

IN THE HIGH COURT OF TANZANIA

[DODOMA DISTRICT REGISTRY]

AT DODOMA

MISC LAND APPEAL NO. 103 OF 2019

[Arising from the decision of the District Land and Housing Tribunal for Dodoma at Dodoma in Land Application No. 68 of 2019]

ALOYCE MAVUNDE APPELLANT

VERSUS

TATU MAZOYA [Administratrix of the

Estate of the late **MEHOZI NOLLO**] **RESPONDENT**

JUDGMENT

3rd August, 2020 & 1st October, 2020

M.M SIYANI, J.

On 2nd January, 2019 Tatu Mazoya acting under special power of attorney of Mehozi Nollo, instituted a land matter at the District Land and Housing Tribunal Dodoma, claiming against for a piece of land estimated to be 17 acres and located at Chiguluka village, Bahi District against Alyoce Mavunde, the respondent herein. It would appear however that Mehozi Nollo who was the donor of the said power of attorney, had already

passed away by the time the suit was instituted something which prompted a notice of preliminary objection from the respondent that the suit was defective under the eyes of the law. Having heard the parties, the trial tribunal sustained the objection and dismissed the suit. No cost was however awarded to the appellant herein. Believing that being a winner, he was entitled to costs, Aloyce Mavunde has preferred the instant appeal which contains basically one ground that the trial District Land and Housing Tribunal erred in law and in fact when it failed to award costs to him.

Despite being served with summons, the respondent opted against appearing in this court. The appeal was therefore heard ex-parte and when accorded a chance to address the court, the appellant who was in person and unrepresented, simply adopted his ground of appeal to be his submissions and contended that he was entitled to costs which he incurred in defending the suit at the trial tribunal.

A trite law is that granting of costs of and incidental to all suits, is purely in the discretion of the court. As it is under section 30 (1) and (2) of the Civil Procedure Code Cap 33 RE 2019, Regulation 21 of the Land Disputes

Courts (District Land and Housing Tribunal) Regulations, GN. No. 174 of 2003 vest power to the District Land and Housing Tribunal to award costs. The practice has however been, that costs would follow the event and the winning party will always be awarded costs as compensation for the expenses incurred in litigating the matter. [See **Geofields Tanzania Limited Vs Maliasili Resources Limited and Others**, Commercial Cause No. 323 of 2015, High Court Commercial Division DSM]. Therefore despite being a domain of the discretion of the court, but such discretion must be exercised judiciously and whenever a court of law finds that under any circumstance, it would be improper to award costs, it will be required to state in writing, its reasons for not doing so.

Having stated the position of the law with regard to awarding of costs, the record of trial tribunal, indicates that initially, the late Mehozi Nollo who appeared to be the respondent's mother, instituted a Land Case No. 13 of 2016 at Chipanga Ward Tribunal where she claimed the same piece of land. When the matter was called for hearing, Mehozi decided not to proceed with the suit. She notified the tribunal that she has found that the land in dispute belongs to the appellant herein and as such she no

longer wished to pursue with the matter. Therefore basing on her own admission, the Ward Tribunal declared Aloyce Mavunde the lawful owner.

Although the record are silent as to what transpired after that decision, it would appear basing on what was averred by the respondent in her plaint before the District Land and Housing Tribunal, there was an appeal against the Ward Tribunal decision, which ultimately ordered the matter to be heard afresh. According to the respondent, Land Case No. 68 of 2019 was therefore a result of that order. As noted earlier, the trial tribunal sustained the preliminary objection and dismissed the suit but refrained from awarding costs to the winning party.

Apparently, it was within the discretion of the District Land and Housing Tribunal under Regulation 21 of GN. No. 174 of 2003 not to award costs, but under section 30 (2) of the Civil Procedure Code, which is applicable to the District Land Tribunals under section 51 of the Land Court Disputes Act the learned trial chairperson ought to have indicated the reasons for not doing so. Since no reasons were given, that particular order was a nullity and cannot be left to stand. In my considered view however, this being the first appellate court, can step into the shoes of the trial tribunal

and consider the circumstances of the case and come to its finding as to whether or not the appellant was entitled to the costs. Without much ado, having gone through the record and upon considering the facts surrounding the matter as narrated above, I believe the appellant was entitled to such costs which he obviously incurred in vindicating his right.

For the reasons above, I find merits in the appeal. I therefore allow the same with costs both in this court and the tribunal below. It is so ordered.

DATED at **DODOMA** this day of 1st day of October, 2020



M.M. SIYANI
JUDGE