

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT KIGOMA

LAND APPEAL CASE NO. 22 OF 2019

*(From the decision of District Land and Housing Tribunal of Kigoma in
Land Case No. 53 of 2018)*

FRANK MIHARUGWA..... APPELLANT

VERSUS

JUMANNE RUSABA.....RESPONDENT

RULING

Date of last Order: 9/6/2020

Date of Ruling: 10/6/2020

Before: Hon. A. Matuma,J

The appellant and one Haridi Juma Kiloloma @ Lusaka Kiloloma stood sued as respondents in the District Land and Housing Tribunal for Kigoma. The applicant thereat was Jumanne Rusaba now the Respondent.

The dispute between the parties at the trial tribunal was over the ownership of a piece of land along Kasulu Road, Zuru area at Gungu Ward in Kigoma Municipality.

Jumanne Rusaba the respondent herein had alleged to have bought the dispute land from the herein above named Haridi Juma Kiloloma @ Lusaka Kiloloma.

The said Haridi Juma Kiloloma also maintained that it is true he sold the dispute plot to the respondent herein and established that he had bought the same from the late Angelina Kanabuka who is the appellant's mother.

The trial tribunal was satisfied that indeed the appellant's mother sold the dispute plot to the said Haridi Juma Kiloloma on 27/6/2002 before her demise in 2004. The trial Tribunal was further satisfied that at the time the late Angelina Kanabuka sold the said land, her son the appellant was only 6 years old and cannot therefore, rebut the sale of the dispute plot by his mother and that the elder children of the deceased one Veronica Ezekiel Miharugwa and Alex together with some relatives of the late Angelina including her brothers namely Benedicto Thadeo, Levocatus Zembi participated in the sale.

The tribunal thus found that Haridi Juma Kiloloma properly obtained title over the dispute plot and properly passed it to the current respondent. The appellant was thus adjudged the loser. He became aggrieved hence this appeal with a total of six grounds of appeal.

The respondent before the appeal could be heard on merit rose to argue a preliminary objection to the effect that this appeal is bad in law for non-joinder of necessary party one Haridi Juma Kiloloma @ Lusaka Kiloloma who sold the land in dispute to the respondent.

At the hearing of such preliminary issue Mr. Ignatus Kugashe learned advocate represented the appellant while Mr. Sadiki Aiki learned advocate represented the respondent.

Mr. Kugashe learned advocate upon reflection by the Court was ready to concede to the PO but in my view, he was ready to concede reluctantly as he thought this appeal can justifiably be determined without necessarily joining the said Haridi Juma Kiloloma.

As such I thought it is in the interest of justice that the PO be heard on merit for each party to present his arguments and the decision be entered to accord the parties right to seek further redress to the superior Court if need be. The parties thus argued the objection.

Mr. Sadiki Aliko started to address the Court and submitted that Haridi Juma Kiloloma @ Lusaka Kiloloma was a necessary Party to be joined in this appeal in whose absence this court cannot pass an effective decree because some reliefs sought by the appellant are directly touching his interests. He argued that grounds No. 3 and 5th of the appeal all touches the interests of the said Haridi Juma Kiloloma and therefore this appeal cannot be determined in his absence.

The learned advocate cited various cases to the effect that a necessary party must be joined in a suit. Some are; ***Juma B. Kadala versus Laurent Mkende [1983] TLR 103, Shaibu Salimu Hoza versus Helena Mhacha, Civil Appeal No. 7/2012 and Abdulatif Mohamed Hamis versus Mehboob Yusuf Osman and Fatna Mohamed, Civil Revision No. 6/2017.***

He also cited the case of ***Selcom Gaming Limited versus Gaming Management (T) Ltd & Gaming Board of Tanzania (2006) TLR 200*** to the effect that a decision reached affecting a certain party without having heard him is a nullity.

Advocate Ignatius Kagashe on his party contended that an appeal is a legal and constitutional right under **article 13 (6) (a)** of the Constitution of the United Republic of Tanzania and it is not inherent or natural but vested to an aggrieved party.

