

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

**LAND APPEAL NO. 35 OF 2021**

*(Originating from Land Dispute No. 183 of 2015 at the District Land and Housing Tribunal for Morogoro).*

**NELSON MAYOMBO .....1<sup>ST</sup> APPELLANT**

**JENIFA MAYOMBO .....2<sup>ND</sup> APPELLANT**

**VERSUS**

**HALIMA YASINI MASANJA ..... RESPONDENT**

**JUDGMENT**

*Hearing date: 10/6/2022*

*Judgement on: 13/6/2022*

**NGWEMBE, J:**

This appeal is questioning the mode and style of judgement writing applied by the Chairman of the Land and Housing Tribunal for Morogoro. That the appellant was aggrieved by the judgement and decree of the tribunal thus, preferred to exercise their rights to appeal to this court.

The genesis of this appeal is a sale of a house. Originally such house was owned by the Government as Government Quarters for her civil servants. The respondent herein and Ramadhani Issa Kiswili were married



and stayed in that quarter since 1972 to 1990, when the Government decided to sale those quarters to the tenants. Such house was offered to Ramadhani Issa Kiswili for an amount of TZS. 1,819,000/=. However, Kiswili decided to sale it to Wolfram Alexander Ngonyani now deceased for an amount of TZS. 7,000,000/=. All necessary transfer documents were executed in favour of Wolfram Alexander Ngonyani. Upon demise of the true owner of that house, the administrator of his estate Nelson Mayombo was appointed by the court. In the cause of execution of his duties as an administrator, the respondent herein, objected to cause vacant possession of the suit house, hence the matter landed before the tribunal. At the end the tribunal decree that:-

1. The applicant's prayers fail except that as a wife of the seller Ramadhani Issa Kiswili has an option to redeem the suit property by compensating the owner at present market value after valuation report has been prepared by Government Valuer;
2. Dismiss the applicant's claims;
3. Due to relationship of the applicant and her husband Ramadhani Issa Kiswili, neither party should pay costs.
4. The administrator is entitled to vacant possession unless compensated.

Those orders triggered the appellant to come to this court clothed with five grounds which all centers on propriate of those orders. The grounds of appeal are quoted hereunder:-

1. The Chairperson erred in law and in fact to continue determining the application after being dismissed;

2. The chairperson lacked jurisdiction to continue determining the application after the respondent's prayers being dismissed;
3. The chairperson erred in law and in fact for raising new issues *suo motto* during composing the judgement but allowing the respondent to redeem the disputed land by paying compensation without affording the parties opportunity to be heard;
4. The chairperson erred in law and in fact to base its decision on the issue of redeeming the disputed land, while it was not among the prayers by the respondent in her application; and
5. The chairperson erred in law and in fact for failure to evaluate the evidence in court's record.

On the hearing date of this appeal, both sides procured legal services of learned advocates. While the appellant was represented by advocate Kazaizi Andrew, the respondent was represented by Ezeckiel Joel.

Arguing on the grounds of appeal, advocate Kazaizi submitted jointly grounds 1 and 2, and grounds 3 & 4 while arguing ground five separately. Briefly, he argued that, since the application was dismissed, the tribunal had no jurisdiction to proceed issuing subsequent orders. The issue of redeeming the suit house was done outside the tribunal's jurisdiction. Such decision led into a misleading decree. Therefore, rested by a prayer that whatever said after dismissal order was nullity.

Submitting on grounds 3 & 4 insisted that, the prayers comprised in the applicant's application had no prayer for redemption of the suit house and that there were neither evidence nor issue raised for that effect.



Insisted that the chairman ought to invite parties to address on the issue raised by the court *suo motto*. Referred this court to the case of **Samuel Munsiro Vs. Chacha Mwikwabe, civil application No. 539 of 2019; and in another case of Kluane Drilling (T) Ltd Vs. Salvatory Kimboka, Civil Appeal No. 75 of 2006**. That once an issue is raised *suo motto* by the court, it has a duty to invite parties to address on same, failure of which is fatal.

The last ground was briefly argued, had the chairperson considered properly on the evidences adduced therein, he would have arrived into a different conclusion. In totally, he invited this court to allow this appeal and set aside the tribunal's judgement and costs be awarded.

In reply Mr. Ezeckiel briefly argued that, the whole arguments and grounds of this appeal are intended to mislead the court. Referred this court to page 4 of the tribunal's judgement which speaks clearly and the tribunal had full jurisdiction to decide what it did. Rested by blessing the trial tribunal's judgement that was based on evaluated evidences adduced by both sides. Thus, invited this court to dismiss the appeal with costs.

As I have pointed out from the beginning, this appeal is a result of stylistics of judgement writing, however certain principles must always be observed in judgement writing. Judgement may be defined to mean a summary of all facts adduced in court; observation of demeanour of witnesses; proper application of laws; rules; directives; and precedents where necessary; consideration of proper arguments advanced by both parties; and analysis of those facts in line with law applicable. Upon doing so, if the case before the court is criminal, then follows conviction or



acquittal, in case of conviction, then it is followed with aggravating factors, if any, mitigating factors, if any, finally sentence and pronouncement of right to appeal to the superior court.

