

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

LAND APPEAL NO. 81 OF 2021

*(C/f Land Appeal No. 16/2021 Originating from Application No 01/2020
Sombetini Ward Tribunal)*

ALLEN ELIMELECK SANDI APPELLANT

VERSUS

EVALINE AWICHI MOSHA RESPONDENT

RULING

20/6/2022 & 01/08/2022

KAMUZORA, J.

The Appellant Allen Elimeleck Sandi being dissatisfied with the decision issued by the District Land and Housing Tribunal exercising its appellate power preferred an appeal to this court. The Respondent lodged a notice of preliminary objection on point of law against the petition of appeal filed by the Appellant that,

"The Appeal is improper (incompetent) before the Honourable Court for not filed in the District Land and Housing Tribunal of Arusha at Arusha thus it contravenes the mandatory provision of section 38(2) of the Land Disputes Courts Act, Cap 216 R.E 2019."

With the leave of this court, hearing of the preliminary objection was conducted by way of written submissions. As a matter of legal representation, the Appellant was represented by Mr. Kapimpiti Mgalula a learned advocate while the Respondent enjoyed the service of Mr. Kennedy Jeremia Mapima, learned advocate. Both parties filed their submission as scheduled save that the Respondent opted not to file rejoinder submission.

In his written submission in support of the preliminary objection, the counsel for the Respondent submitted that, the Appellant filed this appeal at the registry of the High Court at Arusha and not at the District Land and Housing Tribunal of Arusha, a fact which contravenes the mandatory provisions of section 38(2) of the Land Disputes Courts Act, Cap 216 R.E 2019. He argued that, it is a trite law that all appeals from the DLHT in matters originating from Ward Tribunal may be lodged within 60 days after the date of the decision or order to the High Court as per section 38 (1) of the Act. That, section 38(2) of Cap 216 R.E 2019 sets the procedure on how to file the appeal and the relevant document which initiate an appeal. That, the provision requires an appeal to the High Court to be by way of petition and be filed in the DLHT which gave the decision appealed against. He insisted that, the provision use the

word 'SHALL' and according to **Black's Law Dictionary 10th Edition** page 1585 it means, "*has a duty to, connote as mandatory*"

The counsel for the Respondent argued that, the instance appeal was filed upon payment of filing fees as shown in exchequer receipt No. EC101155949121P paid by Richard Massawe who is neither the Appellant nor an advocate for the Appellant so filed by a person not a party to the case. He added that, the same was filed in the registry of the High Court as reflected in the receiving seal stamp at page 1 of the petition of appeal. The counsel was of the view that, since the procedure in filing was not adhered to then the appeal is incompetent to be determined by this court and the remedy is to struck out with costs.

Responding to the raised point of preliminary objection, the counsel for the Appellant argued that, the preliminary objection raised is vexious and flavourers by lacking the quality of being a preliminary objection as it contains proof by evidence to support it contrary to the principle established in the land mark case of **Mukisa Biscuit Manufacturing Company Ltd Vs. West End Distributors Ltd** (1969) E.A 696 at page 700, **The Saitabao Village Council Vs. Tanzania Breweries Limited and another**, Civil Appeal No 105 of 2011, **Ottu and**

another Vs. Iddi Simba Ministries For Industries and Trade and Others (2000) TLR 88.

The Appellant's counsel argued that, the Respondent counsel submitted and presented a proof of exchequer receipt contending that the appeal is incompetent and deserves to be struck out by reason that the person who paid is Richard Massawe who is neither the Appellant nor the advocate for the Appellant. That, the Respondent's counsel failed to state the provision of the law that bars the person who is not a party to the Appeal to make payment and requires only the parties to the suit to make payment. That, what the courts requires is for payments to be made and effected in order to register the appeal but where the money comes from is not the concern of the court. In support of his argument, he cited the case of **Theresia Nemes Lasway vs. Grace Joiseph Swai**, Civil Revision No 02 of 2021. He added that, the Respondents counsel failed to state on how the compliance of the court's fees made by Richard Massawe who is not the Appellant had occasioned miscarriage of justice and prejudiced the Respondent.

The counsel for the Appellant maintained that, the appeal was properly submitted within the prescribed time and in line with the mandatory provision of section 38(2) of Cap 216 R.E 2019 and the DLHT

dully complied and dispatched the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal within 14 days to the Deputy registrar of the High Court of Tanzania at Arusha. That, upon compliance to the law, the case was assigned to the presiding judge.

On the issue of the receiving stamp at page 1 of the petition, the counsel for the Appellant argued that, the Respondent submitted by proof and evidence in his submission contrary to the requirement of the Rule established in the case of **Mukisa Biscuits**. That, the Respondent's counsel failed to cite the provision of the law which requires a stamp to be of the DLHT. He insisted that, the High Court dully stamped a receipt stamp after considering that the DLHT fully complied with all the requirement of section 38(2) (3) of the Land Disputes Courts Act. That, had the DLHT failed to comply with the prerequisites procedures the petition of appeal could not have been received by the High Court.

