

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOBIA DISTRICT REGISTRY**

**AT BUKOBIA**

**MISC. LAND APPEAL NO. 26 OF 2021**

*(Arising from the Misc. Application No. 356 of 2020 of the District Land and Housing Tribunal  
and originating from the Civil case No. 02 of 2020 of the Kaagya Ward Tribunal)*

**METHOD IGNAS.....APPELLANT**

**VERSUS**

**ALANIUS ALEX..... RESPONDENT**

**RULING**

**26/11/2021 & 14/12/2021**

**NGIGWANA, J.**

This ruling emanates from the Preliminary objections on point of law raised by the respondent through his advocate Mr. Gildon Mambo, learned advocate when filing the reply to the petition of appeal by the Appellant. The points of objection are as follows;

- 1. That, this appeal is improper before this court as it has been filed in the wrong/improper registry contrary to the law.*
- 2. That, since this appeal was filed in the wrong registry, it is improper in this court for want of payment of fees.*
- 3. That, the appeal is improper before this court as it has been brought under improper document contrary to the directions of the law.*

Addressing the court in support of the first and 3<sup>rd</sup> Preliminary objections on point of law, Mr. Gildon submitted that this matter originated from

Kaagya Ward Tribunal in Civil Case No. 02 of 2020 which later resulted into Misc. Execution Application No. 356 of 2020. He further argued that, the appellant was aggrieved by the order of the District Land and Housing Tribunal, hence filed the present appeal, and he did so vide Petition of Appeal.

Mr. Gildon further argued that, the procedure adopted by the appellant is wrong. He stated that Appeals originating from DLHT are governed by Section 38 of the Land Disputes courts Act cap. 216 R: E 2019 when a tribunal is exercising its appellate or revisional jurisdiction, and section 41 of the Act, when the DLHT is exercising its original jurisdiction.

Mr. Gildon argued that in Misc. Application No. 356 of 2020, the DLHT exercised neither appellate nor revisional jurisdiction but original jurisdiction, and for that matter the present appeal ought to have been lodged in the High Court as per section 41 of Cap 216 and since the provision does not state how the document should be, Order XXXIX rule 1 of the CPC Cap. 33 R: E 2019 must come into play. The learned counsel referred the court to the case of **Edward Otesoi versus Maingwa Mario**, Misc. Land appeal No. 36 of 2019 in which the court held that Appeal to the High court under Section 38 of the Cap. 216 R: E 2019 should be by way of petition and not memorandum of appeal.

On his side, Mr. Lameck Erasto, learned counsel for the appellant argued that the DLHT did not deal with matter of execution in its original jurisdiction because the case did not originate there but originated from

Kaagya Ward Tribunal, that is why they have not filed the memorandum of appeal under section 38 of Cap. 216 R: E 2019.

Mr. Lameck cited Section 33(3) of Cap. 216 R: E 2019 that DLHT has powers to execute its own decrees. He made reference to the marginal notes of Section 38 Cap. 216 which reads "Appeals **originating from the Ward Tribunal**" and Regulation 4 of G.N 174 OF 2003 which states that any party aggrieved by the decision of the tribunal shall have the right to appeal to the High Court. He further challenged Mr. Mambo that he had cited no specific provision (if any) different for Section 38 of Cap. 216 governing execution.

In brief rejoinder, Mambo submitted that a marginal note is not part of the law therefore should not be relied.

The issue for determination is whether the objections raised are meritorious or otherwise. In this case both counsel are in agreement that, civil Case No. 02 of 2020, was entertained by Kaagya Ward Tribunal and that it has reached the DLHT at the execution stage.

Section 33(3) of the Land Disputes Courts Act Cap. 216 and Regulation 23 of the Land Disputes Courts (The District and Land Housing Tribunal) GN. No. 174 of 2003 are relevant to the issue at stake.

Section 33(3) of Cap. 216 R: E 2019, empowers DLHT to execute its own orders and decrees as well as orders and decrees of the Ward Tribunal.

According to the herein above regulation, any decree holder, may as soon as practicable after the pronouncement of the judgment or ruling, apply for execution of the decree or order as the case may be, and upon receipt of

the application, the Chairman shall proceed to make an order requiring the judgment debtor to reply with the decree.

