

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

LAND APPEAL NO. 46 OF 2022

*(Originating from the Application No. 43 of 2021 of the District Land and Housing Tribunal for
Kagera Region at Bukoba)*

ZELIDA CHARLES.....APPELLANT

VERSUS

STEVEN KANYANKOLE.....RESPONDENT

RULING

*17/10/2022 & 11/11/2022
E. L. NGIGWANA, J.*

This is a ruling in respect of the preliminary objection raised by the respondent through Joseph Bitakwate, learned advocate that the Memorandum of appeal filed by the Appellant is misconceived and un-maintainable in law for failure by the Appellant to join the necessary party one Alfredina Robert, one of the vendors of the suit land to the respondent. It also touches the issue raised by the court in its own motion; whether this appeal is competent or not considering the fact that the name of the respondent herein as per pleadings and the trial tribunal proceedings and the petition of appeal filed in this court reads; as "**Steven Kanyankole**" while in the judgment and decree which sought to be challenged, the name reads as "**Steve Kanyankole.**"

Briefly, the facts of the matter are as follows; before the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 43 of 2021, the respondent herein sued the appellant herein and another person namely; Alfredina Robert who is not a party to this appeal, claiming ownership of the suit land located at Ijuganyondo street, Ijuganyondo Ward within Bukoba Municipality in Kagera Region, whose value is estimated to be **Tshs.**

12,000,000/=. The respondent, Steven Kanyankole alleged that the said land comprised three plots whereby he purchased the first plot on 25/06/2015 from Adrian Kasigwa, the second plot on 21/01/2017 from the same Adrian Kasigwa and the third plot on 18/06/2020 from one Adam Emily and all formed one parcel of land but the said land was encroached by the Appellant herein in July, 2021.

On her side, the appellant herein claimed to have purchased the said land on 13/06/2013 from Adrian Kasigwa while Alfredina Robert alleged that she is a legal wife of the late Adrian Kasigwa. She also alleged that her late husband sold the disputed land to the respondent herein, and she consented to that transaction as a legal wife. She disputed to have consented to the selling of any other portion of land to any other person, therefore, according to her, the disputed land is the respondent's property after it had been sold to the respondent by the late Adrian Kasigwa and she consented to sale as a wife.

Upon full trial, the respondent herein was declared the lawful owner of the disputed land. The appellant herein was declared a trespasser and was ordered to give vacant possession.

Aggrieved by the decision of the DLHT, the appellant has knocked the doors of this court to challenge the same but the respondent raised a preliminary objection on the competence of this appeal.

At the hearing of the preliminary objection, the respondent had the legal services of Mr. Joseph Bitakwate, learned advocate while the appellant had the legal services of Ms. Erieth Barnabas. Submitting in support of the P.O, Mr. Bitakwate argued that in the Written Statement of Defence filed by one

Alfredina Robert in the DLHT, she stated how she was involved in the sale of the disputed land to the respondent, therefore, she is a necessary party otherwise execution of the court decree which might be passed will not be executable.

The learned counsel made reference to the case of **Simon Peter Kimiti versus Jose Baltazar Kameka and 3 Others**, Land Revision No. 3 of 2020 H/C Sumbawanga (unreported) where at page 11 the court held that; a necessary party is one whose presence is indispensable to the constitution of a suit and in whose absence no effective decree or order can be passed. Thus, the determination as to who is a necessary party to suit would vary from case to case depending upon facts and circumstances of each particular case. Among the relevant factors for such determination include the particulars of the non-joined party, the nature of the relief claimed as well as whether or not in the absence of the party an executable decree may be passed. He added that, if this matter proceeds in absence of one Alfredina Robert that amounts denying her the right to be heard.

Submitting on the issue raised by the court, Mr. Bitakwate, advocate argued that the fact that the name of the respondent was wrongly typed in the judgment and decree, this appeal is incompetent and that rectification can only be done by the DLHT. He added that the remedy available is to strike out the same for being incompetent.

In reply, Ms. Erieth Barnabas submitted on the preliminary objection raised by the respondent that the said Alfredina is not a necessary party because she was just a witness who witnessed the sale transaction, therefore, the necessary party was the vendor namely Adrian Kasigwa.

Submitting on the issue raised by the court, Ms. Erieth conceded that, that was an error, but referred this court to section 96 of the Civil Procedure Code Cap 33 R.E 2019 that by virtue of that provision, that the trial tribunal has powers to rectify its typing errors. She prayed that the matter be struck out without costs and with leave to the appellant to file a proper appeal after being availed with copies of rectified documents.

Having heard submissions by both advocates and gone through the records of the DLHT, the main issue for determination is whether the objection raised is meritorious, and if not whether the issue raised by the court is meritorious.

In the trial tribunal, Alfredina Robert was joined in the matter as a necessary party where as in Land Application No. 43 of 2021, she was the 2nd respondent. Upon full trial, she was satisfied by the decision of the DLHT for Kagera at Bukoba therefore, preferred no appeal.

It is trite law that a party who is aggrieved by the decision or order of the court has the right to appeal to the higher court, but no party can be forced to appeal. In the present matter, only Zelida Charles who was the 1st respondent in the DLHT was aggrieved by the decision of the DLHT that is why she lodged this appeal. Therefore, the objection that the appeal is misconceived and unmaintainable in law for failure by the Appellant to join Alfredina Robert as a necessary party, in my view, is baseless and misconceived. Under the circumstances, I have no other option but to overrule the P.O as I hereby do. Objection raised by the respondent through his advocate is hereby overruled for want of merit.

As regards the issue raised by the court, I agree with both advocates that since the name of respondent herein was written as "**STEVEN KANYANKOLE**" in the petition of appeal presented before this court and in the pleadings and proceedings of the DLHT, but in the judgment and decree sought to be challenged in this court, it was written as "**STEVE KANYANKOLE**", and since this court has no power to correct such error, it is on that premise, I hold that, this appeal is incompetent thus, it is hereby struck out. The Appellant is a liberty to file a proper appeal within 14 days after being supplied with the proper copies of judgment and decree. I enter no order as to costs. It is so ordered.



E. L. NGIGWANA

JUDGE

11/11/2022

Ruling delivered this 11th day of November, 2022 in the presence of both parties in person, Hon. E. M. Kamaleki, Judge's Law Assistant and Ms. Sophia Fimbo, B/C.



E. L. NGIGWANA

JUDGE

11/11/2022