

IN THE HIGH COURT OF TANZANIA

DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. LAND CASE APPEAL NO. 32/2016

(Arising from DLHT Appeal No. 101.2013 and Original Civil Case No. 17/2012

Maruku Ward Tribunal)

FRANCE TIBENDA ----- APPELLANT

VERSUS

ANATORY KAJUNA ----- RESPONDENT

JUDGMENT

31/3/2017 & 9/2/2018

Kairo, J.

Being aggrieved by the decision of the District Land and Housing Tribunal for Bukoba in Misc. Application No.101A/2013 on the bill of cost delivered on 20/11/2015, the Appellant decided to appeal to this court to challenge the same. The Appellant raised five grounds of appeal as follows:-

1. That the District Land and Housing Tribunal misdirected himself and erred in law and facts for the reason that appeal No. 101/2013 against the decision and order of Maruku Ward Tribunal was allowed by the same District Land and Housing Tribunal by extending the time to remove the trees in dispute.
2. That the Hon. Chairman misdirected himself for taxing the Respondent's bill of cost from items No. 1-7 and 1-6 to the tune of Tshs 316,500/= without bearing reasonable receipts for proof as required by law.
3. That the Hon. Chairman ignored or failed to take into account that the distance from the parties home is a walking distance of 15 minutes to Maruku Kolekero and that both parties were incurring transport charges to and fro which was not more than Tsh. 1000/= and were both wasting time, if any.
4. That the Hon. Chairman failed to put into consideration that Tshs 170,000/= paid under court receipts No.51,49,24, 42 dated 11/2/2014 included the charge of visiting the area in dispute.
5. That the Hon. Chairman erred in law for not perusing the schedule of bill of cost Taxation from the Ward Tribunal Act 2006 RE 2002 and GN No. 174/2003 and ascertain whether or not the bill of cost is proper and correct under the law.

The Appellant thus prayed this court to quash the bill of cost and this appeal be allowed with cost.

The Respondent generally refuted all of the grounds of appeal claiming to be delaying tactics and prayed for its dismissal.

Briefly the facts that can be discerned from this dispute is that the Respondent sued the Appellant at Maruku Ward Tribunal in application No. 17/2012 claiming that the Appellant had refused to remove/ cut the trees planted near the Respondent's house. The Ward Tribunal decided in favor of the Respondent with cost on 22/3/2013. The Tribunal further ordered the Appellant to remove the trees at issue within two months.

The Appellant was aggrieved and appealed to the District Land and Housing Tribunal in appeal No. 101/2013 claiming that the time given to remove the trees was too short to enable him find a buyer for the trees. The District Land and Housing Tribunal after hearing both parties allowed the appeal on 21/3/2014 and ordered the trees to be removed within a month and cost to follow the event. Following the said decision, the Respondent filed bill of cost alleged to have been awarded to him both at the Ward Tribunal and District Land and Housing Tribunal totaling of Tsh. 316,500/=. The Appellant filed a Preliminary point of objection disputing the bill of cost. According to him his appeal was allowed by the District Land and Housing Tribunal which means he won. Thus the Respondent was not entitled to any cost. The Respondent on his part dismissed the Appellant's argument claiming that the Ward Tribunal has ordered the removal of the trees in dispute, the decision which was confirmed by the District Land and Housing Tribunal, as such the Appellant didn't win in the said appeal.

Upon hearing the arguments by parties in the raised P.O the District Land and Housing Tribunal made a finding that the raised P.O had no merit, consequently it was rejected. The Tribunal proceeded to grant the application whereby the cost was taxed at the tune of Tshs. 316,500/= claimed by the Respondent. This is the decision which aggrieved the Appellant hence this appeal basing on the five grounds of appeal above listed. Both parties are self represented.

When invited for oral submissions, the Appellant prayed for the disposal of this matter by written submission so that he can find legal assistance. The prayer was not objected by the Respondent. The court thus granted the same and set the filing schedule of the written submission which was accordingly complied with.

