

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

(LAND DIVISION)

AT ARUSHA

MISCELANEOUS LAND APPEAL NO. OF 2022

(Arising from Land Appeal No. 6 of 2022 of the District Land and Housing Tribunal for Babati at Babati, Originated at Gehandu ward Tribunal in Dispute No. 1 of 2020)

BETWEEN

IBRAHIMU SIKHISTA _____ APPELLANT

VERSUS

GIDAHALANDA BILAURO _____ RESPONDENT

JUDGMENT

28/04/2023 & 14/07/2023

BADE, J.

The Appellant, Ibrahim Sikhista, having been aggrieved by the decision of the District Land and Housing Tribunal (DLHT) of Babati in Land Appeal No. 6 of 2022 delivered on the 1st day of July 2022, lodged the present appeal armed with the following grounds: -:



1. That, the first Appellate tribunal erred both in law and fact over the matter by passing a judgment that lacks salient features of a valid judgment.
2. That, the first Appellate Tribunal erred both in law and fact over the matter by passing a judgment painted with illegalities.

To appreciate the context of this appeal, it is convenient to recount, albeit briefly, the background of this matter. The Respondent had filed a dispute at Gehandu Ward Tribunal claiming a piece of land measuring one and a half (1½) acres. On his side, the Appellant alleged that the Respondent was an invitee, where her mother was given a place to build a house and to live there for only five (5) years only. Having heard both parties and visited the locus in quo, the trial tribunal decided that the disputed land belong to the Respondent herein and ordered the Appellant to vacate the disputed land. The Appellant was aggrieved and filed an appeal to the District Land & Housing Tribunal of Babati where his appeal was dismissed for being filed out of the prescribed time, hence, the present appeal.

At the hearing of the appeal, Mr. Erick Mbeya, the learned counsel had the conduct of the appeal for the appellant. I commend the Counsel for his lucid and extensive submissions on the issues and particularly on his industry to find several authorities to support his grounds of contention.

The matter proceeded exparte as the Respondent refused service despite

being served with several summons as evidenced by the affidavit of process server Mr. Gidasho Gileksa Rangija. The matter proceeded orally. Submitting in respect of the first and second grounds of appeal, Mr. Mbeya submitted that the judgment of the tribunal lacks legal issues and determination of the raised issues. He reckons that the judgment also lacks reasoning, as there are no reasons for the decision arrived at, as the chairman only jumped to the verdict which is contrary to Order XXXIX Rule 31 of the Civil Procedure Code, Cap 33 R.E 2019. He supported his argument with the case of **Bahati Moshi Masabilie t/a Ndonno Filling Station vs Camel Oil (T)**, Civil Appeal no 216 of 2018 (unreported), which pointed out the essence of giving reasons for a judicial decision as being 5, that is

1. Reasons make litigants know the extent of how their arguments have been understood and analyzed by the court.
2. They foster judicial accountability by minimizing arbitrariness.
3. Facilitate certainty in law by assisting members of the legal fraternity and the general public to know how cases of similar nature may be decided.
4. They are the basis for the appellate court to know if the decision was with apparent error.

5. Make litigants know the judicial officer's basis of their decision.

It was his further submission that the Chairman raised the issues of execution and the appeal being time-barred in his judgment suo motu without according to the parties' right to be heard. They were both raised during the composition of the judgment or so it seems. Further to that no right of appeal was explained to the parties.

Mr. Mbeya further argued that the original suit did not indicate the value of the disputed property to see if the tribunal had jurisdiction to entertain the same. He added that the original dispute did not have a coram so to establish who in fact appeared on the dates scheduled, and Jobick Munyoda who was the secretary of the Ward Tribunal was actually recorded as a member of the Ward Tribunal which is contrary to the law. The counsel supported his contention with a number of cases including the case of **Adelina Koku Hanifa vs Byarugaba Alex**, Civil Appeal No 46 of 2019, and **Fidelis Kutika vs Joseph Kutika**, Misc. Land Case Appeal No 7 of 2010. He prayed for the appeal to be allowed and the decision of the District Land & Housing Tribunal to be quashed and set aside.

Having heard the submissions made by the counsel for the Appellant, and scrutinizing the records of this appeal, the issue for determination is whether the appeal has merit.

Starting with the first contention on the first ground of appeal, the Appellant's counsel complained that the judgment of the District Land & Housing Tribunal lacks points for determination and the reasons for such determination as the Chairperson jumped to verdict. In the 2-page decision, the District Land & Housing Tribunal Chairperson simply mentioned the two grounds of appeal, and instead of addressing the said grounds, he proceeded to bring on the issues of execution of the decree and how the appeal is time-barred (see page 1,2 of the judgment). I am well aware that good judgment needs to contain the point or points for determination, the decision thereon, and the reasons for the decision.

