

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

MISCELLANEOUS LAND APPEAL NO 06 OF 2021

(Originating from the District land and Housing Tribunal for Njombe at Njombe in Land Appeal No. 84 of 2019 which stemmed from Luponde Ward Tribunal in Land Dispute No. 18 of 2019)

CHRISTIAN MYAMBA.....APPELLANT

VERSUS

GERVAS MGIMBA.....RESPONDENT

JUDGEMENT

Date of Last Order: 08/03/2022
Date of Judgement: 08/03/2022

MLYAMBINA, J.

The Parties herein are contesting over a quarter acre area situated at Luponde Village, Luponde Ward in Njombe District. The claim before the Luponde Ward Tribunal by the Appellant herein against the Respondent herein vide *Land Dispute No. 18 of 2019* was on destruction of trees and land. It is obvious that in determining such dispute the Ward Tribunal had to gather evidence as to who owned the disputed area. Upon inter Parties trial, the Ward Tribunal through its judgement dated 12th September, 2019 that the suit land neither belonged to the herein Appellant nor to the Respondent. It belonged to the Luponde Village Council. Aggrieved with the decision, the Appellant unsuccessfully appealed before the District Land and Housing Tribunal for Njombe District at Njombe vide *Land Appeal No. 84 of 2019*. Hence this appeal on two grounds, namely:

1. That, the Appellate District Land and Housing Tribunal erred in law and fact by according weight and base its decision on the Letter of

Luponde Village Council addressed to Luponde Primary Court which was not tendered in evidence by either Party as per the records.

2. That, the Appellate District Land and Housing Tribunal erred in law and fact by deciding the appeal in favour of the Party, the village council which was not a Party to the case without evidence on records.

On 8th day of March, 2022 when the appeal came for hearing, both Parties appeared and argued the appeal orally in person. To my surprise, the Appellant told the Court that it is him who tendered the the Letter of Luponde Village Council addressed to Luponde Primary Court. With such submission, the first ground lost weight. Considering that both Parties are laymen, I had taken time to go through the record to get satisfied on the Appellant's allegation on his first ground of appeal. It appears correct that the District Land and Housing Tribunal partly based its decision on such letter. The first paragraph of page 3 of the impugned decision partly read:

...Kwa kuangalia Ushahidi uliotolewa na pande zote mbili pamoja na barua toka Halmashauri ya Kijiji cha Luponde ya tarehe 08/08/2019 ambapo iliandikwa kwa Hakimu Mahakama ya Mwanzo Uwemba kuwa eneo ni la Serikali ya Kijiji na Wananchi walipanda miti katika eneo hilo ambalo limetengwa kwa ajili ya malisho ya mifugo toka 1984, hivyo wanatakiwa kuvuna miti hiyo na kuacha kwa ajili ya mifugo. Hivyo Baraza la Kata katika kutoa uamuzi

wake liliangalia Ushahidi wa pande zote mbili na ndipo lilipofikia maamuzi hayo...

In the light of the above findings of the District Land and Housing Tribunal for Njombe which sustained the decision of the Ward Tribunal for Luponde, and as conceded by the Appellant himself, there is no flicker of doubt that it is him who tendered such letter before the Ward Tribunal. The later and the District Land and Housing Tribunal were proper to use such exhibit in reaching their decision. The only issue is whether it was proper to give judgement in favour of the village council who were not a Party before the Ward Tribunal. That takes me to answer the second issue.

At the onset, I have six observation: *One*, it is an ordinary principle of law that a Judgement rendered in a particular case affects only those who are Parties to the suit or are in privity with the Parties. *Two*, a Judgement cannot be allowed to operate in favour or at the detriment of a stranger. *Three*, Parties to the case are the persons who are named as such in the record. *Four*, the named Parties are the one to appear in record on the Judgement. *Five*, there must be an identity in the quality, character or capacity in which the Parties appear. A Party acting in his own capacity cannot be affected by a Judgement when acting in other capacities, such as of a Probate Administrator. *Six*, Parties to the case are those who are directly interested in the subject matter. They are the ones who have the right to complain and defend through pleadings or to control proceedings, to adduce evidence, cross examine witnesses and to appeal from the Judgement.

Further, it is a settled law that, Parties are bound by their pleadings, as it was observed in the case of **Nico Insurance (T) Limited v. Philip Paul Owoya and Others** Civil Appeal No. 151 of 2017 High Court at Dar es Salaam, at page 7 when referring the case of **Makori J.B Wassaga v. Joshua Mwaikambo and Another** [1987] TLR 88, the Court observed that:

In general, and this is I think elementary a Party is bound by his pleadings and can only succeed according to what he has averred in his plaint and in evidence, he is not permitted to set a new case.

Perusing the complaint and the defence of the Parties before the Ward Tribunal, I noted nowhere either of the Parties impleaded the Luponde Village Council as a necessary Party to the proceedings. Though I agree with both Tribunals below that neither the Appellant nor the Respondent proved ownership of the suit land, it was, however, not proper for the Tribunals below to pronounce Judgement in favour of the Luponde Village Council as if it was a Party. The Tribunals below were supposed to confine their decision in respect of the Parties before it, or if necessary, the trial Ward Tribunal could have ordered joinder of a necessary Party, Defendant, the Luponde Village Council.

In the end, the appeal is partly allowed to the extent that the decision of the Tribunals below of rendering Judgement in favour of the Luponde Village Council who were not a Party to the case is nullified and set aside. Costs be shared.



Y.J. MLYAMBINA

JUDGE

08/03/2022

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Judgement pronounced and dated 8th day of March, 2022 in the presence of the Appellant and the Respondent in person. Right of Appeal fully explained.



Y.J. MLYAMBINA

JUDGE

08/03/2022

A handwritten signature in blue ink, written over the printed name and title.