

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

MISCELLANEOUS LAND APPEAL No. 12/2020

*(Arising From the Decision of the District Land and Housing Tribunal of Kilindi District at Kilindi in
Land Case Appeal No. 6 of 2019 and Original Ward Tribunal of Bokwa Ward in Land Application No.
17 of 2018.)*

SAIDI MANGUBE APPELLANT

VERSUS

SERIKALI YA KIJIKI KWASTEMBA RESPONDENT

J U D G M E N T.

MRUMA J,

This appeal has to succeed on one ground only. The Respondent who presented herself as "Serikali ya Kijiji kwa Stemba." (The Kwa Stemba Village Government), instituted a land dispute before Bokwa Ward Tribunal against the Appellant Saidi Mangube for encroaching into the village road.

After hearing evidence from both sides, the Ward Tribunal found for the Respondent Serikali ya Kijiji kwa Stemba and ordered the

1. Appellant to demolish that part of his building that had encroached into the village road.

The Appellant was aggrieved and he appealed to the District Land and Housing Tribunal for Kilindi District which dismissed his appeal and hence this second appeal. The present appeal has four grounds but as stated at the outset of this judgment one ground only is sufficient to dispose of the appeal. Ground one challenges the competency of Serikali ya Kijiji kwa Stemba to institute the present proceedings.

As correctly submitted by Ms Elisia Paul, Advocate for the appellant, the so called Serikali Ya Kijiji Kwa Stemba has no capacity to sue or even to be sued. Powers and capacity to sue or to be sued of a local government authority is governed by law. Section 25 of the local government (District Authorities) Act [Cap 287 RE 2019] creates a village council for every village. Under section 26 (1) of that Act, every village council is issued with a certificate of incorporation. Immediately after being issued with a certificate of incorporation village council become a body corporate and in terms of section 26 (2) (b) of the same law it is capable of suing or being sued. Thus, the "Serikali ya Kijiji kwa Stemba" which instituted these proceedings is non-existing person in the eyes of the law.

1.

A decree obtained for against a non-existing legal person cannot be executed. It is a non-status decree. This being a court of record it cannot allow non-status proceedings to remain on records.

Accordingly I allow the appeal I quash and set aside the proceedings and decisions of both lower in tribunals for being a nullity having being instituted by a non – existing legal person. As the appellant cannot recover his costs against a none-existing person, he can only recover them by instituting civil action against an individual who propelled the institution of these proceedings.

Order accordingly.




A. R. Mruma

Judge

07/02/2022