

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

**(APPELLATE JURISDICTION)**

**(PC) CIVIL APPEAL NO. 14 OF 2016**

*(From the Decision of the District Court of Mpwapwa at Mpwapwa in  
Civil Appeal No 2 of 2015 Original Civil Case No. 4 of 2015 of  
Mpwapwa Urban Primary Court)*

**MUSSA LAZARO.....APPELLANT**

**VERSUS**

**AGNES MAKALI.....RESPONDENT**

**JUDGMENT**

**13/6 & 14/8/2017**

**KWARIKO, J.**

The appellant herein claimed against the respondent herein Tshs. 950,000/= being bill of costs in respect of land cases he prosecuted against her in the Village Council and the Ward Tribunal of Lupeta and compensation for destruction of his land. The respondent herein denied the claim for reason that she was not responsible for any wrong doing since she was only a married woman who had no authority over land. At the end the trial the Primary Court of Mpwapwa Urban found that truly the

appellant was party to the said cases hence awarded him compensation of Tshs. 100,000/= only.

The appellant was not satisfied with the trial court's decision hence he unsuccessfully appealed before the first appellate district court of Mpwapwa. Hence, this a second appeal the appellant filed upon the following two grounds of appeal:

- 1. THAT, both lower courts erred in law and in facts for not entertaining his documents which he had in order to support his claims.*
- 2. THAT, the district court erred in law and in facts for refusing him to present his documents before the court as was ordered before and decided to deliver the judgment.*

This appeal was heard *ex parte* as it was proved by the Village Executive Officer of Bumila on 23/12/2016 that the respondent declined service. Hence, arguing the appeal, apart from adopting his grounds of appeal the appellant contended that the two courts below refused to award him the compensation he claimed as there was evidence to decide in his favour.

At this point this court is required to decide whether this appeal has merit. It is on record that the initial claim by the appellant is bill of costs he allegedly incurred in prosecution of cases against the respondent in the Village Council (he did not mention the name of the relevant village) and Ward Tribunal of Lupeta. He also claimed compensation for destruction by the respondent of his land. Having been considered this claim this court have found that the same was filed in the wrong forum for the following reasons;

First, if there were cases before from the village level to the ward tribunal a successful party ought to apply to the ward tribunal concerned for taxation of bill of costs as provided under section 16 of the Land Disputes Courts Act [CAP 216 R.E. 2002] which says thus;

*(1) Notwithstanding the provisions of section 23 of the Ward Tribunals Act , the Tribunal in proceedings of civil nature relating to land may–*

- (a) order the recovery of possession of land;*
- (b) order the specific performance of any contract;*
- (c) make orders in the nature of an injunction both mandatory and prohibitive;*
- (d) award any amount claimed;*
- (e) award compensation;*

- (f) order the payment of any costs and expenses incurred by a successful party or his witnesses;  
or*
- (g) make any other order, which the justice of the case may require.*

Now, if the ward tribunal has jurisdiction to determine bill of costs as shown under item (f) above and compensation relating to land the appellant wrongly presented his claim before normal primary court which did not entertain the alleged land cases in the first place. After all jurisdiction of normal courts over land matters have been ousted by section 3 of the Land Disputes Courts Act (supra).

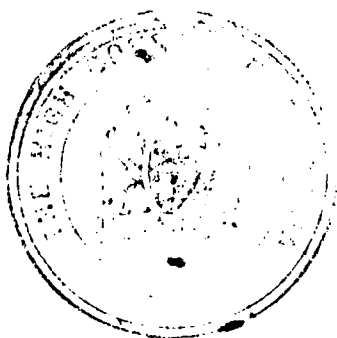
Secondly, even if the primary court had jurisdiction to determine the claim the same could succeed since the appellant did not support the suit with any documents. No any decision or order showing him to be a winner in the alleged cases and no any receipts or anything was presented to prove the said costs.

For the foregoing, this court finds that the proceedings before the trial court were null and void *ab initio* and by this court's revisional powers obtained under section 31 (1) (2) of the Magistrates' Courts Act [CAP 11 R.E. 2002] they are hereby quashed and all orders thereto set aside.

Equally, the appeal proceedings before the first appellate court which originated in the null proceedings are hereby quashed.

Consequently, having been nullified the proceedings of the two courts below this appeal lacks base within which to stand hence cannot be decide on merit and it is hereby dismissed entirely. No order for costs as the respondent did not appear.

Order accordingly.



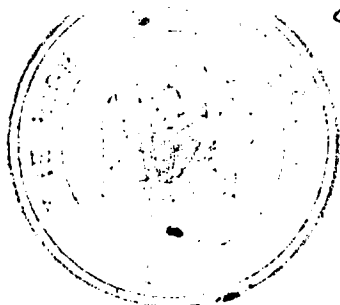
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**M.A. KWARIKO**

**JUDGE**

**14/8/2017**

**DATED at DODOMA this 14<sup>th</sup> day of August, 2017**



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**M.A. KWARIKO**

**JUDGE**

**14/8/2017**

**Date : 14/8/2017**

**Coram : Hon. M.A. Kwariko, J.**

**Appellant : Present**

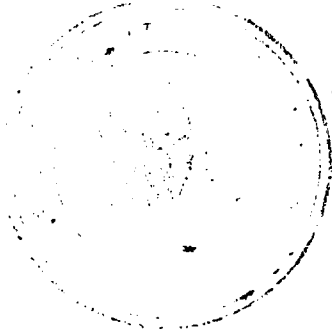
**Respondent – Absent**

**C/c : Judith**

**Appellant:**

The case is for judgment.

**Court:** Judgment delivered in court today in the presence of the Appellant and Ms. Judith Court Clerk.

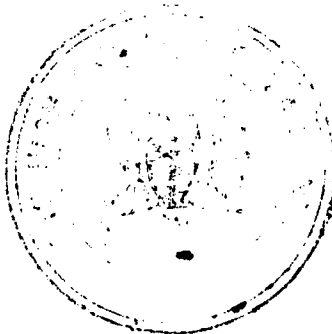


**M.A. KWARIKO**

**JUDGE**

**14/8/2017**

**Court:** Right of Appeal Explained.



**M.A. KWARIKO**

**JUDGE**

**14/8/2017**