Order XX Rule 4 of the Civil Procedure Code Cap 33 RE 2019 is explicit that:

"A judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

In the instant case, the decision of 1.7.2022 does neither contains a concise statement of the case, nor the points for determination or the

reasons for the decision reached. In that respect, I must agree with the counsel for the Appellant on the view that it is not a judgment in the eyes of the law. The case that is put in reference (**Masabilie's Case** supra) on this point is quite elaborate and I fully subscribe to its view.

It is my view that the operative part of a judgment, the very ruling, should be preceded by the grounds which constitute the reasoning on which the ruling is based. Judicial reasoning thus constitutes a model of practical reasoning, aimed at justifying a decision, and establishing that they are neither arbitrary nor unjust, and it is justified as the conclusion following its reasons conforms to the law.

Deliberating on the second ground of appeal, the counsel for the Appellant alleged that the issue of execution and the matter being time-barred was raised in the judgment without according to the parties the right to be heard. I have revisited the records of the 1st appellate court and noted how neither the appellant nor the respondent was given any chance to address themselves on the issue of execution and the issue of the matter supposedly being time-barred. These matters were raised on the judgment and went on to determine the case on the basis of the said issues without the court being addressed on the issues by the parties; which is contrary to the law. A further perusal of the District Land & Housing Tribunal's records by this court confirms that the 1st appellate

court did not bother to address the grounds of appeal or any grounds at all placed before it or raised by the tribunal itself. The counsel made reference to several pronouncements on this point including **Mihayo Maziku Misana vs Abdalla Mashimba Zingula**, Land Revision no 3 of 2021, HCT Shinyanga; **Kumbwandumi Ndemfoo Ndossy vs Mtei Bus**

Service, Civil Appeal No 257 of 2018 CAT; **Said Mohamed Said vs Muhsin Ameir and Anor**, Civil Appeal no 110 of 2020 CAT. All of these cases condone the habit of judicial officers raising issues suo motu and determining the raised issues without according to parties' right to be heard.

In the **Muhsin Ameir Case** cite above, the Court of Appeal was concerned with the issue of whether it was proper for the trial judge to raise suo motu and determine the issue whether the High Court had jurisdiction without affording the parties the right to be heard. In its wisdom, the Court clarified that

"..... a trial judge is obligated to decide the case on the basis of the issues on record. As to what should a judge do in the event a new issue crops up in the due course of composing a judgment, settled law is to the effect that the new question or issue should be placed on record and the parties must be given an opportunity to address

the court on it. We are fortified in that position by our earlier decision in **Scan-Tan Tours Ltd v The Registered Trustees of the Catholic Diocese of Mbulu**, Civil Appeal No. 78 of 2012 (unreported) where, after referring to **Mulla** in his book on The Civil Procedure, Vol. II, 15th Edition at page 1432 and the cases of **Hadmor Productions vs Hamilton** (1982) 1 All ER 1042 and **Blay vs Pollard & Morris**, 1930 1 KB 311, the Court concluded that:

"We are of the considered view that generally a judge is duty bound to decide a case on the issues on record and that if there are other questions to be considered they should be placed on record and the parties be given an opportunity to address the court on those questions."

It is this court's finding that the ground of appeal on this basis is meritorious and thus allowed.

On the basis of this finding then, The Court asked the question as to what would be the legal consequences of failure to afford a party a hearing before any decision affecting his rights is given. The response was that it is a settled law that any breach or violation of that principle renders the proceedings and orders made therein a nullity even if the same decision

would have been reached had the party been heard (**See Abbas Sherally and Another vs Rabdul Sultan H.M. Fazalboy**, Civil Application No.33 of 2002 (unreported) and **I.P.T.L. vs Standard Chartered Bank (Hong Kong) Ltd**, Civil Revision No.1 of 2009 (unreported). In the latter case, the Court categorically stated that:

"No decision must be made by any court of justice, body or authority entrusted with the power to determine rights and duties so as to adversely affect the interests of any person without first giving him a hearing according to the principles of natural justice..."

See also the case of **John Morris Mpaki vs NBC Ltd and Ngalagila Ngonyani**, Civil Appeal No. 95 of 2013 (CAT-Unreported)

In the outcome of the finding above, I find it useless to deliberate on the remaining illegalities as pointed in the second ground of appeal as it will serve no purpose.

In the upshot, the appeal is found with merit and is hereby allowed. The matter is remitted back to the trial tribunal for it to be determined afresh, with due consideration to be given to all grounds of appeal placed before the tribunal; and to give the parties a chance to address the tribunal

regarding the issue of execution and the matter being time barred as they were condemned unheard.

It is so ordered.

DATED at ARUSHA this 14th day of July 2023



**A. Z. BADE
JUDGE
14/07/2023**

Judgment delivered in the presence of parties / their representatives in chambers /virtually on the **14th** day of **July 2023**



**A. Z. BADE
JUDGE
14/07/2023**

