

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA DISTRICT REGISTRY)

AT IRINGA

LAND APPEAL NO. 20 OF 2020

*(Originated from the District Land and Housing Tribunal of Njombe at Njombe in
Misc. Application No. 29 of 2018)*

ADAM MHAGAMA APPELLANT

VERSUS

ABOUBAKAR MANGULARESPONDENT

RULING

Date of last order: 24/03/2022

Date of Ruling: 29/07/2022

MLYAMBINA, J.

The Appellant, Adam Hagama appealed to this Court against the decision of the District Land and Housing Tribunal of Njombe (here in after referred to as the Tribunal). Before the Tribunal, the Appellant filed an application seeking for leave to file bill of cost out of time prescribed by the law. Unfortunately, the Tribunal dismissed his application for failure to advance sufficient reasons.

Being aggrieved, the Appellant filed this appeal to challenge the said decision. His petition of appeal contained two grounds of appeal which are as follows:

- i. That, the District Chairperson erred in law and fact for failure to properly evaluate the evidence adduced by the Appellant as a result he wrongly decided the case in favour of the Respondent; and*
- ii. That, the District Chairperson erred in law and fact by dismissing the application for extension of time with cost.*

The Respondent filed his reply to the petition of appeal accompanied with the notice of preliminary objection against the appeal to the effect that:

This appeal has contravened section 38 (3) of the Land Disputes Court Act [Cap 216 R. E. 2019].

At the date scheduled for hearing of the point of preliminary objection, both parties appeared in person. The said preliminary objection was heard orally. The Respondent while arguing his point of preliminary objection, averred that the Appellant was supposed to file his appeal at the Tribunal of Njombe because the matter originated from Mtwango Ward Tribunal. The decision of the Ward Tribunal was in his favour but the decision was overruled before the Tribunal because he filed the case on behalf of the deceased without being appointed as an Administrator of the estate of the deceased. He prayed this appeal to be

struck out for contravening *section 38(3) of the Land Disputes Courts Act (supra)*.

In his reply, the Appellant conceded to the point of preliminary objection raised by the Respondent. He submitted that his Advocate was at fault for filing this appeal direct to this Court instead of filing at the District Land and Housing Tribunal.

Based on the arguments of the parties, it can be noted that the Appellant conceded that this appeal contravenes with the provision of *section 38 (3) of the Land Disputes Courts Act (supra)*. For easy reference the afore mentioned provision provides that:

38 (1) N/A

(2) N/A

(3) Upon receipt of a petition under this section, the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court.

As it can be noted above, *Section 38 (3) of the Land Disputes Courts Act (supra)*, requires whoever aggrieved with the decision of the Tribunal in its appellate jurisdiction to file his case before the same Tribunal. It is upon that Tribunal to submit the records including the record of the Trial Ward Tribunal to the High Court within fourteen days. In the premises, this Court finds that the Appellant filed his appeal in the wrong registry which contravene the requirement of the provision of *section 38(3) of the Land Disputes Courts Act (supra)*. I therefore struck out the appeal for being filed in a wrong registry. Costs to follow event. Order accordingly



Y. J. MLYAMBINA
JUDGE

29/07/2022

Ruling delivered and dated 29th day of July, 2022 through Video Conferencing in the presence of the Appellant and the Respondent who were stationed at High Court of Tanzania Iringa Registry premises. Right of Appeal fully explained.



Y. J. MLYAMBINA
JUDGE

29/07/2022