The counsel for the Appellant finalised by stating that, the objection raised by the Respondent's counsel requires evidence and proof from the tribunals office so as to justify to the high court thus making it unfit to regard it as a preliminary objection. He prays that the preliminary

objection be dismissed with costs as it aims at wasting the court's time and deny justice to the Appellant.

I have considered the records and the submissions by the counsel for the parties in regard to the raised point of preliminary objection. The counsel for both parties agree to the fact that this appeal originate from the Ward Tribunal. It is clear that appeals originating from Ward Tribunal to this court is governed by section 38 (1) (2) and (3) of the Land Disputes Courts Act Cap 216 R.E 2019. The more relevant provision in this matter is subsection 2 of section 38 to which the preliminary objection lies. The said provision read: -

*"(2) Every appeal to the High Court shall be by way of petition and **shall be filed in the District Land and Housing Tribunal from the decision, or order of which the appeal is brought**" (Bold Emphasis provided).*

The above provision clearly requires the petition of appeal to be filed in the District Land and Housing Tribunal from where the decision or order appealed from is brought. It is elementary rule that whenever the word "shall" is used in a provision, it means that the provision is imperative. This is by virtue of section 53(2) of the Interpretation of Laws Act, [Cap. 1 R.E 2019] which reads:

"Where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the so conferred must be performed".

More emphasis was given by the Court of Appeal of Tanzania in numerous decisions. The case of **National Bank of Commerce Vs. Commissioner General Tanzania Revenue Authority**, Civil Appeal No 52 of 2018 CAT at Dodoma (Unreported) was cited in approval in the case of **Chiriko Haruna David Vs. Kangi Alphaxard Lugora & two others**, Civil Appeal No. 36 of 2012 (unreported), which held that,

"We wish to observe here by way of emphasis even if it is at the expense of repeating ourselves that one of the cardinal rules of construction is that courts should give legislation its plain meaning."

Based on the above provision and case law it is my stand that, the requirement to lodge an appeal to the DLHT and not to the High court for matters originating from the Ward Tribunal is not optional rather a clear and mandatory requirement of the law. It is the contention from the counsel for the Appellant that the said requirement was complied with and it is the reason why the Deputy Registrar admitted the appeal and the Judge in charge assigned the matter to the presiding judge for its determination.

I do not agree with the submission by the counsel of the Appellant that the procedures for filing were adhered to. The mere fact that the records of the tribunal are available to this court does not automatically mean that the required procedure have been adhered to by the Appellant in lodging this appeal. As a matter of procedure, where the document is filed in the respective registry, it is stamped by that registry and the control number for payment of court fees issued.

In the present matter, the document was stamped by the High Court seal and the receipt for payment of court fees No. C1011559491271P dated on 16/12/2021 was issued by the High Court meaning that it is the court to which the appeal was lodged. Thus, the contention by the counsel for the Appellant that the appeal was initially lodged to the DLHT and forwarded to this court is baseless as the documents does not bare even a receiving stamp to justify such an argument.

It was contended by the counsel for the Appellant what was raised by the counsel for the Respondent does not meet the test of a preliminary objection as ascribed in the case of **Mukisa Biscuits** (supra). He argued that, the preliminary objection raised needs evidence from the DLHT to clarify if the requirement was adhered to. He was of

the view that, since the records and proceedings of the DLHT has been forwarded to this court, there was a compliance of the law by the Appellant.

As prior pointed out, the fact that the records were forwarded to this court is not a conclusive fact that the appeal was lodged to the DLHT. Forwarding of the records to the High court from the lower courts/tribunal can also be done administratively. It is not true that evidence is needed in this matter for one to prove that the appeal documents were filed at the DLHT and not at the High Court. The document themselves reveal such fact without need for evidence. The receiving stamp is that of the High court meaning that the same was directly filed at the High court. Similarly, receipt No. C1011559491271P dated 16/12/2021 was issued by the High court and it is in respect of court fees for lodging an appeal. All these justify the argument that the appeal was lodged to the High court and not the DLHT. This is something in record and does not need any kind of evidence to justify the same. In my conclusion, the preliminary objection raised by the counsel for the Respondent meets the requirement of the point of objection stipulated by the court in the case of **Mukisa Biscuits** (supra).

In the final analysis, it is my conclusion that, since the law requires that the appeal to be filed in the District Land and Housing Tribunal and the records shows that it was filed directly to the High court, the appeal was filed in contravention of section 38(2) of the Land Disputes Courts Act, Cap 216 R.E 2019. The point of preliminary objection is therefore sustained. The appeal is incompetent before this court and it is hereby struck out with costs.

DATED at **ARUSHA** this 1st August, 2022.




D.C. KAMUZORA

JUDGE