He was of the further argument that in an appeal it is not necessary all the parties who were at the trial to participate ~~on~~ appeal. That an appeal

can proceed even in the absence of some other parties who originally were party during trial. To fortify this argument, he cited the case of ***Chacha Mote and 2 others versus Mkambi Matinde, Civil Application No. 73/08 of 2018 (CAT)***.

Even though the learned advocate at the end he materially conceded that in the circumstances of this appeal Haridi Juma Kiloloma is a necessary party since his purported purchase of the dispute land from the appellant's deceased mother and his subsequent sale to the respondent is subject to discussion in this appeal.

He therefore, argued in the alternative that in case this Court sustains the PO, they should be allowed to refile the appeal by joining such necessary party without necessarily going into applications for extension of time and that I should do so for the sake of justice as I did in the case of ***Angelina Reuben Samson and Another versus Waysafi Investment Company, DC Civil Appeal No. 4/2020 HC Kigoma*** and as he did my learned brother **Mugeta, J** in the case of ***Hamis K. Ntanzihwa and 17 others versus Oxfam and Salu security Services, Revision Application No. 7/2020***.

In Rejoinder, Mr. Sadiki Aliko learned advocate submitted that he has taken note that his opponent has conceded to the PO and as such he only makes his rejoinder on the alternative prayer.

He submitted that if the appellant wants to re-process the appeal he must do so starting afresh and he should not be given leave automatically.

On my party, I should state at the right beginning that this objection must stand. The same has been sufficiently raised.

As rightly submitted by advocate Sadiki Aliko learned advocate, nobody should be condemned unheard. That is a statutory principle with various

authorities developed through case laws which are many without numbers including but not limited to ***Mbeya – Rukwad Auto Parts and Transport Limited versus Jestina George Mwakyoma [2003] TLR 251.***

In the instant appeal the right of the parties herein cannot be determined in the absence of **Haridi Juma Kiloloma @ Lusaka Kiloloma** because the respondent alleges to have acquired title over the dispute land from him. The said Haridi Juma Kiloloma @ Lusaka Kiloloma established to the satisfaction of the trial tribunal that he had good title to the dispute land and therefore, the respondent properly acquired title from him.

In the circumstances, the respondent's title over the dispute land cannot be denied or challenged unless, it is determined that his vendor Haridi Juma Kiloloma had no good title to pass to him.

In fact, the appellant's 3rd and 5th grounds of appeal as rightly submitted by Mr. Sadick Aliko learned advocate, purports to challenge the title of the said Haridi Juma Kiloloma over the dispute land. He is alleged under those grounds to have lack of good title to pass to the respondent and to have produced sale agreements tainted with frauds and uncertainties.

From such grounds, it is quite clear that the appellant wants this Court to either devalue the sale agreements or expunge them as being tainted with frauds and falsehoods. It is my firm view that any attempt to do so will amount to condemn the said Haridi Juma Kiloloma unheard as rightly argued by Mr. Sadick Aliko advocate.

Not only that his evidence at the trial tribunal which was believed and became the basis of the decision of the tribunal which gave title to the respondent cannot be challenged, determined and even decided against it without affording him opportunity to be ~~heard~~.

And if that is to be, even the title of the respondent cannot be challenged in this appeal without first determining the title of Haridi Juma Kiloloma who was the Respondent's vendor. This is because if the title of Haridi Juma Kiloloma stands as a good title, then that of the respondent would also stand. If the title of Haridi would be found illegal, then that of the respondent would not stand as he could not acquire good title from a person who had no good title to pass.

Even the other grounds of illegalities in the trial tribunals proceedings cannot be determined without hearing the said Haridi Juma Kiloloma because he was a party to the said proceedings. He benefited with such proceedings through which he satisfied the trial tribunal that he legally purchased the dispute land from its owner and justifiably sold the same to the respondent herein. He must therefore, be accorded opportunity to state whether he also observe the alleged illegalities or not.

Mr. Ignatius Kagashe learned advocate tried to argue that the said Haridi Juma Kiloloma was a co-respondent to the appellant at the trial, and he seems to have been satisfied with the decision reached thereat and could not therefore, be forced to join in this appeal as the right of appeal is vested only on the aggrieved party.

