

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

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**LAND APPEAL NO. 28 OF 2022**

*(Arising from Karagwe District Land and Housing Tribunal Appeal No. 31 of 2019. Originating from Kitwe Ward Tribunal of Kyerwa District)*

**JAMES BWEME.....APPELLANT**

**VERSUS**

**GRATIAN DIDACE .....RESPONDENT**

**JUDGMENT**

*08/09/2022 & 03/10/2022  
E. L. NGIGWANA, J.*

This is a second appeal. It traces its origin from Kitwe Ward Tribunal whereby the respondent Gratian Didace sued the appellant James Bweme claiming that the latter invaded the church land located at Kihango Ibamba, whose size is one acre, valued at **Tshs.1, 000,000/=**. On the other hand, the appellant herein alleged to have purchased the said land from one Kakabiro Nyakeiruka on 18/03/1979.

After full trial, the Ward Tribunal was satisfied that the lawful owner of the disputed land is James Bweme. Consequently, the matter was dismissed with costs.

The respondent Gratian Didace was aggrieved by the decision of the Ward Tribunal therefore, appalled to the District Land and Housing Tribunal vide Land Appeal No. 31 of 2019 on the following grounds:-

1. *That, the trial Tribunal proceedings were conducted by two different sets of the tribunal members an anomaly which renders all the proceedings null and void.*
2. *That, the trial Tribunal utterly demonstrated biasness by involving the respondent's wife, one Angela James, who was not even one of the witnesses who testified during the proceedings but yet was the only person who was allowed to identify and describe the boundaries of the suit land in the exclusion of the rest of witnesses who had testified at the proceedings except the appellant and respondent both of whom were curtailed to utter a word in explaining on the boundaries identification process.*
3. *That, the trial Tribunal proceedings are grossly irregular for lacking basic details about the suit land after conducting a locus in quo exercise to gives impressions gathered from the site/field.*
4. *That, the trial Tribunal misdirected itself to admit and heavily rely on the purported sale agreement of the respondent whose signature does not feature as a buyer of the suit land.*
5. *That, the trial tribunal decided the case against the appellant's weight of evidence both oral and documentary which was consistently elaborating the dimensions of the suit land that was acquired by the church since 1958.*

Wherefore the appellant, now respondent prayed for the DLHT to allow the appeal with costs, quash and set aside the decision and orders of the trial tribunal and declare him as the lawful owner of the disputed land.

After hearing the appeal, the DLHT was satisfied that the trial tribunal failed to maintain the quorum in all sittings as there was change of members. In other words, the first ground was found meritorious. The DLHT also addressed the 5<sup>th</sup> ground and found that it was meritorious.

It was found that the respondent Gratian Didace had no *locus standi* to institute the case against the Appellant as he stated clearly in his evidence that he instituted Land Case No. 5 of 2018 before Kitwe Ward Tribunal on behalf of a religious institution to wit; a church.

Basing on those two procedural irregularities, the proceedings, of the trial tribunal were quashed; judgment and orders thereto were quashed and set aside. The DLHT directed that parties are at liberty to institute a fresh case before the court of competent jurisdiction subject to the laws of the land including the law of Limitation.

Aggrieved by the decision of the DLHT, the appellant has knocked the doors of this court clothed with four (4) grounds of appeal drawn and filed by his advocate Mr. Mathias Rweyemamu. The grounds of appeal read as follows:-

- 1. That, the appellate learned Chairman of Karagwe District Land and Housing Tribunal grossly erred in law and fact to entertain an Appeal which was filed hopelessly out of time without the leave of the appellate tribunal to do so.*
- 2. That, the appellate learned Chairman grossly erred in law and fact to associate the Land claimed by the respondent to be part of the Church while the respondent was claiming the land for his own ownership.*

3. *That, the appellate Chairman of the District Land and Housing Tribunal grossly erred in law and fact to depart from the lucid finding of all assessors who opined to dismiss the Appeal before them for want of merit.*
4. *That, the appellate Chairman grossly erred in law and fact to nullify the proceedings of Kitwe Ward Tribunal based on the Coram of attendance of the members as it did not occasion the failure of justice between the parties*

Wherefore, the appellant is praying that this appeal be allowed with costs, that the judgment of the DLHT for Karagwe at Kayanga be quashed and set aside, and the decision and orders of the Kitwe Ward Tribunal be restored.