In his written submission, the Appellant informed the court that the 1st ground will be argued separately and the rest will be argued together.

For the 1st ground he argued that neither party was awarded cost in appeal No. 101/2013, thus it is surprising that the Respondent who was defeated in the said appeal was awarded cost of Tshs.316,500/= by the same Chairman who decided application No.101A/2013. He recapitulated the second sentence of page 2 of the judgment to buttress his argument. He concluded that the Chairman misdirected himself and humbly thus prayed this court to set aside the bill of cost awarded.

Regarding the other grounds of appeal, the Appellant submitted that in the circumstances this court would find that it was proper for him to be condemned to pay the said cost, the court should find that the application for the bill of cost was allowed out of biasness as there was no evidence to prove the cost incurred. The Appellant thus prayed the court to set aside the cost awarded, alternatively allow the execution of the judgment in land appeal No. 101/2013 to take place.

In reply to the written submission, the Respondent submitted that, this matter originated at Maruku Ward Tribunal which was decided in his favor. Later on, the appeal was filed at the District Land and Housing Tribunal Bukoba which again judged in his favor. He prayed the court to get the facts from both Tribunals to verify his contention.

Having gone through the petition of appeal, its reply and rival arguments from the parties; the issue for determination is whether or not this appeal has merits. I will collectively address the grounds of appeal. In so doing the interlocutory question to be dealt with is whether the Respondent was awarded cost at the Ward Tribunal and at the District Land and Housing Tribunal.

Going through the records of the Ward Tribunal, the judgment categorically stated that the cost for the application No.17/2012 should be borne by the Appellant. In other words, the Respondent herein was awarded the cost

after the Tribunal found in his favor as correctly submitted by the Respondent in his submission.

With regards to appeal No.101/2013, the Appellant argues that the decision was in his favor wherein the appeal was allowed, as such the Respondent cannot claim for cost. On the other hand, the Respondent argues that both Tribunals (trial and appellate) decided in his favor (Respondent) that's why the Appellant appealed to this court. He prayed the court to go through the court record for verification.

Regarding their rival arguments, the court has to answer the question who won at the District Land and Housing Tribunal and thus awarded cost.

To resolve this jigsaw/ puzzle let me reproduce part of the judgment concerning the matter in verbatim;

"That the appellant (who is also the Appellant herein) was not satisfied, he prayed for time to find a buyer and cut them upon being granted time. My two assessors have opined in favor of the Appellant. I concur with them and as such the appeal is hereby allowed, the trees be removed in one month cost to follow the event".

In my opinion the words "*cost to follow the event*" has confused the parties as the Respondent has argued that the cost was awarded to him while the Appellant argues that no one was awarded cost in the said appeal.

In my judicial understanding the words “*cost to follow the event*” means the one who won in the matter concerned was also awarded the cost. Besides it’s the cardinal principle that cost is to be awarded to the winner of the matter in the circumstances where the court would award cost. The Appellant argued that he was the winner in the said matter as the appeal was allowed by granting him one month within which to remove the trees in dispute. On the other hand the Respondent argued that the District Land and Housing Tribunal confirmed the decision of the Ward Tribunal to remove the trees thus the appeal was judged in his favor. The wanting question therefore is who won the appeal among the two.

The court revisited the grounds of appeal and the written submission to clarify the grounds of appeal in Civil Appeal No. 101/2013 so as to ascertain what exactly the Appellant was challenging and his prayers. Having gone through the said documents it has been observed that the Appellant was not disputing the order to remove the disputed trees rather the time within which to remove them [Refer prayer in the petition of appeal No.101/2013 and the written submission to amplify the petition of appeal].

