

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

PC. CIVIL APPEAL NO.37OF 2022

*(Arising from the Civil Appeal No. 3 of 2022 of Kishapu District Court
emanating from Civil Case No.38 of 2021 of Kishapu Primary Court)*

DOCTA NJILE IDUHI.....APPELANT

VERSUS

GEORGE NGASA.....RESPONDENT

JUDGMENT

Last order: 12/12/2022

Judgment date on 23/02/2022

MASSAM, J.

Appeal before this court started on 7/12/2021 when the respondent, George Ngasa sued the appellant one Docta Njile Idohi in Kishapu Primary Court for a claim of payment Tshs 5,600,000/= ascending from accumulative money emanating from multiple cases costs purported to be awarded indifferent criminal cases and Land Tribunals determined in different times from 2016 to 2019. In the trial court respondent prayed the

court to order the appellant to pay him sum of Tsh. 5,600,000/= as compensation costs incurred in all cases he won against the appellant.

In trial court, respondent informed the court that, he prosecuted cases against the appellant which he all won. He supported his claim by mentioning the said cases as follows, (i) Shauri Na. 1/2017- Baraza la Ardhi(ii) Shauri Na. 38/2018- Mahakamaya Wilaya Kishapu, (iii) Shauri Na. 11/2018, (iv) Shauri Na. 12/2018 Mahakama ya Mwanzo Kishapu, (v) Shauri Na. 6/2018 Baraza la Ardhi, (vi) Shauri Na. 24/2017 Mahakama ya Wilaya Kishapu, (vii) Barua ya kutembelea eneo la tukio- Baraza la Ardhi la Wilaya, (viii) Barua ya Utekelezaji ya Mtendaji wa kata 28/8/2019 and Risiti ya malipo fedha ya Kutembelea Na. 4/4/2017.

Appellant denied the claim by informing the trial court that respondent had no claim against him as the respondent never won the purported case in the Ward Tribunal as the said case never came to an end rather than the case was stopped continuation because he was sick.

After a full trial, the trial primary court decided in favour of the respondent and the appellant was ordered to pay the respondent the claimed amount of 5,600,000/=. Respondent dissatisfied who preferred

appeal in District court with two grounds of appeal which I opt not to reproduce. In determining the said grounds of appeal the District court found the trial court's decision had merit hence it upheld the said decision and the appeal of the appellant was dismissed. Dissatisfied with the said decision appellant again tested second appeal herewith with three(3) grounds of appeal. Reading the grounds of appeal I have noted that ground 1 and 2 have similar ground which complained about jurisdiction of the trial court to try the land issues and awarding costs as the matter originated from the District Land and Housing tribunal. With thus regards I opt to join the grounds No. 1 and 2 into one ground jointly and the ground 3 will be discussed separately. The ground 1 is to the effect that;

- 1. That, the District court erred in law and facts in upholding the decision of the primary court in awarding cost to the respondent without considering that the primary court had no jurisdiction to award cost as the appeal originated from the district Land and Housing Tribunal of Mwatanga.*
- 2. That the District Court erred in law and facts in awarding costs to the Respondent without considering the order originating from the District Land and Housing Tribunal of Mwatanga involving the*

parties which had already determined the matter with regard to cost by ordering each party to bear its own cost.

When the matter called for hearing both parties appeared in person unrepresented. Appellant was the first to address the court on his grounds of appeal, he submitted that, he filed his appeal in this court to deal with his appeal because the trial court did order parties to bear their own costs but the respondent prayed in the trial court to be given costs.

Appellant went on telling the court that the matter was returned to Mwantanga Ward Tribunal but in surprise he was served with a summons and the respondent again praying costs. He said he appealed to Kishapu District court in order the court to see if it was right for him to pay costs.

Respondent in his reply submitted that he prayed to be paid costs because it was seven years since his case started in primary court and later to District court, so he finds that, it was his right to pay costs.

I have considered the submissions by the parties' submissions, grounds of appeal, Judgment, proceedings of the trial and two grounds of appeal they established a purely points of law which will lead me to accommodate them basing on point of law as raised by the appellant.

To start with the 1st ground, appellant faulted the decision of the first appellate court by complaining that the District court erred in law and facts in entertaining an appeal which it had no jurisdiction since the decision originated from District Land and Housing Tribunal. I had an ample time to review records of both lower court's proceedings and judgments. After being read the records I find that it is true the trial court heard Madai Na. 38/2021 where the respondent claimed Tsh. 5,600,000/=. In that claim the Plaintiff read as follows;

MADAI: Tsh. 5,600,000/= (MILIONI TANO NA LAKI SITA)

HABARI YA MADAI;