When this appeal came for hearing, the appellant had the legal service of Mr. Mathias Rweyemamu, learned advocate while the respondent appeared in person, unrepresented.

Arguing the first ground of appeal, Mr. Rweyemamu submitted that Land Appeal No. 31 of 2019 was filed in DLHT on 13/05/2019 as per seal of the DLHT. He added that the same was argued by way of written submission whereas the present respondent filed a written submission in-chief accompanied with a receipt which showed that the filing fee was paid on 22/05/2019. He added that it is on that point, the respondent now appellant discovered that Land Appeal No. 31 of 2019 was filed out of time, therefore, as an advocate for the appellant, he raised a Preliminary objection in the reply submission indicating that 45 days lapsed on 15/05/2019, and since filing fee was paid on 22/05/2019, it is obvious that

the matter was filed out of time, and extension of time not sought and obtained before filing the said Appeal.

He referred this court to the (District Land and Housing Tribunal) Regulations, 2003 that a matter is said to be fully filed upon payment of the filing fee. The learned counsel referred this court to the case of **John Chuwa versus Anthony Ciza** [1992] TLR 233 where the court held that; the date of filing the application is the date of the payment of the fees and not that of the receipt of documents in the registry.

He added that any matter filed out of time cannot be heard, withdrawn or adjourned, it deserves to be dismissed. He referred this court to the case of **Mwatima Sulemin Petro and another versus Halima Juma and 8 Others**, Civil Appeal No. 293 of 2019 ( CAT) (unreported) and **Andrew Rweikila versus Celestine Rweikila**, (PC) Civil Appeal No. 75 of 2001 to support his argument that the matter which is out of time should be dismissed.

As regard the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal, Mathias submitted that, the disputed land is not the church property and no members of the Board Trustees who appeared in the tribunal to testify that the disputed land was a Church Property. He added that the DLHT had no grounds to nullify the proceedings of the trial tribunal, quash and set aside the judgment and orders thereto. He added that Appeal No. 31 of 2019 was devoid of merits as opined by the Assessors hence ought to have been dismissed by the DLHT.

In reply, the respondent Gratian Didace stated that he testified in the trial tribunal that the disputed land is the property of the church, and he instituted the case on behalf of the church. He also argued that Appeal No. 31 of 2019 was filed within time, thus the argument that it was filed out of time is baseless. He urged the court to dismiss this appeal, and upheld the decision of the DLHT.

In his rejoinder Mr. Rweyemamu reiterated that the disputed property is not the church property as per evidence on the trial tribunal record. He added that under the circumstances of this case, the respondent ought to have sought extension of time before filing Appeal No. 31 of 2019.

Having and considered the grounds of appeal, submissions for and against the appeal, the issue for determination is whether this appeal is meritorious.

In the matter at hand, it is not disputed that the Ward tribunal delivered its judgment on 02/04/2022. It is trite law that where a person is aggrieved by an order or decision of the Ward Tribunal; he/she may appeal to the District Land and Housing Tribunal. See section 19 of the Land Disputes Courts Act, [Cap 216 R:E 2019], and must do so within 45 days after the date of the decision as provided for under section 20 (1) of the Land Disputes Courts Act, [Cap 216 R.E 2019] which states that;

*"Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty five days after the date of the decision or order against which the appeal is brought."*

In the Matter at hand, after the judgment of the Ward Tribunal, the respondent herein was aggrieved therefore an Appeal to the DLHT for Karagwe at Kayanga and it was registered as Land Appeal No. 31 of 2019. The petition of Appeal shows that it was presented for filing on 13/05/2019 in the DLHT registry on 13/05/2019 where it was received by the tribunal clerk who then stamped it with the DLHT Receipt stamp.

Upon being served with the Petition of Appeal, the reply thereto was filed therein by the appellant. It was agreed that, the same be argued by way of written submissions. In his reply to the submission filed on 30/07/2021, the appellant herein through Mr. Mathias Rweyemau raised an objection that the appeal was out time on the ground that it was filed on 22/05/2019 while 45 days required by the law lapsed on **15/15/2019**.

