

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

AT ARUSHA

LAND APPEAL NO. 42 OF 2020

(CF District Land and Housing Tribunal of Arusha, Land Appeal No. 64 of 2019, Originating from Ward Tribunal of Esilalei, Application No. 11 of 2019)

ORMUSEI NANGARI.....APPELLANT

VERSUS

NDOROSI NGISAJOI.....1ST RESPONDENT

NGATAYANG KITEHO2ND RESPONDENT

PAANI NYINGE.....3RD RESPONDENT

LESIKARI LAANDARE4TH RESPONDENT

METUI MBOYO5TH RESPONDENT

RULING

15/10/2021 & 05/11/2021

GWAE, J

~~In the Esilalei ward tribunal at Arusha District, the appellant filed a dispute claiming to be the unlawful owner and a holder of a customary right of occupancy issued on the 25th May 213 of a land measuring 64.3 acres located at Losirwa village. He claimed that, the respondents herein above to have trespassed into his land. The ward tribunal through is decision dated 17th July 2019 decided in favour of the respondents and~~

went further ordering a cancellation of the said Customary Right of Occupancy by relevant authorities.

Aggrieved by the ward tribunal's decision, the appellant subsequently appealed to the District Land and Housing Tribunal of Arusha at Arusha (DLHT) where he also lost save to an order of revocation on the ground that the ward tribunal had not such power.

The appellant preferred this appeal armed with four (4) grounds of appeal however before hearing of the appeal, Mr. Mwale, the learned counsel for the appellant sought and obtained leave to file a supplementary Memorandum of Appeal. The same was subsequently filed however the respondents' learned counsel, Mr. Lectony Losijo Ngeseyan filed a preliminary objection on three points of objection subject of this ruling, namely;

1. That, the appellant's appellant is improper before the court
2. The appellant amended beyond what he prayed for and what the court ordered
3. That, the supplementary Memorandum of Appeal in terms of Order xxxix Rule of the Civil Procedure Code, Cap 33 Revised Edition, 2019 is improper before the court.

With consent of the parties' advocates, it was ordered that the preliminary objection canvassed by the respondents' advocate be disposed by way of written submission. The respondent after the court's order dated 3rd June 2021 accordingly filed his written submission supporting the Po nevertheless the appellant's advocate is found to have abstained from filing or neglected to file his written submission.

In his submission in respect of the 1st limb of objection, the respondents' advocate argued that, the appellant wrongly filed this appeal directly to this court directly since the dispute arose from the ward tribunal, thus contravening the requirement of provisions of section 38 of the Land Disputes Courts' Act, Cap 216 Revised Edition, 2019 (Act) by filing this ~~appeal to the court, thus in a wrong registry instead of filing the same in~~ the District Land and Housing Tribunal (appellate tribunal) and that his appeal ought to be titled a "Petition of Appeal" as envisaged by clear provisions of the law.

The respondents' learned counsel, buttressing his arguments, urged this court to make a reference to a decision of this court (**Utamwa, J.**) in **Editha Benya Sigar vs. Alex Myovera and China Geo Engineering**, Civil Appeal No. 10 of 2020 where it was held that, a right of appeal is, in

fact, a statutory right. A person intending to appeal against any decision of a court must follow the tune of a statute giving him or her a right to appeal. He also cited a decision in the case of **Bakari Mohamed vs. Khadija John**, Civil Appeal No. 21 of 2018 (unreported) where an appeal was struck out for being filed in a wrong court's registry.

As to the 2nd limb of the objection herein above, the learned counsel for the respondents, argued that it was improper for the appellant to raise new ground of appeal at the 2nd appellate stage whilst the same ground raised before this court was not raised in the appellate tribunal. He referred this court to the decisions of the courts in criminal appeals to wit; **Hassan Bundala @ Swaga vs. Republic**, Criminal Appeal No. 385 of 2015, **Florewnce Athanas @ Baba Ali and Emmanuel Mwandeje v. Republic**, Criminal Appeal No. 438 of 2016 (both unreported).

