

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

LAND APPEAL NO. 97 OF 2022

*(Originating from Misc. Land Case No. 595 of 2021, the District Land and Housing
Tribunal for Morogoro)*

CONRAD THADEI GERVAS APPELLANT

VERSUS

ANDWILILE NYALLE MWAKIBETE1ST RESPONDENT

KOBA KOBERO2ND RESPONDENT

RULING

Hearing date on: 05/10/2022

Ruling date on: 18/11/2022

NGWEMBE, J.

This is a court ruling born out of preliminary objection preferred by the respondents against this appeal. In this appeal, the appellant was aggrieved by the judgement and decree of the District Land and Housing Tribunal of Morogoro in Land Application No. 595 of 2021. At the District Tribunal, the appellant was also the applicant, while the respondents herein remained respondents.

In a nutshell, the dispute originally was instituted at Gwata Ward Tribunal by Andwilile Nyalle Mwakibete claiming ownership of the suit land. The tribunal after hearing both parties, declared that, the

respondents herein are the true owners of the suit land. Being dissatisfied with such decision, the appellant herein found his way to the District Land and Housing Tribunal. However, the District land Tribunal upheld the decision of the Ward Tribunal and in fact proceeded to warn the appellant from abusing the court process.

Upon being aggrieved with that judgement and decree, preferred this appeal before this court. However, his appeal was encountered by one ground of preliminary objection to the effect that, the appeal contravened section 38 (2) of the **Land Disputes Courts Act Cap. 216 R.E. 2019.**

In the cause of hearing of this objection and after the objector closing his arguments, the appellant conceded to the objection and prayed same be struck out. In essence the learned advocate Benjamin Jonas for the 1st respondent, submitted by citing the contents of section 38 (2) of the Act, that disputes originating from Ward Land Tribunal shall be appealed to this court by way of petition filed in the District Land Tribunal. Filing direct to this court is fatally irregular, hence the appeal before this court is incompetent same should be dismissed with costs.

As I have so said, the appellant though appeared in person, yet he conceded to the objection, thus this court ruling.

In considering this ground of objection, I find important to be guided by the applicable laws itself. With a view to print out clear picture on this objection, I proceed to quote the respective section hereunder: -

Section 38 (2) *"Every appeal to the High Court shall be by way of Petition and **shall be filed in the District Land and***

Housing Tribunal from the decision, or order of which the appeal is brought"


In this point, I find equally important to quote subsection 3 of section 38: -

Section 38 (3) *"Upon receipt of a petition under this section, the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court"*

This section is couched in a mandatory manner that compels whoever intends to appeal to this court must comply with. The word used is "shall" meaning mandatory as interpreted by section 53 (2) of the Interpretation of **Laws Act Cap. 1 R.E. 2019** which is quoted hereunder: -

"Where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function conferred must be performed"

In any event the couching of section 38 of the Act meant mandatory. As such the appellant by filing his appeal direct to this house of justice, was not only irregular but serious contravention of section 38 of the Act. It follows therefore that; the appeal is incompetent. Consequently, the appellant in this appeal, though was not represented by an advocate, but he acted maturely by accepting the mistake he made. Hence, he conceded to the objection raised by the respondent. Accordingly, this appeal is incompetent same is struck out with no order as to costs.



I accordingly order.

Dated at Morogoro this 18th November, 2022.



P.J. NGWEMBE

JUDGE

18/11/2022

Court: Ruling delivered at Morogoro in Chambers on this 18th day of November, 2022 in the Presence of the Appellant and the presence of Mr. Mtemi Mathew, Advocate for Benjamin Jonas, Advocate for the Respondents.

Right to appeal to the Court of Appeal explained.



P. J. NGWEMBE

JUDGE

18/11/2022