

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TABORA

AT TABORA

LAND APPEAL NO. 14 OF 2022

(Arising from Land Application No. 14 of 2022 at Nzega District and
Housing Tribunal)

FRANCIS NYAMITI.....APPELLANT

VERSUS

BARAGI BOMANI.....RESPONDENT

JUDGMENT

Date 22/3/2023 & 31 /3/2023

BAHATI SALEMA,J.:

The appellant herein **FRANCIS NYAMITI** is appealing against the ruling of the District Land and Housing Tribunal (DLHT) of Tabora Nzega at Tabora in Application No. 14 of 2022 that was struck out. The DLHT's ruling was delivered on 22nd June, 2022 before Hon. V. A. Ling'wetü – Chairman.

Aggrieved by the impugned decision of the District Land and Housing Tribunal, the appellant marshaled two grounds of appeal that: -

- 1. That, the learned trial chairman erred in law in fact in disregarding the contents of the letter dated 28/03/2022 which proves that the*

Ward Tribunal failed to settle the land dispute between the parties herein amicably.

2. *That, the learned trial chairman erred in law and in fact in striking out the land dispute filed by the appellant before it and awarding costs to the respondent.*

The appellant prays for the grant of this appeal with costs and the ruling of the District Land and Housing Tribunal of Nzega to be set aside and the Land Application No. 14/2022 to be restored and be heard *inter-parte*.

In the course of the hearing, the appellant was represented by Mr. Emmanuel Sululu, learned counsel whereas the respondent enjoyed the services of Mr. Samwel Ndanga, also learned counsel. The matter was heard *viva voce*.

Submitting on the first ground of appeal, Mr. Sululu stated that the District Land and Housing Tribunal struck out the application on 27/6/2022 for reason that the application did not pass to the ward tribunal for settlement and ordered costs thereof. He submitted that this was not fair since the appellant passed through the ward tribunal of Lugubu before going to Nzega. To emphasize his point, he submitted that the Ward Tribunal on 28/3/2022 confirmed that the parties went to the ward.

He also stated that prior filing the application, the appellant informed the Chairman of the District Land and Housing Tribunal who admitted. He submitted that since the chairman received the letter before, he could have advised him not to file.

Further Mr. Sululu admitted that section 13(4) of the **Written Laws (Miscellaneous Amendments) Act, No.3/2019**, all applications must pass, before the ward tribunal but he submitted that there was no format until last year. He stated that this letter is sufficient to be a notice or certificate by looking at the contents of the Ward Tribunal letter which was determined on 28/3/2022. He believed that this was not fair since the chairman allowed him to file. He prayed to this court to allow the appeal.

On the second ground of appeal, he stated that, it is the discretion of the court to award cost but it has been restated in many judicial authorities that it should be granted judiciously. Reinforcing his stance the learned counsel urged this court to seek inspiration from the decision in the case of **Tozo V Philemon Musa Mwashilanga**, [2002] TLR pg. 276 which discussed the construction of section 30(1) and (2) of the Civil Procedure Code, Cap. 33 governing the award of costs. He contended that the chairman did not act judiciously since there was no winner and if there was a mistake, it was done at the ward tribunal level.

In rebuttal, on the 1st ground of appeal Mr. Samwel Ndanga averred that it is trite law that before filing a case, it must be passed to the ward tribunal to prove that the Ward Tribunal has failed to settle the dispute amicably and issue a certificate. Section 13 (4) of **the Land Disputes Courts Act**, Cap 216 [R.E. 2019].

He submitted that in this matter at hand, the letter on 28/3/2022 presented before the District Land and Housing Tribunal was not a certificate but a complaint letter. There is nowhere the chairman allowed him but the appellant himself paid the costs for filing. In the tribunal the case was withdrawn and not struck out since the case did not meet the criteria.

On the issue of costs, he stated that it was the discretion of the court to grant or not. He submitted that the District Land and Housing Tribunal was right to give costs since both parties used advocates. The District Land and Housing Tribunal had discretion and power to order for the costs.

