

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND CASE APPEAL No. 25 OF 2020

*(Arising from the decision of the District Land and Housing Tribunal for Lushoto at
Lushoto in Land Application No. 18 of 2017)*

1. HAMISI SAMAUVA 2. SABITINA MWELEKWA 3. HIDAYA SAMAUVA	}	----- APPELLANTS
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Versus

SERIKALI YA KIJIKI CHA UBIRI ----- RESPONDENT

JUDGMENT

22.07.2021 & 22.07.2021

F.H. Mtulya, J.:

On 6th February 2017, Ubiri Ward Tribunal (the Ward Tribunal) sitting at Ubiri Village determined **Civil Case No. 2 of 2016** (the Case) in a dispute between Serikali ya Kijiji cha Ubiri (the Respondent) and Hamisi Samauva & two other persons (the Appellants). At the conclusion of its determination, the Ward Tribunal, as depicted at page 6 of the decision, held that: *Baraza limeamua eneo hilo ni mali ya Shule siyo mtu binafsi*. The reasoning

of the Ward Tribunal is found at the same page in the following words:

Kutokana na lalamiko la uvamizi wa maeneo ya Shule ya Msingi Ubiri, Baraza la Ardhi na Nyumba Kata ya Ubiri limesisitiza maelezo ya Mkutano Mkuu wa Mwaka 2012 ulisomwa na Mlalamikaji ambao ni Serikali ya Kijiji Ubiri na kuona wana haki ya Shule kumiliki eneo hilo
kutokana na ushahidi wa Mkutano Mkuu wa Mwaka 2012.

(Emphasis supplied).

This decision and its associated reasoning were protested at **Lushoto District Land and Housing Tribunal for Lushoto** in (the District Tribunal) **Land Appeal No. 18 of 2017** (the Application). After full hearing of the parties, the District Tribunal also decided in favour of the Respondent and at second paragraph of page 5 in the judgment, the Tribunal reasoned that:

Regarding the last ground that the trial tribunal erred in law by making decision basing on weak evidence of village meeting, I agree with the Respondent that the decision of the tribunal depended adduced by the parties... the trial

tribunal was correct to rely on evidence which was strong among all the adduced evidence during the trial.

The Appellants were also dissatisfied with both the holding and reasons for the decision hence approached the legal services of Mr. Philemon Raulencio, learned counsel to draft and file **Land Case Appeal No. 25 of 2020** (the Appeal) in this court attached with five (5) grounds of appeal. Today morning when the appeal was scheduled for hearing, the Appellants invited Ms. Grace Ntambi, learned counsel, to argue the Appeal for them whereas the Respondent preferred the legal services of Mr. Shafii Rugine, learned Lushoto District Council Solicitor.

However, this court after perusal of the proceedings and judgments of both lower tribunals, it found out that the location and exact size of the disputed land is not stated by both parties in the Ward Tribunal Proceedings and the Ward Tribunal declined to inquire on the same. Again, the minutes of Village Council Meeting of 2012 which were heavily relied by both tribunals below were not admitted during the proceedings in the Ward Tribunal or read before the parties. This court also scrutinized the record of the Ward Tribunal, but could not find the same in the record. As part of right to be heard, both learned minds were called to state on the raised

issues and the status of the proceedings and decisions of the lower tribunals.

It was fortunate that both learned minds changed their course and conceded the identified faults. According to Ms. Ntambi, the record is silent on precise land size and location for easy distinction between invaded land and other lands. Ms. Ntambi identified further fault in the record with regard to silence on value of the disputed land to distinguish the appropriate forum in determining the dispute. On his part, Mr. Shafii supported the submissions of Ms. Ntambi and contended further that the proceedings lacked size, location and surrounding neighbors for easy identification of the disputed land with other lands. In bolstering his submission, Mr. Shafii cited Regulation 3 (2) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations).

However, the two learned minds differed on the appropriate remedies available in appeals originated in fault situations like the present one and who to bear costs in such circumstances. To Ms. Grace Ntambi, the Respondent must shoulder costs as she initiated proceeding against the Appellants and that the remedies available in this appeal is suppression of the decision and set aside of the

proceedings of the lower tribunals so that each party may search its course. On the other hand, Mr. Shafii thinks that the issues were raised *suo moto* by this court and no party may carry the burden of costs and in any case costs is discretion of this court. On remedies, Mr. Shafii thought that an order of *trial de novo* would be appropriate in search of the rights of the parties.

On my part, I think, the irregularities were identified by this court, but well received and conceded by the learned minds. In any case, the law in Regulation 3 (2) (b) of the Regulations as interpreted in the case of **Daniel D. Kaluga v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015, require detailed description of the land in dispute to distinguish it from other lands. The interpretation has already received a bundle of precedents in this court (see: **Swaibu Hassan v. Serikali ya Kijiji Cha Wanga**, Land Case Appeal No. 28 of 2020; **Aron Bimbona v. Alex Kamihanda**, Misc. Land Case Appeal No. 63 of 2018; **Ponsian Kadagu v. Muganyizi Samwel**, Misc. Land Case Appeal No. 41 of 2018; and **Simeo Rushuku Kabale v. Athonia Simeo Kabale**, Civil Appeal No. 6 of 2019).

In circumstances, like the present one, where there are vivid irregularities committed by the Ward Tribunal and blessed by the

District Tribunal, this court cannot close its eyes in permitting open irregularities to remain on record (see: **Diamond trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017, and **The Principal Secretary, Ministry of Defence and National Services v. Devram P. Valambia** [1991] TLR 185). This court is a temple of justice empowered to ensure proper application of the laws in the Regulations and precedents emanated from the interpretations of the Regulations and **Land Disputes Courts Act** [Cap. 216 R.E. 2019] and for the sake of certainty of the precedents in this court, this appeal will follow the same course of the previous decisions.

Having said so, and noting the need to ensure proper application of the laws in our courts, I have decided to quash the judgments and set aside proceedings of the two lower tribunals in search of fair proceedings. I award no costs to this appeal as the matters were raised *suo moto*, and in any case the learned minds in this appeal cooperated as officers of the court, and considering the fact that the dispute is yet to be determined to the finality to identify wrong parties. Any of the parties who is still interested in the dispute may file fresh and proper suit in accordance with the laws regulating land disputes.

It is so ordered.

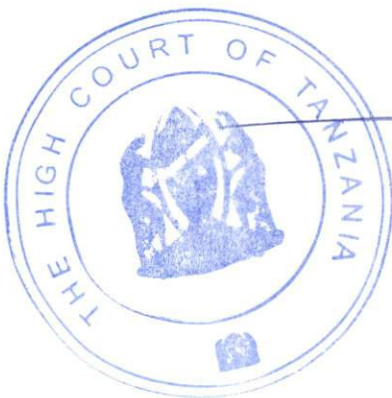



F. H. Mtulya

Judge

22.07.2021

This judgment is delivered under the seal of this court in Chambers in the presence of Mr. Rashidi Kivo (Ubiri Village Chairman), Mr. Athumani Kyamba (Ubiri Village Council Member), and Mr. Neema Kweka (Ubiri Village Executive Officer) and enjoyed legal representation of Mr. Shafii Rugine, Lushoto District Council Solicitor and in the presence of the First and Third Respondents, Hamis Samauva and Hidaya Samauva respectively, who enjoyed legal representation of learned counsel Ms. Grace Ntambi.




F.H. Mtulya

Judge

22.07.2021