

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT BUKOBA

MISCELLANEOUS LAND CASE APPEAL NO.9/2014

(Arising from the Decision of the District Land and Housing Tribunal of Bukoba District at Bukoba in Land Case Appeal No. 10 of 2011 and Original Ward Tribunal of Maruku Ward in Application No. 7 of 2010).

JASSON MPINZILE APPELLANT

VERSUS

1. NELSON WILSON

2. SERIKALI YA KIJIKI BWIZANDURU

} RESPONDENTS

JUDGMENT

10.07& 03.08.2018

BONGOLE, J.

At Maruku Ward Tribunal the respondents were sued for encroaching into the appellant's land. The trial tribunal ruled in favour of the appellant.

Aggrieved, the first respondent appealed to the District land and Housing Tribunal of Bukoba. The appellate tribunal nullified all the proceedings before the ward tribunal on ground that there was

nonjoinder of the parties namely failure to join the second respondent being the land allocating body. It ordered for retrial.

This time, the appellant was aggrieved hence the present appeal. He lodged three grounds of appeal coached thus:

- 1. That, both the ward tribunal and the District land and Housing Tribunal misdirected themselves for failure to take into account that the suit is subject to the law of limitation hence time barred. The petitioner has been occupying the Suitland since 1983.*
- 2. That, the District land and Housing Tribunal misdirected itself for failure to take into account of the trial court's proceedings on page 6, which reads as follows; "walalamikiwa No. 2 (Serikali ya kijiji) imethibitishia Baraza kuwa hawajawahi kumpa mdaiwa ardhi yenye mgogoro"*
- 3. That, District land and Housing Tribunal misdirected itself to uphold that there was an issue of nonjoinder of the necessary party at the trial court, namely, serikali ya kijiji, thus dismissing the suit to be tried denovo, thereof,(sic) when in fact the said serikali ya kijiji was a party to those proceedings.*

submission, he referred to section 19 of the Land Disputes courts Act [Cap.216 R.E.2002] which requires a party aggrieved by the decision of the ward tribunal such as in the present matter, to appeal to the District Land and Housing Tribunal.

On non-joinder of the parties, he submitted that it was wrong for the Chairman of the District Tribunal to quash the proceedings basing on this ground because the same had been resolved by striking out the "*Serikali ya kijiji Bwizanduru*".

Mr. Mathias Rweyemamu did not submit on the first ground of appeal which was on time limitation. I take it that he abandoned it. Besides that, my cursory perusal of the record is to the effect that the same was never raised either at the trial tribunal or the District Land and Housing Tribunal.

He prayed this court to quash and set aside all the proceedings of the District tribunal and order the parties to file a proper appeal to the District land and Housing Tribunal.

In reply, the appellant who is a lawperson had nothing significant to submit. He supported the decision of the District tribunal in that it was right for the Chairman to nullify the proceedings. Regarding the matter to indicate that it was filed in the District court, he submitted that it was typing error.

I will commence with the second ground. As the record depicts, the ground to nullify the ward tribunal's proceedings was that the village government which is the land allocating body was not joined. However, I have read the trial tribunal judgment and noted at page 6 of the hand written judgment that the alleged party that is, "Serikali ya Kijiji Bwizanduru" was formerly a party to the suit but was struck out after it was found not to have involved in allocating the suit land. To this end therefore, the learned chairman of the District Tribunal erred for failure to have noted this obvious finding of the subordinate tribunal on non-joinder. Had he considered this fact he would not have nullified the proceedings.

It was also the submission of Mr. Rweyemamu that the present appeal originated from Maruku Ward Tribunal but it was referred to the District court of Bukoba instead of the District Land and Housing Tribunal of Bukoba. I have read the judgment and noted that it bears the title that differs with the title of the file. Likewise, instead of being recorded as an appeal it was recorded as miscellaneous application originating from Maruku Ward Tribunal. According to section 19 of the Land Disputes Courts Act [Cap.216 R.E.2002] an aggrieved party by a ward tribunal is required to appeal to the District Land and Housing Tribunal. This implies that such a matter must be an appeal and not otherwise. On this, section 20 of the Land Disputes Courts Act provides further thus:-

“(1) Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days after the date of the decision or order against which the appeal is brought”.

Furthermore, section 3 of the Land Disputes Courts Act (supra) directs all land disputes at the district level to be determined by the District Land and Housing Tribunal and not the District court as it was done in this appeal. By indicating that the matter was miscellaneous and filed in the District Court was not only illegal as per the above law but also misleading to the public as it was filed in non- existing or improper registry.

Due to this anomaly I hereby quash and set aside the judgment of the District Land and Housing Tribunal of Bukoba and restore the decision of the Ward Tribunal of Maruku. The party aggrieved must lodge an appeal in the proper land registry at the district level.

Appeal allowed with costs.




S.B. Bongole

Judge

3/8/2018

Date: 03/8/2018

Coram: Hon. S.B. Bongole, J.

Appellant: Present

1st Respondent: Present

2nd Respondent: Absent

B/Clerk: A. Kithama

Court:

This appeal comes for judgment and the same is delivered.



S.B. Bongole

Judge

3/8/2018