

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPEAL NO. 28 OF 2020

(C/F Land Appeal No. 61 of 2019 in the District Land and Housing Tribunal of Arusha at Arusha, Originating from Land Complaint No. 19 of 2019 at Baraza la Kata la Esilalei)

NAIRABA TAPETI.....APPELLANT

VERSUS

LOSHAKE NGUNINI.....RESPONDENT

JUDGMENT

06/10/2022 & 04/2/2022

GWAE, J

The appellant named herein unsuccessfully filed a dispute against the respondent as named above before Esilalei Ward Land Tribunal (trial tribunal). Aggrieved by the trial tribunal's decision, the appellant filed an appeal in the District Land and Housing Tribunal for Arusha at Arusha (hereinafter to be referred to as the appellate tribunal) where he also lost.

Still aggrieved, the appellant knocked the doors of this court as a second bite equipped with five grounds of appeal which literally challenges the appellate tribunal's order as to costs against the appellant.

This appeal was disposed of by way of written submission after the parties' advocates namely; Mr. Kennedy Mapima and Mr. Joshua Jonas Minja for the appellant and respondent respectively had sought and obtained leave of doing so.

I have carefully examined the records of the appeal as well as parties' written submissions. From the records, it is evidently clear that, the appellate court when disposing the appeal in particular on ground number one which questioned the jurisdiction of the trial tribunal, the appellate court discovered that the trial tribunal named; "Ward Land Tribunal of Esilalei (Baraza la Ardhi la Kata ya Esilalei)" did not have statutory jurisdiction to determine the matter pursuant to section 3 (2) and 10 (1) of the Land Disputes Courts Act cap 216 Revised Edition, 2019 which established the Ward Tribunal. The appellate tribunal was of the view that, the trial tribunal improperly constituted itself as the Ward Land Tribunal as what the law establishes is only Ward Tribunals and not Ward Land Tribunal. Consequently, the 1st appellate tribunal quashed and set aside both judgment and proceedings of the trial tribunal and further made an order as to costs which were to be borne by the appellant on reason that he had

contributed to the anomaly. Since this is the basis of this appeal, this court finds it pertinent to reproduce part of the order as follows;

“But in consideration that it was the appellant who referred the matter to the tribunal which lacked jurisdiction and it was him who came to this Tribunal and raised issue of jurisdiction then that might imply that he had contributed to make matter goes in a manner it went. With that observation, costs shall not therefore follow the event. Instead, the appellant shall bear the respondent’s costs at this tribunal and tribunal below.”

I have had ample time to go through the judgment of the trial tribunal of the appellate tribunal and the following observations are made by this court. Admittedly, this court observed that in the judgment of the trial tribunal at times it referred itself as the Ward Land Tribunal (see page 1 of the typed judgment) and Ward Tribunal (Page 8 of the typed judgment). Furthermore, this court observed that at page 9 of the typed judgment signed by one Nanyaro Milia who referred himself as the chairman of the Ward Land Tribunal for Esilalei however with the seal of “Mwenyekiti Baraza la Usuluhishi Kata ya Esilalei”.

With the above observations this court join hands with the appellate tribunal as to the hierarchy of courts with jurisdiction to determine land

disputes there is nothing like Ward Land Tribunal. Reference is made to section 3 (2) of the Land Disputes Courts Act which reads as follows;

“(2) The Courts of jurisdiction under subsection (1) include-

- (a) the Village Land Council;
- (b) the Ward Tribunal;
- (c) the District Land and Housing Tribunal;
- (d) the High Court; or
- (e) the Court of Appeal of Tanzania”.

Nevertheless, much as this court is aware that, the award of costs is at the discretion of the court, however given an account of the circumstances of this case, this court supports the appeal on reason that the 1st appellate tribunal reasoning in awarding the costs in favour of the respondent was unjustifiable as the appellant had not contributed to the above anomaly. One would ask how could a lay man who is unrepresented knows the difference between the Ward Land Tribunal and the Ward Tribunal, it is apparent that the appellant herein filed his complaint to the Ward Tribunal of Esilalei not knowing that it would refer itself as the Ward Land Tribunal of Esilalei. Had it been that it is on the question of pecuniary jurisdiction perhaps the answer would be different as the burden would have lied to the appellant to establish

the value of his property and failure to do so the appellant could have been held accountable for contributing to the anomaly.

Given the above explanations, I am of the considered view that, the respondent tribunal unwarrantedly made the order as to costs in favour of the appellant as the noted anomaly was mainly contributed by the trial tribunal.

Consequently, this court invokes its revisional powers under section 43 (1) (b) of the Land Disputes Courts Act (supra) and set aside the order as to costs and furthermore order that each party to bear his own costs of the trial tribunal, appellate tribunal and this appeal.

It is so ordered.




M. R. GWAE
JUDGE
04/02/2022