

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

MISCELLANEOUS LAND APPLICATION No. 57 OF 2021

(Arising from the High Court (Musoma District Registry) in Misc. Land Case Appeal No. 128 of 2020; the District Land and Housing Tribunal of Tarime at Tarime in Land Appeal No. 112 of 2018; and Original from Kisumwa Ward Tribunal in Land Case No. 13 of 2018)

CHACHA MAGO **APPLICANT**

Versus

Dr. JAMES KILAZA **RESPONDENT**

RULING

22.02.2022 & 22.02.2022

F.H. Mtulya, J.:

Section 18 (2) of the **Land Disputes Courts Act** [Cap. 16 R. E. 2019] (the Act) provides that: a *ward tribunal may permit any relative or any member of household of any party to any proceedings, upon request of such party to appear and act for such party.* This provision was subject of contest today in this court in application for certification on the point of law. The dispute which brought the parties in this court was:

Whether a requested person or relative who represents a party in a dispute filed at ward tribunals may display his name in the dispute instead of the real party, and if the reply is in affirmative, who will bear costs of the suit in the contest fails on the person.

After long submissions and consultations with learned counsels of the parties in this dispute, Mr. Thomas Manyama Makongo and Mr. Daudi John Mahemba, two (2) matters came to the light in this application, *viz*, first, that the **Ward Tribunal of Kisumwa** (the tribunal) in **Land Dispute No. 13 of 2018** (the case), entertained a suit between Dr. James Kilaza (the respondent) and Mr. Chacha Mago (the applicant) instead of Dr. James Kilaze and Laurentia Mbusiro as per registered letter by Lawrencia Mbusiro drafted on 26th May 2018 and filed in the tribunal on 22nd June 2018; and second, this court ordered costs against the applicant in **Misc. Land Appeal Case No. 128** determined by this court.

During the submission in favour of the Application, Mr. Mahemba contended that it was wrong for the applicant to appear as a party in the case contrary to the law in section 18 (2) of the Act. According to Mr. Mahemba, his clients, the applicant was also ordered to pay costs of the suit which is against the law regulating costs issues. Mr. Makongo who appeared for the respondent, on the other hand, thinks that the cited letter which was filed at Kisumwa Ward Tribunal was filed to camouflage the applicant as it was well noted by Hon. Judge Mkasimongwa at page 8 of the decision in **Misc. Land Case Appeal No. 128 of 2020**, determined in this court. According to Mr. Makongo, Judge Mkasimongwa was right to order

ownership of the disputed land to the respondent as the applicant participated from the tribunal to this court hence he should bear the consequences in costs.

I perused the record of this application and found that the letter attached in the case at the tribunal. The letter in the text shows that it was drafted by Laurentia Mbasiro requesting the applicant to appear on her behalf in the case. However, the record is silent on who initiated the proceedings and against which persons as per requirement of the law in section 17 of the Act.

Having noted the issues, which are the root cause of the present dispute, I think it will be proper for the parties to access the Court of Appeal in search of proper application of laws by the courts below. I am aware that superior courts in our State have additional duty of ensuring proper application of the laws by the courts below. I understand the Court of Appeal will not close its eyes on improper record and will interpret the dispute accordingly (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017).

In any case, the rights of appeal and fair hearing, which the applicant is praying in the present application are constitutional rights enshrined under article 13 (6) (a) of the **Constitution of the**

United Republic of Tanzania [Cap. 2 R.E. 2002] (the Constitution) and received precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002.

This court would love to cherish the right, when there are good materials registered by applicants in applications like the present one. I have noted in the present application, the applicant has registered plausible materials which display a contest on point of law which must be interpreted by our superior court, the Court of Appeal. In the final analysis, I grant the application and order the applicant to register his complaint in the Court of Appeal as per requirement of the law regulating appeals from this court to the Court of Appeal. I award no costs in the present application as the parties are still at horns in search of the substantial right at the Court of Appeal.

Ordered accordingly.

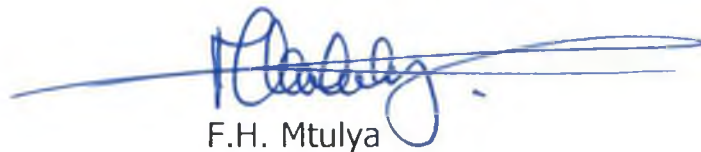



F. H. Mtulya

Judge

22.02.2022

This ruling was delivered in chambers under the seal of this court in the presence of the respondent, Dr. James Kilaza and his learned counsel Mr. Thomas Manyama Makongo and in the presence of learned counsel, Mr. Daud John Mahemba for the applicant.



F.H. Mtulya

Judge

22.02.2022