Arguing for the 3rd point of objection, the counsel stated that, the appellant wrongly cited provisions of the Civil Procedure Code, Cap 33 Revised Edition, 2019 in the Supplementary Memorandum of Appeal thereby making this appeal improper since provision of the said Code are not applicable in the matter originating from ward tribunal. Embracing his

submission, he cited a judicial decision in the case of **Matage Musiba vs. Mtani Maugo**, Misc. Land Appeal No. 75 of 2014 (unreported).

Having briefly outlined what transpired particularly in respect of the respondents' preliminary objection, I will hereinunder test one limb of objection after another, if need arises.

As the 1st limb of objection is grounded from provisions of section 38 of the Act (supra), it is therefore pertinent if the said section is reproduced as herein under;

"38(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:

Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.

(2) Every appeal to the High Court shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision, or order of which the appeal is brought.

(3) Upon receipt of a petition under this section, the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court

Having quoted the provision of the law herein, I will now start testing the 1st limb of the respondent's objection by dividing it into two (2) parts, notably; whether the appellant's appeal titled "Memorandum of Appeal renders it incompetent and whether the act of the appellant or his representative of filing his appeal directly to this court instead of filing the same in the District Land and Housing Tribunal render the appellant's appeal incompetent.

I am sound of the wordings of section 38 of the Cap 216 (supra) quoted above, in my view, it is general principle that, the provision of the Act requires a party appealing against a decision or order of the District Land and Housing Tribunal when exercising its either appellate jurisdiction or revisional power must file his appeal by way of "Petition of Appeal" and **not** by way "Memorandum of Appeal" unlike when the District Land and Housing Tribunal exercising its original jurisdiction or revisional power where an appeal to this court must be by way of Memorandum of Appeal

However, I am of the considered view that, that alone does not render an appeal incompetent to justify this court to strike out the same as was correctly decided by my learned brother, Dr. Utamwa, J. I am of the same view for an obvious reason that, the error is minor and therefore not incurable to justify this court to strike it out. The same position was equally stressed in the case of in **Basil Masare vs. Petro Michael** (1996) TLR 227 where it was judicially stated;

“If an appellant used the word ‘Memorandum’ instead of ‘Petition’ in connection with his grounds of appeal in a case originating in the primary court, that alone cannot render the appeal incompetent since that would be ‘making a mountain out of a mouse mound’.

As pointed earlier above the 1st part of the 1st limb of objection, though wording of the statute is unambiguous but such anomaly does not go to the root of the case nor it does prejudice any party to the appeal. It follows therefore that the first part of 1st limb of objection is overruled accordingly.

Now to the 2nd part of the 1st point of objection on issue of filing this appeal directly to the court and not to the District Land and Housing Tribunal (DLHT). Filing of an appeal for a matter originating from a primary

court of Ward tribunal as the case here amounts to serious violation of mandatory requirement of the law. The error, in my considered view as was correctly found by **Dr. Utamwa, J**, is not correctable by this court. More so if it is held otherwise it will lead into confusions as to which registries are entitled to admissions of appeals for matters originating from either primary courts or ward tribunals especially for those who desire to appeal against a decision or an order.

In order to maintain predictability to the users of our courts there should be consistencies in filing appeals of this kind of appeal. High court and District courts cannot therefore have concurrent jurisdiction in admission of appeals for matters originating from primary court or ward tribunals.

Moreover, by filing this appeal directly to the court caused a wrong registration of this appeal as it is vividly registered as "**Land Appeal**" whilst the appeal in question ought to have legally been registered as "**Miscellaneous Land Appeal**". Therefore, this appeal has not only been wrongly filed to this court but also to a wrong register. Thus, this second part of the 1st limb of objection is sustained accordingly.

Having determined the second part of the 1st issue in affirmative, I should not therefore be curtailed by other limbs of preliminary objection as doing so will unnecessarily cause wastage of precious time as well as my energy. However, it suffices to hold that the appellant ought not to bring new ground of appeal in this second appeal or new fact which was neither pleaded nor raised during trial (**Hotel Travertine Ltd and 2 others vs. NBC** (2006) TLR 133).

In light of the foregoing observations, the 2nd part of the 1st limb of the objection raised by the learned counsel for the respondents is hereby sustained. The appellant's appeal is incompetent, the same is accordingly struck out with costs.

It is so ordered.




M. R. GWAE
JUDGE
05/11/2021