

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

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**LAND APPEAL NO. 09 OF 2022**

**(Arising from Land Application No. 63 of 2012 of the District Land and Housing for  
Kigoma)**

**ZAID JUMANNE ZAID**

**VERSUS**

**PILI RAJABU ABDALLAH**

**RULING**

**13/07/2022 & 22/07/2022**

**MANYANDA, J.**

This ruling concern one question of law raised *suo moto* by this Court and parties dully invited to address it. The appeal is headed "sababu za rufaa". Literally means "reasons for appeal". It is about propriety or otherwise of the appeal which has not been brought in a language used in the original pleadings and proceedings of the case and the judgement, which is English and so headed.



The Counsel for the Respondent also made a reply in a language other than that used in the original pleadings and proceedings, the rejoinder to reply to the appeal also is not in the original proceeding's language.

The Appellant is appearing in person while the Respondent is represented by Mr. Method R. G. Kabuguzi, learned Advocate.

Posed with the said legal question, the Appellant, been a lay person had nothing to assist the Court other than stating that he is unrepresented and that the appeal was accepted by the registry.

On the other hand, the Counsel for Respondent submitted that the reply was not composed in the language of the pleadings and proceedings and judgement after seeing the appeal was not composed in the language of the original proceedings and judgement and decree.

In this appeal the Appellant is challenging a judgement of the District Land and Housing Tribunal for Kigoma in respect of Land Application No. 63 of 2012 which was delivered on 06/07/2020. The Appellant was a Respondent in the impugned proceedings and judgement. The DLHT decided in favour of the Respondent, who was the Applicant in the DLHT and ordered the Appellant (Respondent in the DLHT) to vacate from the suit property.



The Appellant determined to appeal against the DLHT decision, however, since he was out of time, the Appellant successfully applied for extension of time before this Court in Miscellaneous Land Application No. 59 of 2021. After been granted with extension of time, the Appellant filed the current appeal in a different language from which the original pleadings and proceedings, and the application for extension of time in this Court, were recorded.

Pursuant to Act No. 1 of 2021, known as the Written Laws (Miscellaneous Amendments) Act, 2021 some amendments were made to the Interpretation of Laws Act, [Cap. 1 R. E. 2019] involving the provisions of section 84. Whereas subsection (1) of the said section 84 was deleted and substituted with a new subsection which reads as follows: -

*"(1) The language of laws of the United Republic shall be Kiswahili."*

Moreover, a new section 84A was introduced in Cap. 1 which put an overriding requirement to courts, tribunals and other bodies charged with a duty of dispensing justice to use Kiswahili when dispensing justice. The provision reads as follows: -

*"84A.-(1) Notwithstanding any other written law, the language of courts, tribunals and other bodies charged with the duties of dispensing justice shall be Kiswahili."*



Sub-section (2) thereof puts a proviso that English language may be used where the interest of justice so desires provided further that such proceedings and the decision thereof will have to be interpreted in Kiswahili. Further that in case of conflict, the language of the proceeding takes precedence.

In sub-section (5) the Chief Justice is to make rules for the better carrying out of the provisions of section 34A whereas in doing so he may consult the Minister responsible for legal affairs. It reads as follows: -

*"84A(5) The Chief Justice may, in consultation with the Minister responsible for legal affairs, make rules for the better carrying out of the provisions of subsections (2), (3) and (4)."*

The amendments also affected the provisions of section 32 of the Land Disputes Courts Act, [Cap. 216 R. E. 2019] which was repealed. That provision required the Land Tribunals and Courts to use Kiswahili language but keep records in English. The amendments further affected the provisions of section 13 of the Magistrates' Courts Act, [Cap. 11 R. E. 2019] which required the language and record of courts to be English.

The totality of amendments effected on Cap. 1 is to make Kiswahili a language of the courts and tribunals and other bodies charged with a duty of dispensing with justice. An exception, which is optional, is where interest of justice so requires, English language may be used subject to

translation into Kiswahili and further subject to rules to be made by the Chief Justice.

However, the date of Act No. 1 of 2021 to come into operation depended on a date to be appointed by the Minister responsible with legal affairs.

The Minister through the Written Laws (Miscellaneous Amendment (Date of Commencement) Notice, Government Notice No. 4961 published on 30/06/2021, appointed 09/07/2021 to be a date the Written Laws (Miscellaneous Amendment) Act No. 1 of 2021 to come into operation.

This means that Act No. 1 came into force on 09/07/2021. Despite coming into force of the law, yet the Chief Justice had not released the guiding rules on better carrying out of the provisions of Act No. 1 of 2021.

On 4/2/2022, the Chief Justice, issued the rules guiding better carrying out of the provisions of Act No. 1 of 2021 known as the Interpretation of Laws (Use of English Language in Courts) (Circumstances and Conditions) Rules, 2022, via GN No. 66 published on 4/2/2022.

Part II of the Rules provides for circumstances and conditions where the use of English language in courts is permissible. It is where pleadings, proceedings or decisions relate to matters stipulated in the Schedule to

the Rules. The said matters as listed in the Schedule include circumstances where: -

- (a) either of the parties or their representatives to the proceedings are not Swahili speakers;
- (b) the matter is about an international investments dispute; (c) the matter is about a foreign trade or business;
- (d) the matter involves a finance and monetary affairs;
- (e) the matter is about tax and taxation;
- (f) the matter relates to International, Regional or Sub Regional affairs;
- (g) the law governing the matter subject of litigation, and the practice and procedure thereto are not available in Kiswahili language;
- (h) matters of science and technology are involved; or
- (i) for any other reason the interest of justice demands so.

As it can be seen, the said matters are disjunctively listed, that means one of such matter permits the use of English language.

In the matter at hand, both the proceedings were initiated in English language, the pleadings, proceedings and judgement are in English





language. Moreover, the applicable law governing the matter subject of litigation and the practice and procedure thereto all are not available in Kiswahili language.

Amendments effected to section 84(2) of the Interpretation of Laws Act, Cap. 1 by the Written Laws (Miscellaneous Amendments) (No.3) Act, No. 6 of 2020 imposes a duty to the Attorney General to interpret the laws which are enacted in English language into Kiswahili language. The relevant provision reads as follows: -

*"(2) The Attorney General may translate any written law from one language of enactment into another and, by notice in the Gazette, publish the version which is translated."*

The purposes of this requirement was ensure that official translations of the laws exists in order to avoid minimize conflicting constructions by judicial officers. However, to date the laws and the procedures governing land disputes, including the instant case, which are in English language are yet to be so interpreted.

Therefore, it follows that, in the instant matter, presentation of the so called "sababu za rufaa" which is not known whether the same is a petition or memorandum of appeal is makes the appeal incompetent before this Court. I say so because, the pleadings and proceedings and the impugned judgement all are and the law governing the procedures

and practice is in English language. Secondary as stated above, the applicable laws are in English language.

In the upshot based on the above reasons, I am constrained to strike out the so called "sababu za rufaa" purported to be an appeal, the Appellant, if so wishes, may file a proper appeal under the proper language. No order as to costs.

Dated at Kigoma this 22<sup>nd</sup> day of July 2022



  
**MANYANDA**

**JUDGE**