

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOBIA DISTRICT REGISTRY)
AT BUKOBIA**

MISC. LAND APPEAL CASE No. 18 OF 2022

*(Originating from Land Appeal No. 5 of 2020, District Land and Housing Tribunal for Ngara at Ngara
and Arising from Land Case No. 2 of 2020, Nyamiaga Ward Tribunal)*

JOHN RUPIA APPELLANT

VERSUS

MARRY EMMANUEL RESPONDENT

JUDGMENT

24th October 2022 & 04th November 2022

OTARU, J.:

John Rupia, the Appellant herein and the Respondent, Marry Emmanuel are neighbors. The Appellant sued the Respondent at the Nyamiaga Ward Tribunal on the issue of land ownership. The Ward Tribunal decided in favour of the Respondent. Aggrieved, the Appellant appealed to the District Land and Housing Tribunal. Upholding the decision of the Ward Tribunal, the Chairman dismissed the Appeal with costs. Aggrieved again, the Appellant lodged this Appeal arming himself with four grounds. That; -

- 1. The trial chairman grossly erred in law and fact by upholding the decision of the Ward Tribunal of Nyamiaga which was made without considering the weight of the evidence given by both sides.*

- 2. The trial chairman grossly erred in law and fact by upholding the decision of the ward tribunal which gave decision in favor of the Respondent without giving reasons for the decision.*
- 3. The trial chairman grossly erred in law and fact by dismissing the land appeal with cost and holding in favor of the Respondent inspite of the overwhelming evidence submitted by the Appellant against the Respondent.*
- 4. The trial chairman grossly erred in law and fact by not determining the issue of relief the parties are entitled to.*

Owing to these grounds, the Appellant urged this court to allow the Appeal and set aside the whole judgment and decree of the District Land and Housing Tribunal; declare the Appellant as the lawful owner of the land in dispute; and costs. The Respondent resisted the Appeal.

The parties appeared in person and prayed for the Appeal to be heard by way of written submissions. The submissions were filed in accordance with the agreed schedule. In the submissions, the Appellant abandoned the 4th ground of Appeal.

In their lengthy submissions, parties did not confine themselves to the grounds pleaded. I thus extracted matters relevant to the grounds so we remain focused. I wish to summarize the relevant arguments of the parties herein below.

On the 1st ground of Appeal, the Appellant submitted that the Chairman grossly erred in law and fact in upholding the decision of the Ward Tribunal. The Appellant claimed that no consideration of weight was given to the evidence of the parties. The Respondent, on the other hand replied that the Appellant did not explain how he acquired the land in dispute while she showed that the same was given to her by her father-in-law.

On the 2nd ground, the Appellant argued that the trial tribunal did not give reasons for the decision. He submitted that giving reasons for a decision is a legal requirement under Order XX Rule 4 of the **Civil Procedure Code**, Cap. 33 of the laws. The Respondent responded to the effect that page 6 of the District Land and Housing Tribunal's judgment provided the reasons when the Chairman held that he was satisfied with the findings and the decision of the trial tribunal.

On the 3rd ground, the Appellant contested the award of costs to the Respondent, claiming that the Respondent should not have been awarded the costs. The appellant relied on a number of cases including **Nkaile Tozo v. Philimon Musa Mwashilanga** (2002) TLR 276, in which it was held that; -

'the awarding of costs is not automatic, in other words, they are not awarded to the successful party as a matter of course. Costs are entirely in the discretion of the Court and they are awarded according to the fact and circumstances of each case'.

The Appellant argued that basing on the above decision, the facts and circumstances are such that the relationship of the parties and the need for such reconciliation should have been considered by the tribunals. It is the prayer of the Appellant that the order for costs should be dismissed.

I appreciate the effort made by the parties in their submissions, which I have considered in line with the records as well as the law and proceeded to determine whether or not this Appeal has merits.

I commenced with the 1st ground of the Appeal. The general rule of evidence in civil cases is provided under Sections 110 and 111 of the **Law of Evidence Act**, Cap 6 R.E. 2002, which provide that *'he who alleges must prove'* and *'the burden of proof lies on the person who would fail if no evidence is given in either side.'* While the standard of proof is on the balance of probabilities (see the case of **Ikizu Secondary School vs. Sarawe Village Council**, Civil Appeal No. 163 of 2016, CAT at Mwanza, (unreported)).

The Appellant instituted the suit against the Respondent in the trial tribunal. He was the one to fail in the absence of any evidence as the burden of proof was on him. He testified and called witnesses to prove his case.

The record of the trial tribunal indicates that the evidence that the Appellant put forward was on historical conflicts that the parties had between them and did not direct himself on proving ownership of the land in dispute. The Respondent took the opportunity to prove her ownership and showed that the same was given to her by her father-in-law.

It is a settled principle that when a matter is based on the weight of evidence, it is the trial court or tribunal which is better placed to evaluate evidence than the appellate court/tribunal which merely reads what is on record (See the case of **Ali Abdallah Rajabu vs. Saada Abdallah Rajabu and others** [1994] TLR 132). Having this in mind, the evidence on record and the fact that the Ward Tribunal is the one that heard the testimonies and visited the *Locus in Quo*, I am convinced that the trial tribunal considered the evidence adduced by the parties when making his decision. This ground, therefore fails.

On the 2nd ground of Appeal, about the Chairman of the trial tribunal complying to the requirement of Order XX Rule 4 of the **Civil Procedure**

Code on what a judgment should contain, I wish to clarify that by virtue of Section 2 of the **Civil Procedure Code**, the rules of civil procedure in the **Civil Procedure Code** are not applicable to ward tribunals. I also subscribe to the finding of the District Land and Housing Tribunal, that there is no prescribed format for decisions in ward tribunals. The judgment of the Ward Tribunal may not be as elaborative and analytical as the Appellant would like it to be, but the same is still a valid judgment. As in the 1st ground above, the trial tribunal cannot be faulted on this ground as well.

On the 3rd ground of Appeal, as correctly submitted by both parties, the issue of costs is discretionary. Courts have discretion to award costs under Section 30(1) of the **Civil Procedure Code** (supra) and as expounded in the case of **Mohamed Salmini vs. Jumanne Omary Mapesa**, Civil Application No. 4 of 2014 (CAT Dodoma) (unreported):-

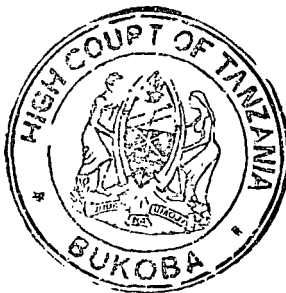
'As a general rule, costs are awarded at the discretion of the Court. But the discretion has to be judicial and has to be exercised upon established principles, and not arbitrarily or capriciously. One of the established principles is that, costs would usually follow the event, unless there are reasonable grounds for depriving a successful party of his costs. A successful party could lose his costs if the said costs were

incurred improperly or without reasonable cause, or by the misconduct of the party or his Advocate'.

In the case at hand, the District Land and Housing Tribunal awarded costs to the Respondent. The award is in accordance to the established principle of costs following the event and there is nothing to suggest that the same were incurred improperly or unreasonably. Plainly, the Chairman exercised his discretion judiciously. This ground fails as well.

All grounds of the Appeal as analyzed above, have failed. Consequently, the issue as to whether this Appeal has merits is answered in the negative. The Appeal lacks merits, and it is hereby dismissed with costs. The decision of the District Land and Housing Tribunal for Ngara at Ngara is upheld.

It is so ordered.



M. P. Otaru

M.P. Otaru

JUDGE

04th November 2022