

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DISTRICT
AT ARUSHA

MISC. LAND APPEAL NO. 6 OF 2019

*(C/f the District Land and Housing Tribunal for Kiteto in Land Appeal No. 41 of 2018, Originating from
Laiseri Ward Tribunal in Land Case No. 10 of 2018)*

MZENYA KILOTI APPELLANT

Versus

MOKO LEMALALI RESPONDENT

JUDGMENT

9th July & 20th August, 2021

MZUNA, J.

Mzenya Kiloti, the appellant herein is seeking for this court to nullify the judgment of the District Land and Housing Tribunal for Kiteto which, just like the Ward Tribunal of Laiseri, adjudged in favour of **Moko Lemalali**, the respondent herein.

The facts giving rise to this appeal shows, the respondent successfully proved his claim of the disputed land measuring 20 acres. The basis of the appellant's claim is that he was allocated the suit land by the Village council in 2020. Then in 2012, the respondent came and claimed that it was his shamba. That the family left for Takaloyi, leaving behind a person known as Kombo who was taking care of the land. Then the appellant trespassed into the suit land clearing it and started agricultural activities therein.

The Ward Tribunal found that the Engusero Sidani Village Council in 2012 allowed the appellant to clear the land measuring 20 acres. The permit to clear

the suit land is dated 14/7/2012. It was signed by the village chairman and the hamlet chairman. The village chairman also testified in the trial tribunal stating that they visited the land that the appellant was permitted to clear it.

After hearing the evidence of the parties, the trial tribunal also visited the *locus in quo*. On 12/11/2018, the trial tribunal delivered its judgment declaring the respondent the lawful owner of the suit land. The decision of the trial tribunal did not please the appellant who appealed to the first appellate tribunal. The first appellate tribunal delivered its judgment on 14/2/2019, dismissing the appeal and upholding the decision of the trial tribunal. The appellant was still aggrieved, he thus preferred this second appeal on three grounds of appeal in an amended petition of appeal which was filed in this Court on 1/6/2020.

The grounds of appeal read as hereunder reproduced: -

- a) That, the appellate tribunal erred in law and facts to find the respondent herein to have locus standi to initiate and prosecute this case at the ward tribunal;*
- b) That, the appellate tribunal erred in law and facts for failure to analyze and evaluate the evidence of the parties herein properly hence reached a wrong decision about the ownership of the suit land; and*
- c) That, the appellate tribunal erred in law for failure to give chances (sic) to the tribunal assessors to give their opinion in written form before pronouncing the judgment as required by law.*

Basing on the above grounds of appeal, the appellant prays that the appeal be allowed by quashing the decision of the lower tribunals with costs.

In this appeal, the appellant was represented by Mr. Stephano P. James learned advocate while the respondent was represented by Mr. Mathias Nkingwa, also learned advocate.

For quite some time, the respondent defaulted appearance. It was ordered that the appeal proceed ex-parte the order which was made on 26/5/2020. Then Mr. James prayed to amend the petition of appeal a prayer which was granted by this Court. He filed amended petition of appeal on 1/6/2020. On 14/6/2021, Mr. James prayed to argue the appeal by a way of written submission. His prayer was granted, it was scheduled that submission in-chief be filed by 21/6/2021, reply submission by 30/6/2021 and rejoinder if any, by 8/7/2021. It was set for mention on 9/7/2021.

Later on, the appellant's counsel filed a letter which was received on 23/06/2021 seeking for extension of time to file submission in chief. The appellant's counsel was directed to appear before me on 9/7/2021 but he did not bother to do so. For reasons not yet disclosed, by 9/7/2021 neither party had filed submissions as ordered by the court. This set of events, by necessary implication, shows that parties (especially the appellant), are not serious in prosecuting the appeal. I had no option but proceed to compose the judgment, as I hereby do.

The question to ask is, what is the position of the law where a party fails to file submissions?

It has been held times without number that failure by a party to file written submission as ordered by Court is tantamount to failure to prosecute his case. In the case of **Godfrey Kimbe vs. Peter Ngonyani**, Civil Appeal No. 41 of 2014(unreported), the Court of Appeal observed that:

"By not filing any reply submissions contrary to the order of the Court of 16.06.2017, the appellant has therefore failed to defend the preliminary objection and the Court is entitled to proceed with the ruling as if he did not appear at the hearing despite being duly served with the Notice of Hearing."

From the above exposition, it goes without saying that failure by the appellant's counsel to file written submission as ordered by the Court has a status equal to failure to prosecute the appeal.

For that reason, I see no reason to labour on the grounds of appeal. Specially so because both Tribunals decided against the appellant, which on the face of it, presupposes that this appeal which has never been prosecuted, is meant to delay the execution process. It is an abuse of legal process.

Appeal stands dismissed with costs.



M.G. MZUNA,
JUDGE.
20th August, 2021.