

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND APPEAL NO. 60 OF 2023

(Originating from Land Appeal No. 39 of 2021 for District Land and Housing Tribunal)

LONI MKEKA APPELLANT

VERSUS

ANTHONY MAKELEKETA RESPONDENT

RULING

Date of last order: 14/07/2023

Date of Ruling: 21/07/2023

MALATA, J

This land appeal originates from the Ward Tribunal in Land dispute no. 52 of 2020 where by the trial tribunal entered decision in favour of the respondent. However, before institution of Land case no 52 of 2020, there was Land dispute no. 22 of 2018 at Mbingu Ward Tribunal where the respondent was claiming one acre of Land, the dispute was resolved

in favour of the appellant herein. Aggrieved thereof, the respondent appealed against that decision to the District Land and Housing Tribunal (DLHT) in Land Appeal no. 282 of 2018. The DLHT set aside the decision of the trial tribunal in Land dispute no 22 of 2018 and ordered trial de novo of Land case no. 22 of 2018.

Following the order by DLHT for trial de novo the then appellant now respondent herein instead of proceeding with land dispute case no. 22 of 2018, on 14/07/2020 lodged Land Dispute no. 52 of 2020 at the Mbingu Ward Tribunal claiming trespass of the same land but now four acres, one acre claimed in land dispute no. 22 of 2018 inclusive.

The Mbingu Ward Tribunal continued to determine land dispute no. 52 of 2020 leaving land dispute no. 22 of 2018 unattended. In the final result the Mbingu Ward Tribunal ruled in favour of the respondent. Aggrieved thereof, the appellant appealed to the DLHT in Land Appeal no. 39 of 2021, the appeal was ended in favour of the respondent herein. Aggrieved by the decision of DLHT the appellant approached this court in land appeal no.60 of 2023.

When this appeal was called for hearing, both parties were present through their advocates, the appellant was represented by Ms. Kay Zumo while the respondent enjoyed the service of Mr. Bageni Elijah learned

counsels. Having acquainted with the historical background of the case and the present appeal, the court was caught in predicament as whether the present appeal is a result of execution of the DLHT directives in land appeal no. 282 of 2018 which ordered trial de novo.

As such, this court invited the learned counsels to address on;

1. Whether the order for trial de novo by DLHT dated 29/05/2019 was complied with.
2. Whether Land dispute no. 52 of 2020 was in execution of the order by DLHT in land appeal no. 282 of 2018.
3. If the answer in issue numbers 1 and 2 herein above are in negative, whether land appeal no. 39 of 2021 of the DLHT and Land appeal no. 60 of 2023 emanates from a valid proceeding.
4. What are the available remedies to the parties herein.

Regarding the first issue, Ms. Kay Zumo stated that, the order of DLHT has never been complied to date, the reason being that in the land case no. 22 of 2018 and land case no 52 of 2020 have the same parties but different size of the disputed land. The Mbingu Ward Tribunal registered a new land dispute no 52 of 2020 instead of hearing de novo land dispute no. 22 of 2018 in compliance with DLHT decision in land appeal no.282 of 2018. Ms. Kay Zumo submitted that, the Mbingu Ward Tribunal did not

comply to the DLHT order. As the size of land was increased then that could have been inserted in land dispute no. 22 of 2018 by way of amendment but in the same case not by instituting a new case. Ms. Kay Zumo cemented that, the order by DLHT in land appeal no 282 of 2018 and land dispute no. 22 of 2018 of Mbingu Ward Tribunal are unattended.

The decision to file a fresh land dispute no. 52 of 2020 was contrary to the DLHT for Kilombero/Ulanga land appeal no 282 of 2018. This is so because the trial de novo was only intended to have the existing land dispute no 22 of 2018 be heard afresh. The phrase "de novo" is a Latin phrase which means "from the new or hear afresh".