It is true that the District Land and Housing Tribunal observed that the trees were likely to cause damage to the Respondent’s house and thus should be removed within a month. However the catchy words in the decision is the time within which to remove the trees in dispute which is the issue the Appellant was contesting. As earlier stated the time was the contentious point appealed against and not whether or not the trees at

issue should be removed. Principally the appellate court is required to determine the grounds of appeal before it and not otherwise and further award what was prayed [**Refer the case of Daud Hega vrs Jenits Abdon Machafu: Civil Ref No.1/2000 CA (unreported)**]. With much respect therefore, the argument by the Respondent that he won the appeal No.101/2013 of the District Land and Housing Tribunal is not correct. The District Land and Housing Tribunal having allowed the appeal, it goes therefore that the winner was the Appellant.

Since the District Land and Housing Tribunal decided *cost to follow the event*, it further goes that the winner was awarded cost and that was none other than the Appellant. In this respect therefore even the argument by the Appellant that nobody was awarded cost in the said appeal was a misconception.

The Appellant has also argued that the District Land and Housing Tribunal erred for failing to peruse the schedule of the bill of cost to ascertain its correctness. Reading between the lines, the Appellant is interrogating the authenticity of the figures or cost incurred by the Respondent as stipulated in the schedule.

The court record reveals that, the District Land and Housing Tribunal after rejecting the P.O raised in application No.101A/2013 went ahead and granted the application without affording the parties an opportunity to submit before the court on the filed application and decide on merit eventually. In

my opinion, the District Land and Housing Tribunal having been determining the P.O raised, it was expected to rule out on the same only and since he resolved to reject the same, the law requires him to invite the parties and address him on the merits of the application. The finding reached therefore would have been made after hearing them and not before as it happened, with much respect to the Hon. Chairman.

The courts have held time and again that the denial of the right to be heard in any proceedings would *vitiating* the proceedings [**Refer the case of DPP vrs Sabina Tesha & Others**] [1992] TLR 237.

In emphasizing the fundamentality of affording a party a right to be heard, the court in the case of **Abbas Sherali & Another vrs Abdul S.H.M Fazalboy: Civil Application No. 33/2002 (unreported)** the C.A held that;

“The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. The right is so basic that a decision which arrived at in violation of it will be nullified even if the same decision would have been reached had the party been heard because the violation is considered to be a breach of natural Justice”.

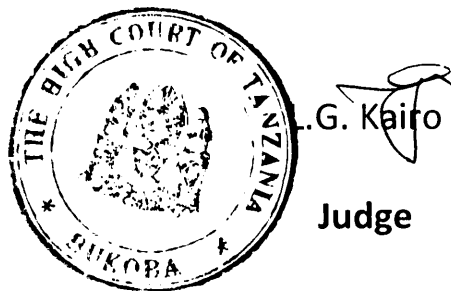
Applying the quoted decision to the circumstance of this appeal, it is the finding of this court that the decision of Civil Application No. 101A/2013 on the bill of cost is a nullity and thus need to be quashed and set aside as I hereby do.

For avoidance of doubt, the court has made a findings that the cost was awarded to the Respondent at the Ward Tribunal and was awarded to the Appellant at the DLHT, in the circumstance therefore I order *set off* of the cost aspect. However the District Land and Housing Tribunal's decision in application No.101/2013 is left undisturbed.

Appeal allowed with no order to cost in the circumstances of this case.

It is so ordered.

R/A explained



9/2/2018

At Bukoba

Date: 09/02/2018

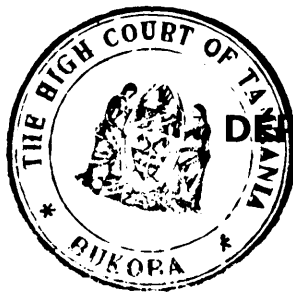
Coram: Hon. S. M. Kulita

Applicant: Absent (sick)

Respondent: Present

B/Clerk: R. Bamporiki.

COURT: The matter is for delivery of ruling. It is ready and the same is hereby delivered today 09/02/2018 in presence of the Respondent. The Applicant is absent. He is reported sick.



S. M. Kulita

DEPUTY REGISTRAR

09/02/2018