

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

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPEAL NO 100 OF 2021**

*(Arising from Misc. Land Application No 460 of 2018 District Land and Housing Tribunal at Musoma and Original Land Case No 20 of 2018, Ward Tribunal of Nyamrandirira)*

**MRADI MAREGESI ..... APPELLANT**

***VERSUS***

**MAGAFU NYAGONDA..... RESPONDENT**

**JUDGMENT**

31<sup>st</sup> March & 1<sup>st</sup> April, 2022

**F.H. MAHIMBALI, J.:**

The respondent Magafu Nyagonda while being CCM secretary of Kasoma Branch filed a Land suit at Nyamrandira Ward Tribunal against the appellant for a claim of land allegedly invaded by him. It is alleged that the respondent filed the said suit on behalf of CCM. He won the case.

Aggrieved by that decision, the appellant unsuccessfully filed an application for extension of time to file appeal before the DLHT for Mara at Musoma to challenge the said appeal.

Dissatisfied, he has appealed this court on two grounds namely:

1. Since there are irregularities that the respondent admitted and since the same were to be remedied by the District Land and Housing Tribunal upon extension of time to appeal, the honourable tribunal chairperson erred on point of law to condone by the glaring irregularities by declining to extend time to appeal.
2. Since the respondent alleged stood for a political party that could only sue through Registered Trustees, the District Land and Housing Tribunal chairman erred on point of law when:
  - a) Having declined to extend time to appeal, ought to have resulted to revision to ameliorate the trial proceedings.
  - b) He let it go, despite the irregularities that was vivid and plainly offensive to the law.
  - c) He compromised his discretion to the detriment of propriety of the proceedings and record.

During the hearing of the appeal, Mr. Makowe learned advocate represented the appellant whereas the respondent appeared in person. Interestingly, prior to the commencement of appeal hearing, the respondent raised a concern that he is no longer CCM leader, thus has no further locus to stand for the matter.

In arguing the appeal generally Mr. Makowe submitted that as per law, the DLHT erred in law for failure to grant extension of time to file appeal out of time on ground of illegality. That as per proceedings at the trial Ward Tribunal, the respondent filed a suit on behalf of CCM while there was no authorization as per law for him to act for CCM as alleged (page 1 of the typed proceedings). As the error was an obvious, the DLHT erred in not granting that application of extension of time.

Secondly, the respondent has not established anywhere that he was mandated to do so by CCM as alleged.

In supporting his submission, he cited the case of **Principal Secretary of Ministry of Defense vs Deviam Valambia** (1992) TLR 387 and also the case of **Transport Equipment Ltd vs Deviam P. Valambia** (1993) TLR 91. That amongst other things the Court of Appeal held that on issue of "illegality" an application for extension of time be granted for it to be dealt with as per law.

Following this position of the law, he argued this Court to consider the appeal as meritorious as the DLHT failed to accord the application before it meritoriously. On this, he prayed that this Court not only to allow the appeal but considering the respondent's own reply before the Court today the whole proceedings are nullity. Thus under section 43

(1)b of the LDCA, this court be pleased to quash the proceedings of the two lower tribunals and set aside their respective orders.

I have cortically traversed the both lower tribunals' record, I am satisfied that the respondent had no locus standi to sue the appellant on behalf of CCM. Not only had he no legal capacity to sue on behalf of CCM, he being CCM leader, and CCM being a legal entity it is sued or only sues by its Registered Trustees (See the cases of **Lujuna Shubi Balози vs Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203 and **Madam Mary Silvanus Qurro vs Edith Kweka and another**, Civil Appeal No 102 of 2016, CAT at Arusha).

In the case at hand, since the respondent was not a competent person to sue on behalf of CCM, the DLHT ought to have considered the application for extension of time to file out of time so as to determine the illegality pointed out (see the case of **Principal Secretary Ministry of Defense vs Devram Valambia** (1992) TLR 387).

Since the respondent has admitted the same before me today, that he just sued on behalf of CCM and that currently he is no longer CCM leader of that post, then he is no longer having locus of the matter, I am compelled to intervene.

That being a leader, by itself is not grant of authority to sue or being sued but the entity itself unless one is dully mandated so. In the absence of that mandate, the respondent wrongly filed the said suit by his name purportedly on behalf of CCM. CCM could only sue for that claim via its registered entity i.e Registered Trustees of CCM and not by individuals.

That said, both lower tribunals' proceedings were vitiated. The same are hereby declared nullity.

By virtue of section 43 (1) of LDCA, the proceedings and decision/orders emanating thereof are hereby quashed and set aside.

In the circumstances of this case, each party shall bear its own costs.

DATED at MUSOMA this 1<sup>st</sup> day of April, 2022.



F. H. Mahimbali

Judge

01/04/2022