The learned counsel cited the case of **Munguatosha John (Administrator of the Estate of late Rose Methuselah Msaky) vs. Peter John Mganga**, Civil Appeal no 180 of 2020,

Addressing on issue number 2 Ms. Kay Zumo the learned counsel started by answering in negative and stated that, the reason behind that the respondent chose to begin from the scratch by choosing to file a new land case with a different case number and certainly a new size of area of the disputed land. However, that was out of scope ordered by the court. The increased size of land in dispute could have been accommodated by way of amendment. For that reason, Land case no. 52 of 2020 was not in

execution of the DLHT order of trial de novo. Ms. Kay Zumo referred this court in **Maisha Tabu vs. Pembele Gombanila**, Misc. Land Appeal no 8 of 2021, where in the circumstances like this the court had this to say;

*"....As submitted by both parties, filing the dismissed appeal came after the decision of the court which ordered that the proceedings in appeal no 6 of 2019 be quashed, judgement and decree set aside, and the matter be tried de novo, before another chairperson. **This is what triggered the appellants decision to institute a new appeal, thinking that the de novo hearing ordered by this court entailed starting afresh from the level of filing another appeal. In my considered view, and the respondent has rightly contended, this was a flawed approach, and the tribunal was right to reject a fresh appeal whose filing was belated.**"*

On the third issue, Ms. Kay Zumo the learned counsel submitted that as the answer on the 1st and 2nd issues are answered in negative, it so clear that, the land appeal no. 39 of 2021 and the present land appeal no. 60 of 2023 emanates from invalid proceedings, thence decision in land

dispute no.52 of 2020 and land appeal no.39 of 2021 cannot stand for the given reasons. All decision Mbingu Ward Tribunal and the DLHT are void ab initio, thence a nullity.

On the available remedies to the parties, it was Ms. Zumo's submission that the remedy is to nullify the proceedings and decision of Mbingu ward tribunal and the decision by DLHT in land dispute no.52 of 2020 and land appeal no 39 of 2021 respectively.

Ms. Zumo submitted further that; this court be pleased to order for hearing of land dispute no. 22 of 2018 in compliance with DLHT order in land appeal no. 282 of 2018.

Based on the current position of law that, the Ward tribunal has no jurisdiction to adjudicate on land dispute, the matter can be transferred to the DLHT which Tribunal is now vested with adjudication role. **This marked the end of appellant's submission.**

Submitting on the issues posed by the court Mr. Bageni Elijah stated that, the respondent herein initiated the matter against the appellant way back in, 2018.

The record shows that the appellant sued the respondent at Mbingu Ward Tribunal accusing her of invading his one-acre piece of land. The matter

was lodged with the Tribunal and registered accordingly as Land Case No. 22 of 2018 which finally ended against the respondent herein. He thereafter appealed to Kilombero District Land and Housing Tribunal (DLHT) in Land Appeal Case No. 282 of 2018 which nullified proceedings and judgment of the Ward Tribunal and ordered trial de novo.

In 2020, the record shows that, the respondent approached again Mbingu Ward Tribunal complaining against appellant for invading his four acres. The case was registered as Land Dispute Case No.52 of 2020 and it finally ended in his favour of respondent. Aggrieved thereto, the appellant unsuccessfully appealed to the DLHT via Land Appeal Case No. 39 of 2021 hence the present Appeal No, 60 of 2023 before this court.

Mr. Bageni further stated that, it is worth noting that, the proceedings before this court involve only two cases Land Case No, 52 of 2020 (Ward Tribunal) and Land Appeal Case No.39 Of 2021 (DLHT). It is not clearly stated in the records of the cited cases and there is nothing clearly suggesting that this matter had its genesis from land case no. 22 of 2018 and land appeal no. 282 of 2018. Had it not been from court's curiosity and probe the legal points stated above would not have their place here. So, we do take notice and so the judicial notice of the existence of the

land dispute no. 22 of 2018 and subsequent land appeal no. 282 of 2018 and its consequential orders as clearly narrated above.

As to the first issue, Mr. Bageni Elijah learned counsel stated that, he would hasten to answer it in negative for simple and obvious reason that the respondent herein who was initiator and losing party in land case no. 22 of 2018 appealed to the DLHT in land appeal no. 282 of 2018 whose decision directed rehearing of the case. Our understanding of the law is that rehearing of the case means starting afresh hearing of the same case.

