

IN THE HIGH COURT OF TANZANIA

SHINYANGA DISTRICT REGISTRY

AT SHINYANGA

LAND APPEAL NO. 39 OF 2021

NGUSA GAMU LWENGE.....APPELLANT

VERSUS

MASHILU GAMU @ MAGANGA.....1st RESPONDENT

SAMWEL MASALA.....2nd RESPONDENT

**[Appeal from the decision of the District Land and Housing Tribunal of
Maswa.]**

(Hon. J.F. Kanyerinyeri, Taxing Master.)

**dated the 20th day of October, 2020
in**

Misc. Land Application No. 23 of 2020

JUDGMENT

28th June & 5th August, 2022.

S.M. KULITA, J.

This is an appeal from the District Land and Housing Tribunal of Maswa. The story behind this appeal in a nut shell is that, the appellant had instituted a Misc. Land Application No. 23 of 2020 at the District and Land Housing Tribunal for Maswa. The respondent herein confronted the application with an objection. Following that objection, the said

respondent's application No. 23 of 2020 was dismissed with costs. The respondent then instituted a Misc. Land Application No. 80 of 2020 which was all about his Bill of Costs. In that application, the respondent was awarded Tshs. 1,654,000/=. That was on 20th October, 2020.

The appellant was aggrieved with the decision, hence appealed to this Court with three grounds of appeal as follows; **one**, the trial chairman erred by holding that the respondent had service of a lawyer while there was no documentary proof of the same, **two**, the trial chairman erred in holding that the respondent deserves payment of Tshs. 150,000/= as costs for prosecution while there were no receipts tendered to prove the same, **three**, that the award of Tshs. 1,500,000/= was exaggerated and that the trial tribunal did not consider the economic situation of the litigants.

On 25th April, 2022 the matter was scheduled for hearing. The appellant appeared in person, whereas due to non-appearance of the respondent even after effectively been served, the matter proceeded *ex-parte* against him.

Submitting in support of his appeal the appellant generally condemned that, the receipts presented by the respondent in proving his bill of costs were not genuine. He added that, the same bear the dates of

the final date of trial of the original case. Thus, he was of the views that the same were prepared in afterthought.

Upon earnestly gone through the appellant's submission and the available records as well. The issue to be determined is whether the appellant's appeal is meritorious.

In determining ground number one of appeal, whether the respondent had engaged a lawyer in Misc. Land Application No. 23 of 2020, I went through the records in the said Misc. Land Application No. 23 of 2020. Therein I have noted that on 6th April, 2020, Mbatina Advocate appeared for the respondent herein, there at the District Land and Housing Tribunal of Maswa. Again, the proceedings show further that, on 12th May, 2020 when hearing of the preliminary objection took place, the respondent was also represented by the said Mbatina Advocate.

For this evidence, there is no doubt that, Mbatina Advocate appeared for the respondent following him being instructed to do so. As the evidence is clear that the respondent had a service of a lawyer in Misc. Land Application No. 23 of 2020, the first ground of appeal fails

As for the second ground of appeal, the appellant contended that, the respondent tendered no receipts to prove his bill of costs. But during

the submissions of this appeal, he contended that the respondent tendered receipts which were not genuine to prove his bill of costs. Here it is seen that, the appellant does not know what he actually disputes concerning the receipts.

However, from the trial tribunal's records, particularly the judgment of the bill of costs, the trial chairman taxed off items number one up to four for lack of receipts to prove the same. Essentially, those items were concerned with appearance in court. On that account, the appellant herein should not lament on these items as the respondent got nothing from them.

Item number 5 in the list of the bill of costs, the trial tribunal awarded the respondent Tshs. 4,000/= being the money paid for filling notice of preliminary objection. The record is vivid that, Misc. Land Application No. 23 of 2020 was dismissed on account of the said preliminary objection. There is no way that, the said notice of preliminary objection was filed in the tribunal properly. To prove this, the respondent annexed NMB online Bills Payment Slip with payment Reference No. 991172803431.

The availability of this receipt, negates the appellant's claim that the respondent did not annex any receipt to prove this item. And as long as

there are costs in filling the pleadings in courts, there is no doubt that the respondent actually paid that amount to file his notice of preliminary objection. Thus the receipt is genuine.

As for the item number 6 which is concerned with instruction fee, the respondent annexed receipts No. 1271 of 18th June, 2020 from the AK Law Chambers. Again, the presence of it, negates the appellant's claim that the respondent did not annex receipt to prove this item. Also, as long as the respondent was represented by an advocate in Misc. Land Application No. 23 of 2020, there is no doubts that the said advocate got paid. On that account, it goes without saying that, the receipt is genuine.

Lastly is on the ground that the awarded amount of Tshs. 1,654,000/= to the respondent is exaggerated as the litigants have no such economic situation. It should be noted that, bill of costs deal with the costs that the Judgment Debtor (appellant) has caused the Decree Holder (respondent) to incur following his (appellant's) institution of Misc. Land Application No. 23 of 2020. That is the claimed amount which the Decree Holder (respondent) asks the trial tribunal to order the Judgment Debtor (appellant) to restore it to him. The award of this claim does not depend on the economic situation of the appellant. The amount that the Taxing Master (Chairman) orders the Judgment Debtor (Applicant) to pay

the Decree Holder (Respondent) is nothing but the restoration of costs that the respondent has incurred following the institution of the Applicant's case. The economic situation of the Judgment Debtor (respondent) has nothing to do with the application for bill of costs. Thus, this ground of appeal fails too.

All said and done, as all grounds of appeal have failed, I find no reason to fault the decision of the Taxing Master in the trial tribunal, thus I proceed to dismiss the appeal for being unmeritorious. The appellant to bear the costs.



S.M. KULITA
JUDGE
05/08/2022

DATED at Shinyanga this 5th day of August, 2022.



S.M. KULITA
JUDGE
05/08/2022