With due respect to the learned counsel, being a co-defendant does not preclude him from being the respondent in an appeal against the trial tribunal's judgment if he did not co-appeal.

A party to the suit cannot be forced to appeal against the decision of the lower Court but he must be joined in an appeal as a respondent if the decision of the lower Court is challenged, and the relief sought in an appeal are likely to affect his rights fully determined and declared at the trial Court. **Chacha Mote's** case is therefore distinguishable in the

circumstances of the instant appeal because the issue in that case was not in respect of an appeal against a non-party like in this case nor it was in it decided that reliefs on appeal can successfully be sought against one who is not a party in it. The issue before me is, against whom an appeal should be brought. No doubt, it is against any who was a party to the original suit, from whom some reliefs are sought on appeal by the Appellant, and in whose absence an effective decree cannot be issued.

In the instant appeal, the trial Court determined and adjudged for the said Haridi Juma Kiloloma and the Respondent herein. It believed his evidence that he purchased the dispute plot lawfully and again sold it to the respondent lawfully. Therefore, despite the fact that he was a co-respondent with the appellant in the suit at the trial, technically he was a winner along with the Applicant thereat now the respondent and therefore the only loser was the current appellant.

The appellant cannot therefore challenge such purchase and sale in the instant appeal without joining the said Haridi Juma Kiloloma @ Lusaka Kiloloma for him to defend his purchase and sale.

I therefore, sustain the preliminary objection and struck out this appeal for being incompetent for non-joinder of a necessary party.

Mr. Kagashe learned advocate argued in the alternative that in case the preliminary objection is sustained, they be granted leave to refile the appeal in the interest of justice relying in my previous decision in the case of **Angelina Reuben Samson** supra and that of my learned brother Mugeta, J, in the case of **Hamis K. Ntanzih** supra. Mr. Sadick Alik learned advocate disputed the alternative argument of his fellow learned brother and argued that the circumstances of ~~this~~ appeal dictates that the

appellant should not be granted an automatic leave to refile his appeal but to leave him if he so wishes to start the process afresh.

I agree with Mr. Sadick Aliko learned advocate because generally an appeal must be brought within the statutory prescribed time. In that respect therefore, the other parties to the suit who have no interest to an appeal are entitled in law to believe that no further action is to be taken in respect of the same matter and could thus justifiably take some actions along with the decision so reached. Those parties cannot be dragged in an appeal filed out of time unless he has been heard on an application for the extension of time. This is because he has a statutory right to hear the grounds upon which an appeal could have not been brought against him within the prescribed period. But also for him to state whether circumstances have already changed to the extent that any extension of time would prejudice the interest of justice on the so changed circumstances.

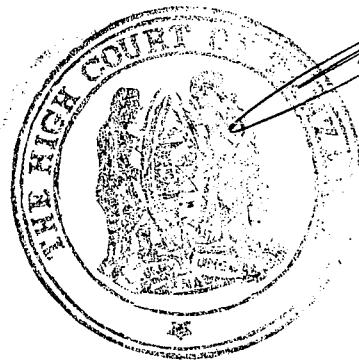
In this case, the appellant delayed to appeal and therefore he successfully applied for the extension of time hence this appeal. Even though the said Haridi Juma Kiloloma was not a party to the said application and he is therefore not aware on the ongoing litigation on the matter which was concluded in his favour way back on the 30/04/2019 over and above a year. Dragging him into an appeal now without first drawing his attention through an application to that effect won't be the interest of justice. The case of Angelina Reuben Samson supra is distinguishable in the circumstances of this appeal because in that case I considered technicalities during trial on the admissibility and rejection of documentary evidence and the role of a judicial officer to stand bold in the administration of justice. It had nothing to do with an automatic leave to appeal without hearing the parties. That ~~of~~ my learned brother Mugeta,

J, is also distinguishable because leave was granted in the presence of both parties but in the instant appeal leave is sought in the absence of one of the parties and without hearing him. Had all the intended parties been before me I would have granted leave because they would have time to state for and against such leave.

The appellant is thus at liberty to start afresh his appeal against all necessary parties subject to the law governing time limitations.

The appellant is condemned costs to the respondent.

Right of appeal explained.



A. Matuma
Judge
9/6/2020