

**IN THE HIGH COURT OF TANZANIA
AT DODOMA**

(APPELLATE JURISDICTION)

LAND APPEAL NO. 16 OF 2016

*(From the Decision of the District Land and Housing Tribunal of Iramba
District at Kiomboi in Land Application No. 26 of 2014)*

VILLAGE COUNCIL OF NKONKILANGI.....APPELLANT

VERSUS

1. JOSEPH MALYETARESPONDENTS
2. KAFACHU LUMBETA.....

JUDGMENT

6/12 & 20/12/2016

KWARIKO, J:

The court record in respect of this matter shows that the original case was heard *ex parte* against the appellant herein and the respondent obtained *ex parte* order winning the case. The appellant on being aggrieved applied to set aside *ex parte* order as per the law but he was not successful. He filed this appeal against the refusal order. This appeal was duly heard.

However, at the time of preparing the judgment this court discovered that the trial tribunal committed legal irregularity to the effect that the process server to the appellant was a political party secretary; this was CCM Branch Secretary of Sekenke one ELIAKIMU S. MWASONGA. This court asked the parties to address this legal issue before decision is made.

Mr. Kuwayawaya learned advocate who held brief for Mr. Mutaki learned advocate for the respondents argued that since the intention of summons is to inform a party that they are required to attend the court, the political party leader if at all conveyed the same no prejudice was occasioned.

On his part the appellant's representative Tano Zakaria submitted that the tribunal ought to have used government leaders to effect service since they have no political inclination. And in any case the said party secretary is a very close friend of the first respondent. He prayed for this case to be retried for justice to be served.

This court is required to decide this legal issue.

In law the term **process server** is defined under *Rule 2 of the Land Disputes Courts [The District Land and Housing Tribunal] Regulations GN 174 of 2003*, as thus,

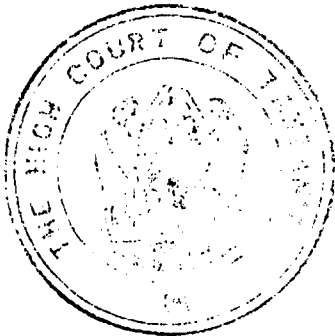
Any person authorised by the Tribunal to effect service of documents to the tribunal and include a Ward Executive officer, a Mtaa Chairman, Village Chairman and Village Executive Officer so authorised.

Therefore, as it has been seen a political party leader is not among those authorised to be process servers. As it can be seen those numbered herein above are all government leaders. Hence, the trial Tribunal ought to have adhered to law to affect summons to the appellant herein.

Consequently, failure by the district tribunal to affect summons to the appellant in accordance with the law vitiated the proceedings thereof. Hence, by this court's revision powers envisaged under *section 43 (1) (b) of the Land Disputes Courts Act* (supra) the proceedings before the district tribunal are declared *null* and *void* and are hereby quashed and all orders thereto are set aside.

Having quashed the trial tribunal's proceedings this appeal lacks base within which to stand and it collapses. However, for the justice to be done it is ordered that the case be tried afresh before the trial tribunal by different Chairman and a new set of assessors. This court orders no costs as the omission was the tribunal's making.

It is ordered accordingly.



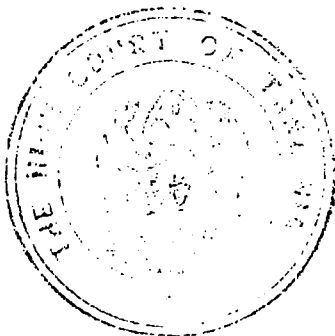
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M.A. KWARIKO

JUDGE

20/12/2016

Judgment delivered in court today in the presence of Tano Zakaria the Appellant's representative, the Respondents and Mr. Magezi learned Advocate for Mr. Mutaki learned Advocate for the Respondents. Mr. Mahmoud Court Clerk present.



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M.A. KWARIKO

JUDGE

20/12/2016

Court : Right of Appeal Fully Explained.



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M.A. KWARIKO

JUDGE

20/12/2016