

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

LAND APPEAL NO. 75 OF 2022

(Originating from the District Land and Housing Tribunal for Mbeya at Mbeya in
Application No. 231 of 2020.)

FERE ZABRON MALIMBA @ ZABRON M. NYANGE.....APPELLANT

VERSUS

BURTON IGNAS NTULO.....RESPONDENT

JUDGMENT

Date of Last Order: 14/02/2023

Date of Judgement: 21/04/2023

NDUNGURU, J.

The appellant, FERE ZABRON MALIMBA @ ZABRON M. NYANGE is challenging the order of the District Land and Housing Tribunal for Mbeya dated 15/03/2022. Before the DLHT, the respondent BURTON IGNAS NTULO who was the applicant had instituted a land suit against the appellant and another person who is not a party in this appeal. The suit however, did not go to a full trial since it was marked withdrawn upon the respondent's prayer which was not objected by the appellant. The appellant's discontent is not on the withdrawal order which he had no objection to the prayer but it was gone without granting costs. So what

irritated the appellant is non grant of the costs notwithstanding the fact that he prayed for the same.

The appeal is thus, preferred under one ground that *the DLHT erred in law and facts for failure to award costs to the appellant following a prayer by the Respondent herein to withdraw the case without assigning any reason.*

When the appeal was called on for hearing, the appellant was represented by Mr. Gerald Clement Msegeya, learned advocate whereas the respondent was represented by Mr. Chapa Alfred Sukari, learned advocate. The appeal was heard by way of written submissions.

Arguing for the appeal, counsel for the appellant armed with the provision of section 30(2) of the Civil Procedure Code, Cap. 33 R.E 2019 said that the learned Chairman did not assigned reasons in writing to his denial of costs to the appellant which is contrary to the law. Counsel also cited this court decision in the case of **Andrew C. Ndakidemi vs Nassoro Lwila & Two Others**, Land Appeal No. 41 of 2020 High Court of Tanzania at Iringa (unreported). In that case this court cited the decision of the Court of Appeal of Tanzania in **Mohamed Salmi vs Jumanne Omary Mapesa**, Civil Appeal No. 4 of 2014 at Dodoma (unreported) where it was held that; as a general rule, costs are awarded

at the discretion of the court. But the discretion is judicial and has to be exercised upon established principles and not arbitrary or capriciously. One of the established principles being that, costs would usually follow the event.

Counsel for the appellant further argued that denial of costs to the appellant was arbitrary since the appellant had engaged an advocate as soon as he received a summons to appear where the advocate duly prepared a Written Statement of Defence and he paid for it. Also, that the appellant had already paid the advocate to represent him thus, he had already incurred costs. Counsel for the appellant, therefore, prayed for the appeal to be allowed with costs.

In reply, counsel for the respondent started giving the background of the case which led to its withdrawal. According to the counsel this court should look on those circumstances and consider if the DLHT erred in giving the order which discontented the appellant. According to him, it was the appellant's stake of failure to remove the tenants until the respondent employed his own tactic in removing them which he could not later benefit from his own wrong. Further that had the tribunal awarded costs would have amounted to punishing the respondent while his act of

instituting the application in the tribunal was neither an ill-motive nor malafide.

Counsel for the respondent referred this court to the case of **Nkaile Tozo vs Phillimon Musa Mwashilanga [2002] TLR 276** where it was said that; awarding of costs is not automatic. That, they are not awarded as to the successful party as a matter of course but are entirely in the discretion of the court and they are awarded according to the facts and circumstances of each case.

According to the counsel for the respondent, the DLHT made the order discretionally and judiciously. He thus prayed for dismissal of the appeal with costs.

In rejoinder, counsel for the appellant reiterated his submission in chief, serve for the contention that the arguments by the respondent are not worthy at this juncture since the DLHT denied costs to the appellant without assigning reasons while the application lasted for one year in the tribunal which is the fact that the appellant incurred costs.

I have considered the submissions by the counsel for the parties. I hastily agree with them on the stance of the law in both; that costs are awarded at the discretion of the court and that the discretion must be judicially on the point that there should be reasons. This is per Regulation

17(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 GN. No. 174, 2003. which provides that:

*"Tribunal **may** allow the application for withdrawal and make orders as to costs, as it deem fit."*

It is also true, as argued by the counsel for the appellant that, as a general rule, costs follow the event; unless the awarding court in its discretion, finds good reasons for ordering otherwise. See **Njoro Furniture Mart Ltd v Tanesco [1995] TLR 205**. However, the general rule of costs follow the event does not apply in the matter at hand since the case was not concluded but parties agreed to withdraw it. Thus, was upon them to implore the court on or not granting the costs.

Now the question for determination by this court is whether the learned Chairman of the tribunal erred when denied the appellant costs without giving reasons. Conversely, it should be born it the parties mind that the principle of assigning reasons to the decision depends on the circumstances and facts of each case.

In the instant matter as the record shows, parties made their general prayers one praying for costs and another praying for declining the same. The record however, does not indicate if in their respective prayers they gave any reason either for or against. In my concerted view, it was upon

the counsels for the parties to make their prayers and reasons supporting their respective prayers. This would have necessitated the tribunal to analyse and reach to the just decision. Failure by the counsels for the parties to assign reasons for their respective prayers the Tribunal had no parameter of giving reason for its decision.

Counsel for the parties have tried in this appeal to give their views and grounds as to why the tribunal would have granted costs or not. In my humble opinion, had all those grounds been advanced before the Tribunal, it would have been in a wide range to decide and give reasons for its decision. Again, the fact raised by the appellant that the matter lasted for almost a year in the tribunal was a good argument that would have been made before the tribunal, raising at this stage is an afterthought since this court cannot decide on the matter which was not delt by the trial tribunal. Under the circumstance this court cannot firmly fault the trial Tribunal for its decision while there was no valuation of the reasons given by counsels. That being the case it is in my concerted view that no error was committed by the trial tribunal.

Therefore, I dismiss the appeal with no order as to costs on reason that the issue of costs could have been resolved at the trial tribunal if the

counsel for the parties would have played their role properly as I have reasoned herein above.

It is so ordered.




D.B. NDUNGURU

JUDGE

20 /04/ 2023