Mr. Bageni further submitted that, they didn't have advantage of visiting the relevant case file to satisfy themselves as to whether land case no. 22 of 2018 was reheard but they heard from the respondent himself who made it clear that having approached the Ward Tribunal for rehearing of the case as per the order of the DLHT, the Ward Tribunal itself (out of ignorance) directed opening of a new case file (land case no.52 of 2021). He stated that the rehearing of the case should be conducted within the same file, Land Disputes No. 22/2018 and not in a new case file.

Nevertheless, opening a new case file as the trial Ward Tribunal was not irregular/fatal if the complainant (respondent) maintained the same claims as previously registered in Land Disputes Case No. 22/2018 and that no injustice was occasioned to the opposite party. Mr. Bageni submitted that,

considering the advent of overriding objectives principle which requires courts to do away with technicalities and in fact the ward tribunal is not bound by technicalities (see case of **Zahara Mingi vs. Athuman Mangapi** Civil Appeal No. 270 of 2020). In that regard we could dare to say that, the retrial order of the District Land and Housing Tribunal was complied with.

Conversely the respondent opened a new case with new claims involving four acres, and not one acre previously claimed. In the circumstances, the retrial ordered by DLHT was really contravened. Trial de novo order does not relate to the commencement of an action.

In other words, the originating processes (where not tainted with fatal defects) subsist and survive the order of trial de novo” (**Adefulu and others vs. Okulaja and others** (1996) L. PELR- 90 (Supreme court [nigerialii.org/ng/judgment/supreme court/1996](http://nigerialii.org/ng/judgment/supreme-court/1996)))

As to the second issue, it is quite clear that Land Dispute case no. 52 of 2020 was nothing but a new business started in contravention of the DLHT retrial order.

Regarding the third issue, all what transpired in land case no. 52 of 2020 was a nullity and so are subsequent proceedings including appeal case no. 39 of 2021 and the present appeal.

From the above, this appeal is incompetent for emanating from a nullity, liable to be struck out. Similarly, the proceedings in the lower tribunals land appeal case no. 39 of 2021 and land case no. 52 of 2020 should be nullified and the decision thereof be set aside. The land case no. 22 of 2018 should resume if the dispute still exists. Should there be any amendment of the claim the respective parties are at liberty to do so with the leave of the Ward Tribunal.

This marked the end of respondent's submission

Having briefly summarized the arguments from both side, it is evident that, all parties agree that, **one**, the parties herein had a land dispute no.22 of 2018 before Mbingu Ward Tribunal, **two**, upon delivery of decision the aggrieved party appealed to DLHT through Land appeal no. 282 of 2018, **three**, the DLHT reversed the decision of Mbingu Ward Tribunal in land dispute no. 22 of 2018 and ordered trial de novo, **four**, the appellant herein instituted a new land dispute registered as land dispute no.52 of 2020 at Mbingu Ward Tribunal, **five**, land dispute no. 52 of 2020 was in respect of four acres, the one acre claimed in land dispute no. 22 of 2018 inclusive, **six**, the appellant filed new case land dispute no. 52 of 2020 instead of proceeding with trial de novo of land dispute No. 22 of 2018 as ordered by the DLHT in land appeal no.282 of 2018, **seven**,

the parties have not implemented DLHT directives as per decision in land appeal no. 282 of 2018, ***eight***, upon filing new land dispute no. 52 of 2020 in the same tribunal the decision was made and appealed to DLHT in land appeal no.39 of 2021, ***nine***, the present land appeal is the outcome of new land dispute no.52 of 2020, land appeal no. 39 of 2021 and not land dispute no. 22 of 2018, ***ten***, increase of three acres in land dispute no.52 of 2020 could have been added and claimed in land dispute no.22 of 2018 by way amendment and not filing a new land case erroneously, ***eleven***, the decision by DLHT in land appeal no 282 of 2018 has not been implemented to date.