In civil trials including land matters, the contents of judgement is provided for under **Order XX Rule 4 of CPC** as quoted hereunder:-

*"A judgement shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision"*

One eminent Jurist **A.D. Singh's** on **Judgements and How to Write them, 4<sup>th</sup> edition**, defined judgement to mean an *expression of the opinion of a judge arrived at after due consideration of the evidence and of the arguments advanced before him*. It is a final verdict of the trial of an accused or appellant. It is a cardinal principle which must not be forgotten that, a court judgement should be based strictly on the evidence on record, and not on outside evidence, however acquired.

The late Judge Buxton D. Chipeta in his book **Civil Procedure in Tanzania, A Student Manual**, at page 203 defined judgement in a civil suit to mean:-

*"a reasoned account and exposition of the principles of law applicable to such facts and the decision to the rights and liabilities of the parties to the suit"*

Moreover, the Court of Appeal in the case of **Hamis Rajabu Dibagula Vs. R, [2004] T.L.R. 196** emphasized by holding that:-

*"A judgement must convey some indication that the judge or magistrate has applied his mind to the evidence on the*



*record. A good judgement is **clear, systematic and straight forward.** Every judgement should state the **fact of the case**, establishing each fact by reference to the particular evidence by which it is supported and it should give sufficiently and plainly the reason which justify the finding."*

Therefore, it is settled in our jurisdiction that Court/Tribunal's judgement must be clear in respect of material facts and particulars of the issues in disputed; systematic, that is, flow of logical thinking up to its conclusion; straight forward; and clear in terms of its conclusion. If the case is dismissed, that is the final verdict of the court. However, the court or tribunal may have an *obita dicta*, which does not bind the court or is not part of *stare decisis*.

From that understanding, it goes like a day followed by night, that when the court/tribunal dismisses an action/suit, means no liability to the defendant/respondent. Dismissal is defined by **Black's Law Dictionary** (8<sup>th</sup> Edition) to mean *termination without further hearing, to release or discharge from liability. Termination from an action or claim without further hearing, before the trial of the issues involved.*

Once the action/suit is dismissed, before the court or tribunal nothing remains. The claimant's allegations are rejected and the defendant/respondent is relieved from any liability.

In respect to this appeal, the tribunal decreed that, the claims of the respondent herein was unsubstantiated, hence dismissed. After dismissal of those claims, before the tribunal remained nothing to be considered. As

such I agree with the arguments of the appellant that the trial tribunal composed its judgement contrary to the basic principles of proper judgement writing. The tribunal had nothing before it to decide after dismissing the application.

It is further known in law, that the court is mandated to decide what is before it, it has no jurisdiction to decide what is not before the tribunal. The issue of compensation or redemption was neither raised in the pleadings nor raised as an issue for determination nor argued by parties. Therefore, it is a cardinal principle of law which should not be forgotten that court must decide what is pleaded by the parties. The subsequent principle" which is in line with it, is that "parties are bound by their pleadings. If they want to raise an issue viable for consideration by the court or tribunal, that issue must be pleaded. In the case of **Fatma Idha Salum Vs. Khallida Hamis Said, Civil appeal No. 28 of 2002**, the Court of Appeal emphasized on this point as fundamental principle of court's jurisdiction to decide matters before it. The court held:

*"With all due respect to both the District court and the Regional Court, this issue were not pleaded and should not have been considered, it is now settled law that the only way to raise issue before the court for consideration and determination is through pleading and as far as we are aware off, this is the only way. Order VII Rule 8 of CPC"*

If an issue is not pleaded, parties are not allowed to raise it. However, the court, during composition of a judgement, may find a pertinent legal issue, parties must be invited to address it prior to delivery

of such judgement. This principle is backed by the well-known principle of *Audi alteram Partem* that is the right to be heard prior to the court verdict.

Perusing on the whole judgement of the trial tribunal, I have no slight doubt, the chairperson misdirected his mind to raise the issue of redemption of the suit house by paying compensation based on the current valuation report without affording parties to be heard. I agree with the appellant that the issue of redemption or compensation did not arise because the tribunal was satisfied that the suit house was a property of the late Wolfram Alexander Ngonyani, now under administration of Nelson Mayombo. If the respondent herein, wanted such house she should purchase it under pleasure of the appellant. Therefore, the issue of redemption or compensation was not for the tribunal to decide.

Without laboring much on this appeal, obvious the chairperson of the tribunal misdirected his mind in deciding matters/issues which were not before it. Accordingly, I allow this appeal, quash and set aside all subsequent orders issued by the tribunal after dismissal order. Since the source of this appeal is not born from either party rather arose from misdirection of the trial chairperson, I find just and equity to order each party to bear his/her own costs.

**I accordingly order.**



**P.J. NGWEMBE**

**JUDGE**

**13/6/2022**



**Court:** Judgement is delivered at Morogoro in Chambers on this 13<sup>th</sup> day of June, 2022 in the presence of all parties.

**Right to appeal to the Court of Appeal explained.**



A handwritten signature in blue ink, appearing to be "P.J. Ngwembe".

**P.J. NGWEMBE**

**JUDGE**

**13/6/2022**