

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

**IN THE DISTRICT REGISTRY OF KIGOMA**

**AT KIGOMA**

**LAND APPEAL NO. 08 OF 2022**

(Original Land Case No. 85/2017 from the District Land & Housing Tribunal for Kigoma  
before F. Chinuku – Chairperson)

**IBRAHIMU PIUS KAGANSHA .....1<sup>ST</sup> APPELLANT**

**GILBERT G. MAHUMBA .....2<sup>ND</sup> APPELLANT**

**VERSUS**

**BERA KARUMBA .....1<sup>ST</sup> RESPONDENT**

**KIGOMA/UJJI MUNICIPAL COUNCIL .....2<sup>ND</sup> RESPONDENT**

**RULING**

27/7/2022 & 6/9/2022

**L.M. Mlacha,J**

The appellants, Ibrahim Pius Kagansha and Gilbert G. Mahumba filed an appeal against the decision of the District Land and Housing Tribunal for Kigoma (the DLHT) made in Application No. 85/2017. They presented their grounds of Appeal in Kiswahili in a document entitled "SABABU ZA RUFAA" literally meaning grounds of appeal. The respondents Bada Karumba and Kigoma – Ujiji Municipal Council (hereinafter referred to as the first and second respondents) were dully served and presented their respective

defences. The first respondent came out with a preliminary objection which reads:

*1. That, the Appellants appeal is bad in Law for contravening the mandatory provision of Rule 4(1) (a) and (b) of the Interpretation of Laws (use of English Language in courts) (circumstances and conditions) Rules, 2022, GN. NO. 66 of 2022.*

The appellants were represented by Mr. Sadiki Alik, the first respondent was represented by Mr. Ignatus Kagashe and the second respondent was represented by Mr. Allan Shija. Hearing was done by oral submissions.

It was the submission of Mr. Kagashe that the appeal was filed contrary to rule 4 (1) (a) and (b) of the Interpretation of Laws (use of English language in courts) (Circumstances and Conditions) Rules, GN. No. 66 of 2022. Counsel submitted that the appellant was supposed to file the appeal in English not Kiswahili. He said that it was mandatory under the rules to file the appeal in English, not Kiswahili. He argued the court to strike out the appeal.

Mr. Sadiki Alik resisted. He said that the language of the court according to the written law (Miscellaneous Amendment) Act No. 1 of 2021, published on 30/4/2021 is Kiswahili. He referred the court to GN 66/2022 and Act No.



1 of 2022 and tried to give an interpretation. He said that both section 84A (1) and 53(2) of the Interpretation of laws Act say that the use of Kiswahili language is mandatory. Counsel submitted that the rules were not made to defeat the main Act. The English language is just used as an exception, he said. He went on to submit that English may be used where parties do not understand Kiswahili. The parties in this case understand Kiswahili and the proceedings in the DLHT were conducted in Kiswahili hence the need for filing the case in Kiswahili he submitted.

Counsel for the appellant proceeded to submit that even when it will be found that the case was filed wrongly, the remedy is just to give directions, not otherwise, making the preliminary objection baseless. He cited the case of **Mukisa Biscuits Manufacturing Company v. West End Distributors Ltd** [1969] EA 696 saying that what was raised did not qualify to be a preliminary objection.

Mr. Kagashe made a rejoinder and said that section 84 A is a provision of general application. We need to get the procedural laws to know how to access the courts. The relevant provision is rule 4(1) which has the word 'shall'. He said that the appellant was supposed to file in English with a Kiswahili translation. The court can also direct the case to be filed in

Kiswahili under rule (2) (b). He added that the case of Mukisa Biscuits has no application in this case.

Having considered the parties respective positions carefully, I will hasten to say that the objection is sound and has legal base. I also agree that the case of Mukisa Biscuits was cited wrongly in this case. With respect, I don't share the views of Mr. Sadiki Aliko. I will try to explain.

The introduction of Kiswahili in our courts was done through the **Written Laws (Miscellaneous Amendments) Act No. 1 of 2021**. The Act came into effect on **9/7/2021** – see GN 4961/2021 Published on 30/6/2021. Part II of the Act has the Amendment of the Interpretation of laws Act, cap 1 R.E 2019. Sections 4 and 5 are the relevant provisions for purposes of our discussion. Section 4 amended section 84 by deleting subsection (1) and substituting it with a new subsection (1) while section 5 added a new section 84 A.

Section 84 reads as under: -

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

***(2) Laws of the United Republic which are currently in the English Language shall be translated into Kiswahili.***



(3) Without produce to subsection (1), where circumstances so require, laws enacted in Kiswahili **may be translated into English language.**

(4) .....

(5) Where a written law is translated and there occurs **a conflict or doubt** or doubt as to the meaning of any word or expression, **the language of the enacting version shall take precedence**" (Emphasis added)

Looking at the new section 84, one can see that it was all about statute books. It imposed a duty on the parliament to enact laws in Kiswahili. It also left the room open, where circumstances so require, some laws to be translated in English, adding that in case of conflict in interpretation the Kiswahili version shall prevail.

