

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MUSOMA**

AT MUSOMA

LAND APPEAL NO. 71 OF 2021

BURENDIRE ISAKWE APPELLANT

VERSUS

ITASO ALLY RESPONDENT

***(Appeal from the decision of the District Land and Housing Tribunal for
Mara at Musoma in Land Appeal No. 18 of 2020)***

RULING

29th and 29th November, 2021

KISANYA, J.:

This appeal finds its origin from the decision of the Nyamang'uta Ward Tribunal in Land Case No. 7 of 2017 in which the appellant unsuccessfully sued the respondent for trespassing into his family land. The appellant's appeal to the District Land and Housing Tribunal for Mara at Musoma was dismissed for want on merit. Still aggrieved, the appellant has filed the present appeal.

When the matter was called on for hearing today, the appellant appeared in person. He was also represented by Ms. Happiness Machage, learned advocate. The respondent failed to appear.

Prior to proceeding with the matter, I invited the learned counsel for the appellant to address me on whether the appeal was properly filed before this Court. That issue was raised after noting that the petition of appeal was filed in

this Court thereby, contravening section 38(2) of the Land Disputes Courts Act [Cap. 216, R.E. 2019] (the LDCA).

Ms. Machage readily conceded that the petition of appeal was improperly filed before this Court. She submitted that the petition of appeal ought to have been filed in District Land and Housing Tribunal. Therefore, the learned counsel urged me to strike out the appeal. However, she prayed for leave to lodge a fresh appeal.

I agree with the learned counsel for the appellant that the appeal was improperly filed in this Court. In terms of section 38(2) of the LDC, appeals against matters originating from Ward Tribunal are filed in the District Land and Housing Tribunal which passed the decision subject to appeal. The said section reads:-

"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."

The above provision is couched in mandatory terms. The appellant has no option than lodging a petition of appeal in the District Land and Housing Tribunal which gave the impugned decision. Upon receipt of a petition of appeal, the District Land and Housing Tribunal dispatches it together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to this Court. For the foresaid reasons, I hold that this appeal

was improperly filed before this Court. As a result, the record of the ward tribunal and District Land and Housing Tribunal is missing.

Eventually, the appeal is hereby struck out. Considering the interest of justice, the appellant is granted leave to file a fresh appeal in accordance with the law. It is further ordered that, the fresh appeal (if any) be lodged within thirty days from the date hereof. In the circumstances, I make no order as to costs.

DATED at MUSOMA this 29th day of November, 2021.




E.S Kisanya
JUDGE

Court: Ruling delivered this 29th day of November, 2021 in the presence of the appellant and his counsel and in the absence of the respondent.


E.S Kisanya
JUDGE
29/11/2021