

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**MISC. LAND CASE APPEAL NO. 53/2016**

*(Arising from Land Appeal No. 216/2013 at the DLHT of Bukoba and  
Originating Civil Case No. 27/2013 of Kitendaguro Ward Tribunal)*

**ELINA ANTHONY ..... APPELLANT**

**VERSUS**

**EDSON IMBA ANTHONY ..... 1<sup>ST</sup> RESPONDENT**

**DAUDI ANTHONY ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*10/11/2017 & 2/3/2018*

Kairo,J.

The background of this case starts from the Ward Tribunal of Kitendaguro in Land Civil case No. 27/2013 whereby the Appellant (deceased now) instituted a suit claiming that the Respondents have encroached into part of his farm and are now owning it without his consent. Apparently the Appellant is the biological father of both of the Respondents. When the matter was proceeding at the Ward

Tribunal, the Respondent wrote a letter to the Chairman alleging that justice will not be done to them as the dispute has already been determined before.

The tribunal upon receiving the said letter resolved that it will not continue hearing the dispute and the Appellant was authorized to seek redress elsewhere.

The Appellant thus decided to approach the DLHT who admitted the matter as Land appeal No. 216/2013 and delivered its decision in favor of the Respondent. This decision aggrieved the Appellant who decided to appeal to this court to challenge the DLHT tribunal's decision raising nine grounds of appeal to which I will deal with them in seriatim. I will start to analyze the second and third grounds together which are related as the first one is an explanation of what transpired in court and not a ground as such:-

The Appellant has submitted that, the DLHT grossly misdirected itself for designating the matter brought before it by the trial tribunal as an appeal while in fact it was a reference after the Respondents had tendered a letter dated 28/5/2013 refusing to be heard by the tribunal. In his third ground which relates to file second one, the Appellant contended that the DLHT misdirected itself for treating the matter as an appeal, it abused the court process as the Appellant was condemned unheard on all matters raised in the trial tribunal.

In replying to the petition of appeal, the Respondents conceded to have written a letter to the trial tribunal refusing to be heard by it. They further asserted that the trial tribunal didn't give them a wide chance to hear them on all matters raised at the tribunal.

The Appellant is represented by the Learned Counsel Advocate E. Bengesi while the Respondents are self represented.

Before embarking on the analysis, I wish to put records correct—that the Trial Tribunal didn't refer the matter to the DLHT for advice/ guidance as nowhere in the record supports that assertion. According to record, the trial tribunal after resolving not to continue with the matter, left the decision on the Appellant to seek his redress anywhere he will consider appropriate [as per *uamuzi wa baraza*] of 22/3/2013.

I will now revert to the grounds of appeal. The issue to be determined is whether it was proper for the DLHT to treat/ admit this matter as an appeal. An appeal is the process provided by the legal system for rectification of errors which have occurred during the trial or lower appellate court. The process is underlined by the principle of finality of the matter, as per a book by Frank Mrindoko titled; "*Administration of Justice in Mainland Tanzania*" Published by Law Africa Publishing (T) Ltd page 122.

The finality principle in an appeal is hinged on the test as to whether the parties were heard and their rights conclusively determined. **[Refer the case of Tanzania Motor Service Ltd & Another vrs Menher Singh t/a Thaker Singh; Civil Appeal No. 115/2005 CA Dodoma (unreported)]**. It is a common ground that an appeal lies against a decree or drawn order. The interlocutory question is how can a decree obtained. The book of F. Marindiko (supra) has written that a decree is obtained after a complete hearing of the case and pronouncement of a judgment whereby on such a judgment a decree shall follow. **[Also refer section 28 of the CPC Cap 33 RE 2002]**. In the matter at hand, the record shows that the parties weren't heard to the finality at the trial tribunal. Hearing of the matter entails taking of evidence which stage wasn't completed by the trial tribunal following the complaint by the Respondents. The record further reveals that the trial tribunal decided not to continue adjudicating the case. The situation is also echoed by all of the parties herein in their petition of appeal and reply thereto. In the said circumstance therefore, I am convinced that the case was not heard. It follows therefore neither a judgment nor a decree could be obtained out of the case. In the same vein no appeal could lie in respect of the said matter.

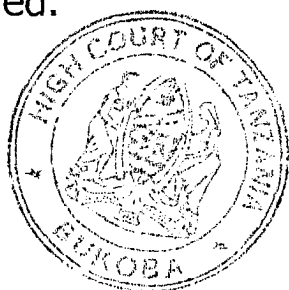
I thus join hands with the Appellant's argument that the DLHT misdirected itself to treat the matter before it as an appeal while it not

conclusively determine by the trial court. Thus the second and third grounds of appeal have merits. The court however cannot go on determining the rest of the grounds for two reasons; first the analyzed grounds have disposed this appeal. But even if it wouldn't have so done, the rest of the grounds are matters which need evidence that would have been adduced at the trial court, as such they are prematurely before this court. It is trite law that, the appeal court to is look into matters that have already been adjudicated upon by the lower court **[Refer the case of Elisa Moses Msaki vrs Yesaya Ngateu Mathew (1990) TLR 90 CA.**

In the upshot therefore, this appeal is hereby allowed. The proceedings and orders of DLHT are hereby quashed and set aside. Any party can seek redress if he/she so wish. For avoidance of doubt, should any one so decides, I order the matter be tried by the DLHT regardless of the pecuniary jurisdiction involved, before another Chairman and set of assessors due to observed complexity of the issues involved.

It is so ordered.

At Bukoba  
2/3/2018



  
L.G. Kairo  
**Judge**

Date: 2/3/2018

Coram: L.G. Kairo,J.

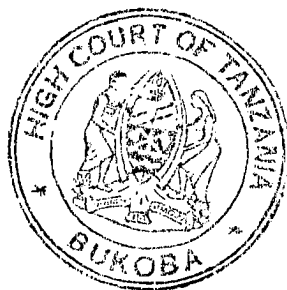
Appellant: Present Elina Antony, administratix

1<sup>st</sup> Respondent: Present in person

2<sup>nd</sup> Respondent: Present in person

B/C: R. Bamporiki

**Court:** The matter is scheduled for Judgment. The same is ready and is read over to parties in open court as per the today's quorum.



L.G. Kairo

**Judge**

2/3/2018