

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

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPEAL NO 41 OF 2022**

(Arising from the decision of the District Land and Housing Tribunal of Mara District  
at Mara, in land Appeal No 11 of 2020)

**MAPIUS OTIENO .....APPELLANT**

***VERSUS***

**MACHIMU MAYARA ..... RESPONDENT**

**JUDGMENT**

6<sup>th</sup> October & 6<sup>th</sup> October, 2022

**F. H. Mahimbali, J.**

The contest in this appeal, is why the first appellate tribunal failed to award costs of the case after it allowed the appeal.

The first appellate tribunal after it had allowed the appellant's appeal, it withheld costs of the case simply because the said error was not occasioned by the parties themselves, but the trial tribunal's negligence.

As per law, costs are discretionary powers of the court. However, I exercising its discretion, the court has to give reasons as to why it was withholds costs. So generally, when the suit is fully determined, costs

must follow the event (See S.30 (1) & (2) of the CPC, Cap 33, R.E 2022).

In the current case, the respondent lodged his complaint at the Ward Tribunal for it to be dealt with the law. Instead of mediating the parties, the trial Ward Tribunal adjudicated the matter and determined the rights of the parties.

As the findings of the trial Ward Tribunal aggrieved the respondent, he appealed to the DLHT where it was ruled that as per the written laws (Miscellaneous Amendments) No 3 Act of 2021, the trial Ward Tribunal had no powers to try the matter as the same was filed on 3<sup>rd</sup> December 2021. As the said amendment is of 28<sup>th</sup> September 2021, the Ward Tribunal had no powers to adjudicate the matter.

As per circumstances of this case, considering the fact that the said error was omitted by the Ward Tribunal itself, the DLHT properly exercised its discretion by refusing to award costs.

Since it is not hard and fast rule that in each case costs must be awarded, in the current case, the discretion of the DLHT was well utilized.

That said, the appeal is dismissed. However as per nature of this appeal, parties shall bear their own costs.

DATED at MUSOMA this 6<sup>th</sup> day of October, 2022.



F. H. Mahimbali

**JUDGE**

**Court:** Judgment delivered 06<sup>th</sup> day of October, 2022 in the presence of the Mr. Nyasebwa Yohana Advocate for the appellant and Mr. Christopher Waiakama, advocate for the respondent and Mr. Gidion Mugo, RMA.

Right of appeal is explained.

F. H. Mahimbali

**JUDGE**