

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

Misc. CIVIL APPLICAITON No. 12 OF 2022

(Arising from the High Court (Musoma District Registry) in Misc. Land Appeal Case No. 76 of 2021; the District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 76 of 2020; Originating from Itaro Ward Tribunal in Land Dispute No. 2 of 2018)

BWIRE MTUNDI APPLICANT

Versus

MASATU EKONJO RESPONDENT

RULING

15.06.2022 & 15.06.2022

Mtulya, J.:

This court on 22nd March 2022 delivered a judgment in **Misc Land Appeal Case No. 76 of 2021** (the appeal) and had produced two (2) paragraphs at page 7 & 8 of the judgment. The first paragraph at page 7 of the judgment shows that:

...non-disclosure of the land value in the ward tribunal is not fatal unless there is clear evidence from either party that the value is above the pecuniary jurisdiction of the ward tribunal.

The second passage is displayed at page 8 of the judgment and was drafted in the following words:

There is no provision barring the ward tribunal from conducting ex-parte hearing. Section 15(2) of the Ward

Tribunals Act gives ward tribunal powers to regulate its own proceedings in case of lacuna.

The two (2) paragraphs which are related to the final determination of the appeal aggrieved the appellant hence preferred the present application alleging that there are points of law to be scrutinized by our superior court, the Court of Appeal (the Court). Following the thinking of the appellant, he moved into hiring the legal services of Mr. Noah Mwakisisile to persuade this court to decide the application in his favour.

The application was scheduled for hearing today morning and the court was ready to receive materials in favour and against the application. However, Mr. Sifael Muguli, as an officer of this court, appearing for the defendant, was very gentle person as he readily conceded the application with one reservation on two (2) points of law raised by the applicant in the fourth paragraph of the applicant's affidavit.

Mr. Muguli submitted that the application has merit save for the third and fourth point in the applicant's affidavit regarding constitution of the ward tribunal and reasons for decision of the chairman in departing with assessors' opinions. This thinking was well received by Mr. Mwakisisile who briefly submitted that the first and second issues in the fourth paragraph of the applicant's

affidavit have merit as they originated from this court and the other two (2) points were merely raised in the application to ask an intervention of the Court on a claim of illegality.

I have scanned the record of this application and found out that the applicant had filed the application on 20th April 2022 with the support of affidavit. The fourth paragraph of the applicant's affidavit shows four (4) complaints related to: first, uncertainty of land value and jurisdiction of the ward tribunal; second, powers of ward tribunal in issuing *ex-parte* orders; third, constitution of the ward tribunal; and finally failure of the first appellate tribunal to give reasons in departing from assessors' opinions.

Mr. Muguli thinks that the first and second complaints have merit as they were under conversations and determinations of this court hence the Court may be invited to resolve the matters. However, Mr. Muguli had reservations with the third and fourth grounds in the fourth paragraph of applicant's affidavit, and his reservations were well echoed by Mr. Mwakisisile. The reasons registered by Mr. Mwakisisile are vivid that the points raised were not brought in previous discussions and conversation in this court hence cannot be raised at this stage of the application.

On my part, and considering this is a court of law and justice, and noting the two (2) cited matters in the first and second sub

paragraphs of paragraph four of the applicant's affidavit touch points of law, and I am aware that there is arguable issues of sufficient importance, and moved by the right of appeal which has already received both human and constitutional enactments in our Bill of Rights through article 13(6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2019], I think, in my considered opinion, to grant the application in order to cherish the right. I let the contest to take its course in our superior court, the Court for determination.

That has been the practice of this court in applications like the present one. There is large family of precedents on the subject. (see: **Joseph Jacob Kahungwa v. Rhobi Kikaro & Eight Others**, Misc. Land Application No. 104 of 2021; **Robert Wema Bayongo Bukuru v. Clara Barakaboji & Another**, Misc. Land Application No. 15 of 2020; **Doto Gavana v. Thabita Komboka**, Misc. Land Application No. 81 of 2021; **Nelimanase Foya v. Mamian Mlinga**, Misc. Appeal No. 19 of 1999; **Gaudencia Mzungu v IDM Mzumbe**, Civil Application No. 94 of 1994; **Grupp v. Jangwani Sea Breeze Lodge Ltd**, Commercial Case 5 No. 93 of 2002; **Garende Nyabange v. Nyanzara Nyabange**, Misc. Civil Application No. 34 of 2021

Having said so, I allow the application without costs. The reason is obvious that the two (2) gentlemen who appeared for the parties today in this court are fully aware of the enactments in

section 66 of the **Advocates Act** [Cap. 341 R.E. 2019] on officers of this court and section 3(A) & (B) of the **Civil Procedure Code** [Cap. 33 R.E. 2019] on appreciation of the principle of overriding objectives. In the end, the applicant is granted leave to access the Court. However, the applicant must abide with the laws regulating appeals from this court to the Court.

Ordered accordingly.



F. H. Mtulya

Judge

15.6.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the parties, Mr. Bwire Mtundi and Mr. Masatu Ekonjo and in the presence of their learned counsels, Mr. Noah Mwakisisile and Mr. Sifael Muguli.



F. H. Mtulya

Judge

15.06.2022