

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(LAND DIVISION)**

**APPELLATE JURISDICTION**

**LAND APPEAL NO. 13 OF 2021**

(Arising from Land Appeal No. 45/2015 of the District Land and Housing Tribunal – Kigoma  
before F. Chinuku – Chairperson, Original Land Application No. 32/2017 of the Kibirizi Ward  
Tribunal)

**BAKARI RASHIDI ..... APPELLANT**

**VERSUS**

**JOSHUA HOMBA ..... RESPONDENT**

**JUDGMENT**

16/8/2021 & 8/10/2021

**L.M. MLACHA, J.**

The appellant, Bakari Rashidi sent the respondent, Joshua Homba at Kibira Ward Tribunal, Kigoma Municipal, in Application No. 32 of 2017 claiming ownership of a plot of land defined as “eneo la kiwanja kilipo kilima, jirani ya nyumba ya Bwana Shabani Hamimu”. It was alleged that the respondent had trespassed into the plot and was building a house. The ward tribunal decided to visit the suit land before hearing the case. They met the respondent beside the house which was being built. They asked him and he agreed that he was the one who was building the house. The appellant informed the tribunal that the plot was his because there was an earlier case involving all the plots in the mountain decided in his

favour. The respondent was asked to respond but declined to ask any question. He had the view that the case had already been decided against him and was sort of angry. He opted to remain silent. Following this state of affairs, the tribunal pronounced judgment for the appellant. He could in a way, own the plot and the house.

The respondent appealed successfully to the District Land and Housing Tribunal for Kigoma Region (the DLHT) in Land Appeal No. 52 of 2018. The decree of the judgment of the DLHT reads in part as under:

"The tribunal after hearing the appeal interparties HEREBY ORDERS THAT: -

- i). The respondent who was the complainant could not state his claims against the appellant.
- ii). The respondent just said the case is a repetition as previously the same was already determined in his favour. It is not known the said previous case was determine between which parties and on what disputed premises and by which court. No any copy of judgment to prove that allegation that the case was resjudicata.

Furthermore, if the case was already determined how comes he decided to file a case again at the tribunal.

- iii). The ward tribunal directly believed the respondent's allegations without proof, that is not proper.
- iv). The respondent failed to prove his ownership over the suit land.
- v). The decision of the ward tribunal is quashed and set aside.
- vi). The appeal is allowed with costs."

Aggrieved, the appellant came to this court armed with three grounds of appeal which read thus;

- 1. That, the appellant tribunal erred in law and facts for deciding the case in favour of the respondent while parties were not heard in the ward tribunal.*
- 2. That, the ward tribunal erred law and fact for deciding the case while necessary party who sold the suit land are not joined in the case.*
- 3. That, the appellate tribunal erred in law and fact for deciding the case in favour of the respondent while in the ward tribunal's records there is irregularities.*

The parties appeared in person to argue the appeal. It was the submission of the appellant that the DLHT never heard them. That, the Chairman kept on adjourning the case without hearing them and finally

made his decision based on the decision of the ward tribunal. He said that he had documents showing that the plot is his but he was not asked to tender them. He added that the land belonged to his father long before it was cut to 10 plots. They were divided in the family. He got two plots which include the suit land.

It was the respondent's submission that he bought the plot from Mr. Mnyonge Saidi Bukulu in 2013 for Tshs. 1,400,000/=. They executed the sale agreement before the street Chairman. He brought stones and built a foundation for two rooms and a sitting room. He bought bricks in 2014. He returned in 2017 to build. He then faced resistance from the appellant and his brother. The ten cell leader came and prevented them. He was allowed to build. He proceeded to build. The matter went to the ward tribunal, DLHT and this court.

In rejoinder, the appellant said that they saw the foundation in 2015 but did not know the owner. He knew the owner in 2017 hence the dispute.

I have considered the grounds of appeal and submissions. The second ground of appeal seeks to challenge the decision of the ward tribunal which was long vacated by the DLHT. That decision is no longer existing. For that matter, I think this ground is misconceived. I proceed

to strick it out.

Grounds one and three are related. I will discuss them together. In ground one, the appellant challenge the decision of the DLHT arguing that there was no hearing at the ward tribunal making it useless to make a decision in favour of the respondent based on those proceedings. In ground three the complaint is that the decision of the ward tribunal could not be the basis of the decision of DLHT because of its irregularities. Based on what has been demonstrated above, I agree with the appellant that there could not have any rights to be given by the DLHT because the decision of the ward tribunal was based on a wrong footing. The parties were not be heard. The decision was pronounced without recording the evidence of the parties. It was a mechanical justice of its own type!

Further to that, it could be difficult to know the suit land. The respondent was declared to be the lawful owner of a piece of land which could not be described. What was on record was just "eneo la kiwanja kilipo kilimani, jirani na nyumba ya Bwana Shabani Hamimu" literally meaning a piece of land at the uplands near the house of Mr. Shabani Hamimu. We are not told which uplands. Kigoma has many hills comprising uplands all looking towards Lake Tanganyika. Which one of them has the suit land? What is the size and it particular? We are not told.

Like the DLHT, I agree that the case was poorly conducted. What was done was nothing but a failure of justice. We have a judgment without proceedings! The DLHT found this but it did not take steps to remedy the situation. It left the matter hanging. I think it should have exercised its revision jurisdiction to revise and vacate the judgment of the ward tribunal and order trial denovo. I will step into the shoes of the DLHT and do so.

That said, I exercise the revision jurisdiction of this court contained in section 43 (1) of the Land Disputes Courts Act, Cap 216 R.E. 2019 to revise and vacate the proceedings and decisions of the lower tribunals. I direct the case to start afresh before the ward tribunal which should record the evidence, receive exhibits (if any), visit the suit premises, draw a sketch map and deliver its decision within sixty (60) days from today. It is ordered so. What about costs?

As a matter of principle, the unsuccessful party must be condemned to pay costs in favour of the successful party. This was reiterated in **CGM (TANZANIA) Limited vs Insignia Limited**, Misc. Commercial Application No. 168/216 (unreported) which cited the case of **Hussein Janmohamed and sons vs Twentsche Overseas Trading Co. Ltd [1967] 1 E A 287** at page 289 – 290 which relied on Mulla: the code of

Civil Procedure by Sir Dinshah Fardunji Mulla, 18<sup>th</sup> Edition 2011. But that is not always the case. Where the error in the appeal is purely or mainly on the part of the lower court, the court should exercise its discretion by ordering each party to bear its costs. I will do so. I make no order for costs.



  
L.M. Mlacha

**JUDGE**

**8/10/2021**

**Court:** Judgment delivered in chamber in the presence of both parties.

Right of Appeal explained.



  
L.M. Mlacha

**JUDGE**

**8/10/2021**