

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

LAND APPEAL NO. 30 OF 2022

(Originating from the Land Application No. 31 of 2020 at District Land and Housing

Tribunal for Kilosa at Kilosa before Hon. Mnyukwa, Chairman)

ABDALLAH MJANG'ANJA (Administrator of the Estate

of the late **OMARY HAMIS MHANDO**) **APPELLANT**

VERSUS

1. AHMED ABDALLAH }

2. TWAIB SHIDA }

..... **RESPONDENTS**

JUDGMENT

21.09.2022 & 06.10.2022

NDESAMBURO, J

Abdallah Mjang'anja is appealing against the decision of Kilosa District Land and Housing Tribunal (DLHT) which struck out his application against the respondents, Ahmed Abdallah and Twaib Shida,

whereby, in that application, the appellant accused the respondents for trespassing to his land located at Uruguruni Hamlet, Maduhu Village, Kitete Ward in Kilosa District.

Briefly, before the commencement of the hearing of the said application before the DLHT, the respondents raised a preliminary objection (PO) predicated that the application is null and void *ab-initio* for non-joinder of Madudu Village Council, District Executive Director for Kilosa (DED) and the Attorney General (AG). However, the respondents withdrew their PO and the date for hearing of the main application was set. On the date fixed for the hearing, the honorable Chairperson re-raised the issue and asked parties to address the tribunal on the joinder or non-joinder of the Kilosa District Council. Parties prayed and were allowed to address the DLHT by way of written submissions. Respondents were ordered to file their submission followed by appellant and rejoinder if any by the respondents. The matter was thereafter set for mention on 20/07/2021.

When the matter came up on 21/09/2021, the record reveals that, parties had not complied with the order for their written

submissions. While the respondents' counsel informed the DLHT that he did not comply with the order as he did not see the importance of joining the DED or the AG, the counsel for the applicant informed the tribunal that they have filed submissions complaining of the respondent's conduct of not obeying the order of the DLHT. The DLHT delivered a ruling whereby the application was struck out for failure by the parties to file submissions which amounted to failure to prosecute the case.

Aggrieved by the said decision, the appellant filed the present appeal containing two grounds summarized as follows:

- i. That, the DLHT erred in law and fact for striking out the application instead of allowing the application to proceed with the hearing on merit because the respondents failed to file Written Statement of Defence (WSD).*
- ii. That, the DLHT erred in law and fact for holding that the DED and AG ought to be joined while, as per facts, the applicant has no course of action against them.*

At the hearing of the appeal, the appellant was represented by Mr. Ignus Punge, learned counsel whereas the respondents had the service of learned counsel, Mr. Saul Sikalumba.

In his submission, Mr. Punge faulted the decision of the DLHT because, according to him, he could not file the written submission as the respondents were ordered to kick start the filing. To his view, it was the respondents who failed to support the issue of joinder or non-joinder of the DED. He referred this court to the decision of the Court of Appeal in **Godfrey Kimbe vs Peter Ngonyani**, Civ App no. 41 of 2014 whereby the Court stated that failure by the party to lodge written submission after being ordered by the court, is tantamount to failure to prosecute or defend one's case. So, to him, the issue which was raised by the DLHT became redundant after the respondents failed to file written submission. He finalized this ground by submitting that the DLHT was not justified to strike out their application but rather was supposed to proceed with the hearing of the application on merit.

Addressing the second ground, Mr. Punge cited Order I Rule 9 of the Civil Procedure Code, Cap 33 R.E 2022 (the CPC) which requires courts to deal with matter in controversy between the parties and not to

allow the suit to be defeated for reason of joinder or non-joinder of the parties. He insisted what was done by the DLHT was contrary to Order I Rule 9.

He rested his submission by asking the court to allow the appeal, set aside the ruling of the DLHT and allow parties to proceed with the application on merit. He did not press for costs.

In response, Mr. Sikalumba, admitted not to have complied with the order of the DLHT but their failure to do so had nothing to stop the appellant from filing his submissions. He repeated his stance at the DLHT that joinder or non-joinder of the DED and AG was not of their interest and that they informed the tribunal.

On the second issue, he seconded his learned brother's argument in respect of Order I Rule 9 (CPC) and on the strength of this point, he prayed for the appeal be allowed without costs.

On my part, I am aware of the number of authorities regarding the consequences of failure to file written submission including the cases of; **National Insurance Corporation of (T) Ltd & Another vs Shengena Limited**, Civil Application No. 20 of 2007 and **Patson**

Matonya vs Registered Industrial Court of Tanzania &

another, Civil Application No. 90 of 2011.

Indeed, both learned counsels were in agreement that they failed to honour the DLHT's order. Their action is not accepted at all. However, given the circumstances of this case, the question is whether the DLHT was justified to strike out the application.

It is common that section 51(2) of the Land Disputes Courts Act, Cap 216 R.E 2019 empowers the DLHT, in exercise of its jurisdiction, where there is inadequacy in Regulations made, to apply the Civil Procedure Code. With that in mind, when the DLHT made an order for the parties to address it on the joinder of the DED, it was foreseeing the wording of Order I and particularly Rule 10(2) of the CPC. Order I Rule 10(2) reads as follows:

"The court may, at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, order that ... the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

The above provision means that, at any stage, the court may, on application by the parties or on its own motion, order the name of any person who ought to have been joined as plaintiff or defendant to be joined to enable the court to effectively and completely adjudicate and settle the dispute between the parties.

The records of DLHT on 22/6/2021 reveals that, the honourable chairperson invited parties to address him on joinder or non-joinder of the DED. Although records are silent, but the powers invoked by the DLHT are normally governed by provisions of Order I Rule 10(2) and it was expected the DLHT to exercise its mandate within the ambit of Order I Rule 10(2). It is unfortunate that it did not.

I agree with the counsel, that the DLHT with due respect, erred in striking out the application. My reasons are of two-folds; **one**, the DLHT was under obligation to exercise its power under Order I Rule 10(2) of CPC and render its decision, and **two**, the matter in dispute between the parties was still pending for determination before the DLHT and the dictate of Order I Rule 9 of the CPC demands that the suits should not be defeated by the reason of misjoinder or non-

joinder of the parties and calls for the Court to deal with matter in controversy between the parties. The DLHT went against the dictate of Order I Rule 9 of the CPC. For matter of clarity the above provision reads as follows:


"A suit shall not be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it".

With the above reasoning, I am satisfied that the appeal is meritorious and I allow it. The order issued by the DLHT is quashed and set aside. The file to be remitted to the DLHT for it to deal with the matter in a manner it will deem fit according to law. The same should be assigned to another chairperson with competent jurisdiction. Each part to bear its own costs.

It is so ordered.

DATED at MOROGORO this 6th day of October, 2022

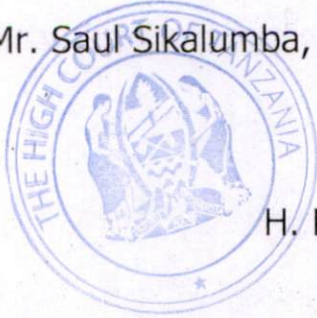




H. P. NDESAMBURO

JUDGE

06.10.2022

Court: Judgment delivered on 6th October, 2022 in the presence of Mr. Ignus Punde, learned counsel for the Appellant who also holds brief for Mr. Saul Sikalumba, learned counsel for the Respondents.




H. P. NDESAMBURO

JUDGE

06.10.2022