribunal on 7<sup>th</sup> August, 2012 as per the tribunal's stamp. I therefore do not know what made the appellant Kidanile Fungo to be the only person signing on the petition of appeal filed before this court. This in my view is a defect. The only question is how fatal is the defect?

My take on that is petition suffering from defect as the one above cannot be dismissed merely on this ground. The defect in my view is curable since it does not make the petition invalid. It only connotes that there is something missing. This line of argument then brings me welcome the submission by Kidanile Fungo, that in dispensation of justice the courts must avoid technicalities. Besides, **Article 107 A (2) (e )** of the Constitution of the United Republic of Tanzania, 1977 as amended referred by Kidanile Fungo, there other courts' decision along the same line. **See: Bhag Bhari V. Mehdi Khan**

**(1965) E.A. 94 at p.104 and General Marketing Co. Ltd V. A.A. Shariff**

**(1980) T.L.R. 61 at p.65** where it was stated:

*"forms and procedure are handmaids of justice and should not be used to defeat justice"*



In the case of **Samwel Kimaro V. Hidaya Didas, Civil Application, No. 20 of 2012 (CAT- Mwanza) (unreported)**, Msoffe, J.A had this to say in passing:

*"In dispensing justice courts are no doubt rendering or giving a valuable service to the society at large and to the consumers of our justice system in particular. If so, the society/consumers must continue to have trust and faith in our system. These will be lost if cases are sometimes struck out on flimsy, cheap or too technical reasons."* [Emphasis mine]

From the above account I am without a doubt that the defect in the petition of appeal filed is curable and accordingly proceed to overrule the objection raised. Had this been an ordinary pleadings where the governing law is the CPC, I would have resorted to **O VI R 17** and allow the parties to amend their pleadings by making sure all three sign the document or their advocate, and if it is only Kidanile Fungo who should sign, then there he has to be authorized. But since the matter is a land one and hence governed by the Act, No. 2 of

2002, I cannot per se bring into application the above cited provision. Nevertheless, I proceed to order the appellants if interested to appeal the District Land and Housing Tribunal decision dated 21st March, 2013, they should all indicate by signing the petition of appeal. The order to be complied with within twenty one (21) days. No order as to costs. It is so ordered.

Ruling Delivered this 18<sup>th</sup> day of February, 2014 in the presence of Kidanile Fungo -1<sup>st</sup> appellant and Alimu Haji Ngaponda the respondent.

  
P.S. FIKIRINI  
  
JUDGE

Right of Appeal Explained.

  
P.S. FIKIRINI  
  
JUDGE

18<sup>th</sup> FEBRUARY, 2014