

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY**  
**AT MWANZA**

**LAND APPEAL NO. 21 OF 2020**

(Arising from judgment of the District Land and Housing Tribunal for Mwanza at Mwanza in Land Application No 20 of 2013 dated 14/2/2020, Masao E. Chairman)

**MBOLILE MADIMANYA** (Administrator of  
the Estate of the late Madimanya Mudanga) .....**APPELLANT**

**VERSUS**

**KAZIMILI PETRO** (Admin of the Estate of the late Venance) ..... **RESPONDENT**

**JUDGMENT**

**19 & 29/04/2021**

**RUMANYIKA, J.:**

With respect to 12 (twelve) acres parcel of land situated at Itandula village Magu district (the suit land), Mbolile Madimanya (the appellant), against Kazimili Petro (the respondent) the latter having had lost the battle on 14/2/2020 at Mwanza District Land and Housing Tribunal (the DLHT) he is aggrieved then here he is with unusual verbal and argumentative seven (7) grounds of appeal. In fact the grounds only revolve around **evaluation of the evidence;**

Messrs Masoud Mwanaupanga and Morhan Kabonde learned counsel appeared for the appellant and respondent respectively.

However when, through mobile numbers 0757722909 and 0759176291 by way of audio teleconferencing the appeal was called on 19/4/2021 for hearing, Mr. Masoud Mwanaupanga learned counsel abandoned all the grounds and, in lieu thereof he introduced one namely:- **Even before an application for setting aside orders for exparte proof of 20/3/2018 was sought and granted erroneously the DLHT chair determined the case inter partes.** We humbly submit and pray that with effect from where parties were, on merits heard, the proceedings be nullified. Mr. M. Mwanaupanga learned counsel further submitted.

On his part Mr. M. Kabonde learned counsel submitted that the appeal lacked merits because notwithstanding the provisions of GN. No. 174 of 2003 much as the DLHT had discretion and it was satisfied the chair had just vacated the order of exparte proof.

Questioned by the court for more clarity, Mr. Mwanaupanga learned counsel submitted that wrongly though on 17/10/2018 the DLHT chair

may have had ordered service on the respondent yes, but first of all the latter should have had formally vacated the said exparte order.

The issue is whether on the basis of the 17/10/2018 order of exparte proof the impugned proceedings were liable to be nullified. Be it as it may, I could not understand if at all really Mr. Mwanaupanga learned counsel meant it that apparently the procedural illegality it constitute a ground of appeal. Ordinarily that one should have been a ground for revision much as it is trite law that an appeal was not a revision is disguise (case of **South Esso V. The People Bank of Zanzibar & Another** (2001) TLR 43 suffices in favor of the respondent the point to dispose of the appeal.

As far as the alleged procedural irregularity is concerned, actually the records would speak louder. It appears though duly served the respondent having had defaulted on 20/3/2018, reasonable expected by its order the DLHT dispensed with the latter's appearance therefore against him it ordered exparte proof whether accidentally or by design I just cannot know. After a series of several and repeated adjournments, like it had set the order aside, on 17/10/2018 the DLHT ordered service on the respondent for hearing then from there the respondent's counsel one Mr.



M.Kabonde never defaulted. However, for reasons not recorded, the hearing never took off it was adjourned to 19/12/2018, 20/12/2018, 21/01/2019, 09/04/2019 and on 21/5/2019. It took off on 22/5/2019.

I would agree with Mr. Mwanaupanga learned counsel that procedurally once the court had made it, unless on application the exparte order was set aside, the matter should not have been determined interpartes. But it goes without more words that impliedly though by its order dated 17/10/2018 the DLHT chair he just vacated his order of 20/3/2018 much as the appellant he never complained against it until say three good years now more so when he had lost the case.

Moreover, as long as it appears parties were on merits sufficiently heard, however procedurally bad on that one the DLHT might have had conducted itself, the respondent decree holder had no upper arm therefore the latter wasn't to blame. In other words if parties were not, in any way produced by the procedural illegality and, like quietly though the appellant showed that the parties were fairly heard so much the better! After all it is settled law that as hand maiden as were, procedural laws were not meant to defeat justice.

When all is said and done the purported appeal is dismissed with costs. It is so ordered.

Right of appeal explained.



**S. M. RUMANYIKA**

**JUDGE**

**25/04/2021**

The judgment delivered this 29/04/2021 in chambers under my hand and seal of court in the absence of the parties.



**S. M. RUMANYIKA**

**JUDGE**

**29/04/2021**