In his shorter rejoinder, Mr. Sululu contended that the respondent concedes that there was a letter in which the main issue is on failure to settle. The District Land and Housing Tribunal endorsed the filing the case.

He reiterated his submission in chief that the issue is whether the disputed area belongs to him or not be done on merit.

On the second ground, he reiterated that discretion must be acted judiciously. Both parties were supposed to pay their own costs as the case ended at preliminary objection only.

Having carefully considered the grounds of appeal, the submissions made by both parties and examined the record. The issue is whether the appeal is meritorious, I find it appropriate to start by pointing out that on the first ground of appeal.

It is the jurisdiction of the Ward Tribunals over the land matters which is now limited to mediation and that has all along been the primary function of the Ward tribunals. The power of the ward tribunals was removed through an amendment made to **the Land Disputes Courts Act, Cap.216 [R.E 2002]** by **the Written Laws (Miscellaneous Amendments) Act, No.5 of 2021**.

This section provides that the District Land and Housing Tribunals are not allowed to hear and decide a land dispute unless the Ward Tribunal has attempted to settle the dispute amicably and failed, and it has issued a certificate that mediation has been attempted but it failed. Where a party to the dispute refers a land matter to the ward tribunal but the tribunal fails to settle it within 30 days, the party who referred the

dispute to the ward tribunal may take the matter to the District Land and Housing Tribunal without a certificate of non-settlement issued by the ward tribunal provided that he will have to prove that the ward tribunal failed to mediate the dispute within 30 days after receipt of the complaint.

In this matter, at hand, having perused through the letter dated 28/3/2022 I noted on the last paragraph that:

“ 2. Kwa kuwa shuri(sic) hili liliamriwa na baraza hili limemueleza kufika kwako kwenye baraza lako kwa hatua Zaidi na pia jinsi litakavyoona baraza.”

From the above extract, I find that this suffices to prove that the ward tribunal failed to mediate the dispute within 30 days.

As to the second ground of appeal, on the issue of costs, I agree with the counsel for the respondent that the law requires a successful party to the proceedings to be awarded costs to reimburse him for the costs incurred in prosecuting the matter.

Similar to Regulation 21 of **the Land Disputes Courts (The District Land and Housing Tribunal Regulations, 2003, G.N. No. 174** which provides that the tribunal may make such orders as to costs in respect of the case as it deems just. It should be noted that the awarding of costs is not automatic. In other words, they are not awarded to the successful party as a matter of course. It is trite law that costs are entirely in the discretion

of the court and they are awarded according to the facts and circumstances of each case.

In my view most of the time courts consider the circumstances of each case to arrive at just findings. Costs are both motivations and deterrent sanctions to parties. In this aspect, when costs are granted or rejected the court may be guided by factors such as mistakes occasioned by unfocussed legal advice to a party; unintended mistakes of parties; time and resources spent in the matter by the opposite party; illegalities/irregularities raised by the court. It is the view of this court that costs awarded not judiciously may tend to shut the doors of the courts as litigants or the public will become afraid to seek such important legal redresses.

Therefore, although costs are awarded at the discretion of the court, such discretion ought to be exercised by the court judiciously unless the court has reasons to deny the same guided by the reasons above, in the matter at hand the tribunal was not right to order costs to the parties since the mistake was done by the trial tribunal.

For those reasons, I find the appeal is allowed, and the decision of the District Land and Housing Tribunal in Land Application No. 128 of 2017 is hereby quashed and set aside. This court orders the case file to be

restored to the trial tribunal so that the application can be determined on merits. I award no costs to either party.

Order accordingly.



A. BAHATI SALEMA
JUDGE
31/3/2023

Court: Judgement delivered in presence of both parties.



A. BAHATI SALEMA
JUDGE
31/3/2023

Right of Appeal fully explained.



A. BAHATI SALEMA
JUDGE
31/3/2023

