

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND CASE APPEAL No. 23 OF 2020

*(Originating from the District Land and Housing Tribunal for Korogwe at Korogwe
in Land Application No.1 of 2019)*

1. MOHAMED M. KIRUWASHA }
2. SAIDI KAMOTA MLAGUZI } ----- **APPELLANTS**

Versus

ADOLF MISAEAL LYAKUNDI ----- **RESPONDENT**

JUDGMENT

27.07.2021 & 27.07.2021

F.H. Mtulya, J.:

On 11th August 2020, the **District Land and Housing Tribunal for Korogwe at Korogwe** (the Tribunal) sat and determined **Land Application No. 1 of 2019** (the Application) between Adolf Misael Lyakundi (the Respondent) and Mohamed M. Kiruwasha & two other persons (the Appellants). In its one sentence order, the Tribunal stated that: *the matter is withdrawn with leave to refile it afresh.*

This order dissatisfied the Appellants and decided to prefer **Land Appeal Case No. 23 of 2020** in this court contending that: *the trial Tribunal erred in law and fact by depriving the Appellants right*

to costs after the withdrawal of the matter. When the suit was scheduled for hearing in this court today morning, the parties hired legal services of Mr. Joseph Mambea and Mr. Sunday Ahmed.

However, before hearing took its course, this court noted that the order of the Tribunal in the Application had fault on failure to order for costs or reasons for denying the Appellants award to costs after the order of withdraw with leave to refile fresh appeal as per requirement of the law Regulation 17 (2) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003** (the Regulations).

To exercise the right to be heard enshrined in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002, this court invited the learned minds to state on the legal status of the order. It was fortunate that both learned minds conceded that there is a serious irregularity which needs to be cured at the Tribunal for proper record of the Tribunal in the Application.

According to Mr. Mambea, orders of this kind must be quashed for failure to state on the issue of costs and prayed for the appeal to

be reverted back to the Tribunal for proper application of the laws. Similarly, Mr. Ahmed had brief statement that the order does not comply with the law and should not remain on record of the Tribunal. On my part, I think orders of this nature must be quashed in search of proper application of the law according to Regulation 17 (2) of the Regulations and directives of our superior court in the precedent of **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017, where it was stated that that superior courts in judicial hierarchy have the additional duty of ensuring proper application of the laws by the courts and tribunals below.

Having said so, and noting learned minds are in agreement that the order be quashed for certainty of the matter and prayed for the Tribunal be given an opportunity to determine the issue of costs with reasons, I think, for interest of justice, expeditious and fair trial, I have decide to quash the order of the Tribunal issued on 11th August 2020, as I hereby do. I further order the Tribunal to determine the issue of costs as per requirement of the law in Regulation 17 (2) of the Regulations. I award no costs in this appeal as the matter was raised *suo moto* by this court.



It is so ordered.

A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal flourish extending to the right.

F. H. Mtulya

Judge

27.07.2021

This judgment is delivered in Chambers under the seal of this court in the presence of the Second Appellant, Mr. Saidi Kamota Mlaguzi and Appellants' learned counsels, Mr. Joseph Mambea and in the presence of Mr. Sunday Ahmed, learned counsel for the Respondent.

A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal flourish extending to the right.

F. H. Mtulya

Judge

27.07.2021