NINAMDAI MDIWA FIDIA YA TSH. 5,600,000/= (MILIONI TANO NA LAKI SITA) INAYOTOKANA NA GHARAMA ZA UENDESHAJI WA KESI (MASHAURI) TOFAUTI TANGU MWAKA 2016 HADI 2019 AMBAO MDIWA ALISHINDWA YOTE MIONGONI MWA MASHAURI HAYO NI SHAURI LA MADAI 1/2017 BARAZA LA ARDHI LA KATA, SHAURI LA RUFAA KATIKA MAHAKAMA YA MWANZO KISHAPU No. 38/2017, SHAURI LA

*RUFAA MAHAKAMA YA WILAYA KISHAPU No. 11 LILITOKANA
NA SHAURI LA MWANZO No. 12/2018.*

*KATIKA MASHAURI YOTE NINADAI GHARAMA ZA UENDESHAJI
MASHAURI HAYO.*

*GHARAMA ZA KUSIMAMISHA SHUGHULI ZANGU KATIKA
KIPINDI CHOTE GHARAMA ZA KUPLEKA BARAZA NA
MAHAKAMA KATIKA MASHURI YOTE KATIKA MAENEO YA
KUTEMBELEA.*

The above quoted claim is said to be the source of the civil case No. 38 of 2021 in Kishapu Primary court where the trial court granted the prayer for the appellant to pay the amount claimed by respondent. In simple language respondent claimed a bill of costs emanating from different cases which he won against the appellant.

Without wasting my time at this earlier stage I find that the trial court improperly entertained the purported Civil case without jurisdiction and the district court upheld the decision of the trial court without checking if the said primary court had powers to entertain the matter. As complained by the appellant the primary court had no jurisdiction to tax the costs awarded

by the District Land and Housing Tribunal. The appellant's assertion that the bill of cost in the District Land and Housing Tribunal or Ward Land Tribunal was supposed to be filed in the District Land and Housing Tribunal which were the proper forum and powers to execute its own decrees. I agree with the submission of the appellant basing on the provisions of law under section 33 (3) of the **Land Dispute Court Act Cap 216 RE 2022** the law provides that;

33 (3)- The District Land and Housing Tribunal shall have powers to execute its own orders and decrees:

Provided that, the pecuniary jurisdiction of the Tribunal shall be unlimited in proceedings under the Customary Leaseholds (Enfranchisement) Act and the Regulation of Land Tenure (Established Village) Act

The provision above has same meaning as in Misc. Land Application No. 41 of 2020, HC Moshi, quoting with authority the case of **Maximillian Rwabulala vs Emilian Kalugala and Another** [1987] TLR 2, where the court held that;

"According to the Advocates 'Remuneration and Taxation of Costs (Amendment) Rules, GN 89 and 159 of 1962 Cap 9 of the Applied Laws, the proper Taxing Master is the court where the case terminates. Since the case in point ended in the High Court the District Magistrate had no jurisdiction to conduct Taxation

The authorities above couched the fact that the bill of costs be awarded by the court which entertained the matter, the instance case lacks all legal requirement for the trial court to award bill of cost to the appellant. Also thus court noted a number of irregularities which on my opinion must be rectified,

One, The Trial court awarded cost which emanating from Land Complaint No. 1 of 2017 of Mwataga Ward Land Tribunal contrary to section 33 of the Cap 216 as the Primary court and Ward Tribunals is a different court and the said decision did not award so the court was wrong to entertain the same. **Second,** Civil Case No. 38/2021 Kishapu Primary Court the court did not order costs. **Third,** Criminal Appeal No. 11 of 2018 which delivered on 21/06/2018 at Kishapu District Court this found clear that there is no law providing bill of cost in Criminal cases. **Forth,** Criminal Case No 12 of 2018 of Kishapu Primary court in this case appellant was

convicted and punished with conditional discharge so no order for the cost was awarded in the said criminal case. **Fifth**, Land Appeal No. 6 of 2019 delivered on 15/05/2019 at page 5 parties were ordered that each party to bear his/her own costs. **Sixth**, the Criminal Appeal No. 24 of 2017 was dismissed and the court upheld the Primary court decision, nowhere the court awarded costs. **Seventh**, the letters which used for applications the court was not supposed to use them.

The noted above was the base for the trial court to award costs though the trial court had no jurisdiction but also the proceedings went in viral to mislead itself by awarding costs of criminal matters as well as the land matters which had no jurisdiction, and in the issue of criminal matters, no law allow the same.

With that finding, I cannot labour much to determine the remaining ground of appeal as the ground 1 is enough to dispose this matter because it goes to the root of the case. By saying appellant managed to default the law courts proceedings and judgments that the district Court erred in law and in facts by its failure to appreciate that the trial court had no jurisdiction to entertain the bill of cost which emanating from the Land Tribunals. More

also to award the cost which was not awarded in the judgment/ruling and the same time in the criminal cases. So according to the foregone reasons, this court find the appeal merited, I quash and set aside the proceedings and judgments of the lower courts with costs.

It is so ordered,

DATED at **SHINYANGA** this 23th day of February, 2023.




R.B. MASSAM
JUDGE
23/02/2023

Court: Right of Appeal explained