The tribunal was only executing the order and decree of the Ward Tribunal. It has not determined the matter on merit. It cannot be said that at that stage, it was exercising its original jurisdiction. The argument by Mr. Gildon that the DLHT was exercising its original jurisdiction was wrong. Now, what happens if the party is aggrieved by the decision of the DLHT when executing the order or decree of the Ward Tribunal?

Regulation 24 of G.N. No. 174 of 2003 provides that;

*"Any party who is aggrieved by the decision of the tribunal shall subject to the provisions of the Act, have the right to appeal to the High Court."*

The procedure in relation to the matter at hand is very that appeal is by way **petition which shall be filed in the District and Housing Tribunal from the decision, or order of which the appeal is brought.** Section 38(2) of Cap. 216 R: E 2016 provides:

***"Every appeal to the High court shall be way of petition and shall be filed in the district filed in the District Land and Housing Tribunal from which decision, or order as which court within forty-five days of the decision or order against which appeal is sought."***

Section 38 (3) of the Act provides;

***"Upon receipt of the petition under this section, the DLHT shall within fourteen days dispatch the petition together with the record of the proceedings in the ward and the District Land and Housing Tribunal to the High Court the appeal is brought."***

Another question is whether the appeal was filed in the proper registry. It is Mr. Gildon's submission that the same was not filed in the proper registry, and since no fee paid in the proper registry, the appeal is incompetent. On his side, Mr. Lameck stated that, filing is complete where the necessary fee is paid, and the appellant paid the necessary filing fee, though he conceded that the appeal was filed in the High Court Registry.

In this particular case, the appellant filed this appeal vide Exchequer receipt **No. 921059493654316 dated 23/02/2021 at 14:50:56, in the High Court district registry contrary to Section 38 (2) of the Land Disputes Courts Act, Cap. 216 R: E 2019.**

It is elementary that whenever the word "**shall**" is used in a provision, it means that the provision is imperative. This is by virtue of section 53(2) of the Interpretation of Laws Act, [Cap. 1 R.E 2019] and it reads:

*"Where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the so conferred must be performed"* See also **Godfrey Kimbe Vs. Peter Ngonyani**, Civil Appeal No. 41 of 2014 (Unreported).

This court is in agreement with Mr. Gildon that, the present appeal was filed in contravention of section 38 of Cap 216 R: E 2019, therefore, there is no way it can be allowed to stand. The remaining question is what is an appropriate order to issue?

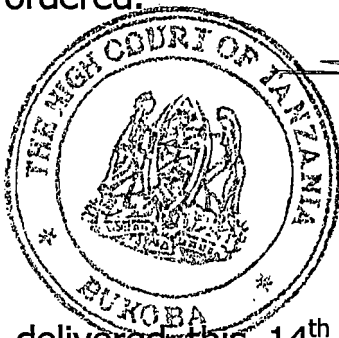
I sought much help in the case of **Bakari Mohamed versus Hadija John**, Civil Appeal No. 21 of 2018 where my learned Sister, Muruke, J. (as she then was) struck out the appeal for being filed in the High Court

Registry Contrary to Section 80 (2) of the Law of Marriage Act cap. 29 R: E 2019 which provides that;

*"Any appeal to the High Court shall be filed in the Magistrate Court within forty-five days of the decision or order against which appeal is sought".*

Indeed, I subscribe to this position, thus in the same line, Appeal No. 26 of 2021 is hereby struck out with costs for being filed in a wrong registry contrary to section 38 (1) of the Land Disputes Courts Act Cap. 216 R: E 2019.

It is so ordered.

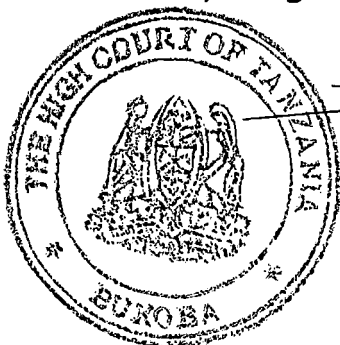


E.L. NGIGWANA

JUDGE

14/12/2021

Ruling delivered this 14<sup>th</sup> day of December, 2021 in the presence Ms. Erieth Barnabas learned advocate for the Appellant, respondent in person, Mr. E. M. Kamaleki, Judges' Law Assistant and Mr. Gosbert Rugaika B/C.



E.L. NGIGWANA

JUDGE

14/12/2021