It is well known that a year has 12 months only. It was not clarified by the appellant in the DLHT whether the month was wrongly typed or not. The DLHT was led by its record which shows that the appeal was filed on 13/05/2019 therefore did not bother to discuss the Preliminary objection. During the hearing of this appeal, Mr. Mathias submitted that he knew that the appeal was filed out of time after observing a receipt of filing fee. On his side, the respondent disputed to have filed Appeal in the DLHT out of time.

I have tried to read an electronic receipt attached to the petition of appeal but with no success because the same was completely not readable. It is a trite principle of law that, a court record being a serious document should not be lightly impeached as there is always a presumption that a court records represents what accurately happened. See **Hafani Sudi versus**

**Abeza Chichi** [1998] TLR 527. Again no readable electronic receipt duly issued by the DLHT brought by Mr. Mathias to show that filing was done on 22/05/2019.

Since I have not come across a readable electronic receipt issued by the tribunal to the respondent herein when filed the petition of Appeal in the DLHT, the court record should prevail because it is reflected in the Petition of Appeal that it was presented for filing on 13/05/2019 in the DLHT registry on 13/05/2019 and since it was received by the tribunal clerk and stamped it with the DLHT Receipt stamp dated 13/05/2019, I consider that date as the filing date. In that respect, Appeal No.31 of 2019 was filed within 45 days, thus the DLHT had the right to admit, hear and determine the way it did. In the event, the 1<sup>st</sup> ground of appeal is hereby dismissed for want of merit.

As regards the 2<sup>nd</sup> and 3<sup>rd</sup> grounds, Mathis Rweyemamu argued that, the land in dispute was not a church dispute while the respondent herein maintained that the land in dispute is a church land. These grounds should not detain me. The one who instituted the suit in the Ward Tribunal was the respondent and he did testify that he instituted the suit on behalf of the Church. In the trial tribunal the respondent put that truth clear as follows;

*"Mimi niliyesimama hapa nimesimama kwa niaba ya Taasisi (Kanisa).... Taarifa ilitolewa kanisani."*

During the hearing of this appeal, the respondent maintained he instituted the land before the Ward Tribunal on behalf of a religious institution to wit Roman Catholic Ibamba.



It is well known that religious organizations are required to be registered. Upon being issued with a certificate of registration, the organization is required to be incorporated and be issued with a certificate of incorporation, from there the organization is deemed to have been incorporated, and therefore can sue or be sued in its incorporation name only. This court in that case **Kanisa la Anglikana Ujiji (Supra)**, (Mugeta, J) held among other things that Anglican Church or its branches cannot be sued. It was further held in the case of **Singida Sisal Production & General Supply versus Rofal General Trading Ltd and 4 others** Commercial review No. 17 of 2017 that;

*"non-existing party does not have legs to stand, hands to prosecute, no eyes to see and mouth to speak either on her own or on behalf of any other person before any court of law."*

In that respect, the decision of the DLHT that the respondent herein had no locus standi to institute a suit on behalf of the religious institution was very right. There was no any other remedy except to nullify the proceedings of the trial tribunal, quash and set aside the resultant judgment as the DLHT did. Thus I see no reason to fault the decision of the DLHT. In the event, the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal are devoid of merit, therefore, I proceed to dismiss them accordingly. Having done so, I find no reason to address the 4<sup>th</sup> ground otherwise it will be a mere academic exercise, because it was not even argued by the parties.

In the upshot, this appeal is hereby dismissed for want of merit. Given the nature the appeal, each party shall bear its own costs. It is so ordered.

Dated at Bukoba this 3<sup>rd</sup> day October, 2022.

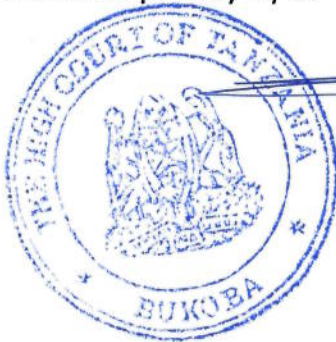


E.L. NGIGWANA

JUDGE

03/10/2022

Judgment delivered this 3<sup>rd</sup> day October, 2022 in the presence of both parties in person, Hon. E.M. Kamaleki, Judges' Law Assistant and Mr. Respichius Bamporiki, B/C.



E.L. NGIGWANA

JUDGE

03/10/2022