

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 2 OF 2014

(From the decision of the District Land and Housing

Tribunal of Njombe in Land Case Appeal No. 28 of 2013

and Original Ward Tribunal of Ramadhan Ward in

Application No. 3 of 2013)

ALATUPELA MKALAWA ----- APPELLANT

VERSUS

TYSON MKALAWA ----- RESPONDENT

JUDGMENT

28th June, 2016 & 14th December, 2016

KIHWILO, J.

The appellant Alaturpela Mkalawa appealed to this court following her dissatisfaction with the decision of the District Land and Housing Tribunal of Njombe in Land Application No. 28 of 2013 that dismissed her appeal

from the decision of the Ramadhan Ward Tribunal in Land Case No. 03 of 2013 in which she unsuccessfully sued the respondent.

The present appeal is premised on five main grounds which in principle faults the decision of both the trial tribunal as well as the appellate tribunal.

The matter has a chequered history as it all started on 9th January 2013 when the appellant lodged a complaint against the respondent before the Ramadhan Ward Tribunal (henceforth "the trial tribunal") alleging that the respondent has trespassed into her suit land. The gist of the complaint was that the respondent has trespassed into the suit land to which the appellant is entitled to half a share because she was the respondent's aunt and therefore entitled to the respondent's grand father's estate which is the appellant's father. Upon listening to all the parties the trial tribunal on 25th March 2013 pronounced the judgment and declared the respondent the lawful owner of the suit land. Aggrieved by the decision of the trial tribunal the respondent filed an appeal before the District Land and Housing Tribunal of Njombe (henceforth "the appellate tribunal"). After

listening all the parties the appellate tribunal upheld the decision of the trial tribunal and dismissed the appeal with costs on 27th January 2014.

Before this court as at the two lower tribunals both parties were not represented as they fended for themselves. The appeal was argued orally and both the appellant and the respondent were very brief and being layperson they did not have much to assist the court. Upon hearing both parties the court set a judgment date.

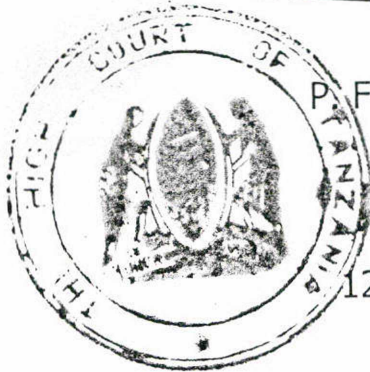
It is instructive to say that while composing the judgment it came into my mind that the appellant moved the court by way of Memorandum of Appeal instead of Petition of Appeal. It was very unfortunate that this did not come into my mind prior to the date of the composition of the judgment. All in all this is contrary to the provision of Section 38(2) of the Land Disputes Courts Act, Cap 216 RE 2002 which categorically requires that every appeal to the High Court on matters originating from the Ward Tribunal to be by way of Petition and not a Memorandum of Appeal.

The above being the circumstances the instant appeal is incompetent as such it has to be strike out. I am however, remained with an issue as whether the instant appeal should be struck out without any order as to what should be the consequences to the appellant. I am mindful of the mundane truth that courts are fountain of justice and in this particular case the anomaly have been noted by the court during the composition of the judgment and not before. Furthermore, the appeal involves two laypersons unaware of the law and procedure and it is trite law that in a case where a layperson, unaware of the process of the machinery of justice, tries to get relief before the courts, procedural rules should not be used to defeat justice. This was celebrated in the case of **RamadhanNyoni V Haule& Company, Advocates** [1996] TLR 71.

In the light of the foregoing and for the reasons stated above this appeal is hereby struck out. However, since the matter was detected by the court while composing the judgment and because the appellant is a laywoman who has been travelling up and down to this court in search of justice this court do hereby grant leave upon the appellant to file the

proper appeal within 30 days from the date of the delivery of this judgment.

Order accordingly.

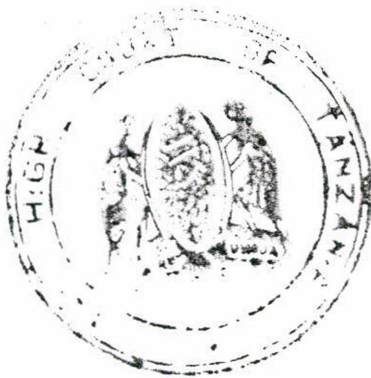


P. F. KIHWELO

JUDGE

12/12/2016

Judgment to be delivered by the Deputy Registrar on 14th December, 2016.



P. F. KIHWELO

JUDGE

12/12/2016