Section 84 A has a marginal note which reads, "Language of courts etc".

The section reads as under: -

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

(2) Without prejudice to subsection (1), courts, tribunals and other bodies charged with a duty of dispensing justice **may,**

***where the interests of justice so require, use English language in the proceedings and decisions.***

***(3) Where English language is used in the proceedings and decisions, such proceedings and decisions shall be translated and authenticated in Kiswahili language.***

***(4) Where proceedings or a decision is translated in Kiswahili language and there occurs a conflict or doubt as to the meaning of any word or expression, the language which the proceeding or decision was recorded shall take precedence.***

***(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 subsection (2), (3) and (4)" (Emphasis added).***

Reading through section 84 A, one can see that whereas the language of the courts, tribunals and other bodies is Kiswahili, but its use is subject to subsection (2), (3), (4) and (5). Subsection (2) allows the use of English Language in proceedings and decisions where circumstances so require. The circumstances were provided later by the chief Justice as we shall see late. Subsection (3) put a condition that where English language is used, there must be a Kiswahili translation.



Subsection 4 talks of interpretation conflicts. Precedence is given to the language under which the proceedings or decisions were originally written. And subsection (5) gives the Chief Justice power to make rules.

The Land Disputes Courts Act cap 216 R.E 2019 (Section 32) and The Magistrates courts Act, cap 11 R.E 2019 (Section 9) were also amended to reflect these changes.

Acting under section 84 A (5) of the Interpretation of Laws Act, the Chief Justice enacted the Interpretation of laws (use of English Language in Courts) (Circumstances and conditions) Rules, GN 66/2022 published on 4/2/2022. Rule 2 defined the word "court" to mean the Court of Appeal, High Court, subordinate courts, tribunals and other bodies charged with the duties of dispensing justice. So these rules apply widely from the Court of Appeal downwards. They apply to subordinate courts and tribunals (including District Land and Housing Tribunal). They are all required to follow and apply the rules. Rule 3 reads:

*"3. Subject to the provisions of subsection 2 of section 84 A of the Act, **Pleadings proceedings or decisions may be in English***

**language** where it relates to matters stipulated in **the schedule to these rules**"

The schedule reads:

"CIRCUMSTANCES AND CONDITIONS FOR THE USE OF ENGLISH LANGUAGE IN COURTS"

- a) either of the parties or their representatives to the proceedings are not Swahili speakers;
- b) the matter is about international investments dispute;
- c) the matter is about foreign trade or business
- d) the matter involves 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 there to are not available in Kiswahili language;**
- h) matter of science and technology are involved; or
- i) for any other reason, **the interest of justice demands so** (Emphasis added).

Rule 4 has a requirement of **filling of pleadings in Kiswahili language.**

Rule 4(1) which was cited by counsel reads: -



*"4(1) A party who intends to initiate proceedings which, in his opinion, falls under the circumstances where the proceedings and decision thereto are to be conducted in English language, such party shall*

*a) file his pleading in English language with their corresponding translation in Kiswahili language; and*

*b) state the grounds upon which he relies to have the proceedings conducted in English language." (Emphasis added)*

So, reading through rule 4(1) there is nowhere written that the pleadings shall be filed in Kiswahili. What is provided is that, where the pleadings are filed in English language, there must be a corresponding Kiswahili translation. In other words, there must be two copies, one in English and another in Kiswahili. It follows that, where a party have filed Memorandum of Appeal or a Chamber Application in English, he is duty bound to attach to it a Kiswahili translation on it otherwise his pleadings will be found to be improperly before the court and be struck out.

Any party filing pleadings must be guided by the schedule to the rules. If he opts to use the language of the court (Kiswahili) he must be satisfied that item (g) is complied with. The existence of parties who are Kiswahili speakers is the first element but must be read with other items particularly

items (g) and (i). Item (g) talks of the existence of the laws and procedure in Kiswahili language while item (i) talks of the interests of justice.

Now looking at the scheme of amendments as I have tried to demonstrate, there is nowhere written that as from 9/7/2021 when the amendments took effect, the parties should now file pleadings in Kiswahili and use it alone. There is no mandatory requirement to use Kiswahili in court. The law and the Rules are flexible. They are designed to take us to the use of Kiswahili in court. We are not yet there yet. We are still on the beginning of the road. A lot has to be done for the statutes, books and Law Reports are still in English. Efforts are made to translate them but we are not there yet. As for now, we must proceed to file our pleadings in English with their Kiswahili translation until such time when the laws, books and law reports will have been available in Kiswahili. In doing so, we are not breaching the Law but we are actually applying it.

Guided by what I have said above and the decision of this court in **zaidi Jumanne Zaidi v. Pili Rajabu Abdalah**, Land Appeal No. 9/2022 this appeal is found to be improperly before the court and struck out. Costs to follow the event. It is ordered so.





  
**L.M. MLACHA**

**Judge**

**6/9/2022**

**Court:** Ruling delivered. Right of Appeal Explained.



  
**L.M. Mlacha**

**Judge**

**6/9/2022**