Further, this court has carefully reevaluated the evidence on record and noted that, in hearing land dispute no.52 of 2021 concern was raised by the respondent that, the appellant herein has kept changing goal post on size of land. While in land dispute no. 22 of 2018 the appellant claimed for one acre in land dispute no.52 of 2020 he claimed a total of four acres, the one claimed in land dispute no.22 of 2018 inclusive.

This court now turns to the points of law raised by the court, the matter in contention is whether it was proper to institute a fresh suit instead of complying to order for re trial issued by DLHT. The parties to this appeal

are in agreement that the DLHT order of trial de novo was not complied with.

This court in the case of **Micky Gilead Ndetura (a minor suing through Gilead Ndetura Lembai) vs Exim Bank (T) Limited**, Commercial Case No. 4 of 2014 held that;

"In order to have an orderly flow in this ruling I will first deal with the issues regarding compliance with Court Orders, I cannot re-emphasize the importance of complying with Court Orders as done by my brother Lunda J, (as then he was) in the Tanzania Breweries Limited Case (supra) that Court order should be respected and complied with and that the Court should always exercise firm control over proceedings and not condone failure by a party to respect and comply with Court Orders, otherwise it will set bad precedent and invite chaos in court in the administration of justice.

This concludes the first issue that, the parties herein did not execute DLHT's decision in land appeal no.282 of 2018, thus the present appeal originates from a different case not in implementing the decision of DLHT in the said land appeal. Thus, this appeal is misconceived as is not in compliance with the DLHT order in land appeal no.282 of 2018. Order of

the Tribunals and courts are made to be strictly executed to the dictates, doing otherwise amount to nothing but disobeying a lawful order of the court/ tribunal like in this case. The parties conduct warrants this court to order parties herein to be arrested and charged for deliberate disobeying of lawful order by the DLHT in land appeal no. 282 of 2018.

Section 124 of the Penal Code Cap.16 R.E.2022 provides that;

A person who disobeys any order, warrant or command duly made, issued or given by a court, an officer or person acting in any public capacity and duly authorised in that behalf, is guilty of an offence and is liable, unless any other penalty or mode or proceeding is expressly prescribed in respect of that disobedience, to imprisonment for two years.

On the second question whether the land dispute no. 52 of 2020 was in execution of the order by DLHT, the parties are in agreement that, it was not in execution of the order by DLHT in land case no 282 of 2018 of which I agree in total.

Based on the answer in on the 1st and the 2nd issues, it is with no iota of doubt that, land dispute no.52 of 2020, land appeal no. 39 of 2021 and the present land appeal 60 of 2023 emanated from invalid proceedings thus a nullity for being filed and pursued in contravention tribunal order

as stated herein above. I repeat orders of the Tribunals and Courts are made to be complied to the dictates by all parties otherwise, there is no need of having justice delivery pillars whose decisions are not respected by the citizens.

What is the available remedy to the parties herein

Both learned counsels were in agreement that, the proceedings and decisions by the Mbingu Ward Tribunal and DLHT in land dispute no. 52 of 2020 and land appeal no. 39 of 2021 respectively be nullified.

Further, the parties herein are ordered to execute the order of the DLHT in land appeal no. 282 of 2018.

However, it must be noted that, the land case no. 22 of 2018 was filed before the amendment of Land Dispute Court Act, section 13 of the Act which gave general jurisdiction to the Ward Tribunal and it included the jurisdiction to enquire into and determine disputes arising under the Land Act and Village Land Act.

Following the amendment of section 13 of the Land Dispute Court Act which ousted the Ward Tribunal's jurisdiction to determine land disputes, the complainant in land dispute no.22 of 2018 inclusive, the Mbingu Ward Tribunal will proceed with what is vested to it by the law as it stands to

date. That is to say, it will conduct with mediation and in case of failure to reach an amicable settlement the matter will be referred to DLHT in accordance with the dictates of the current Land Disputes Courts Act as amended.

All said and done, I hereby nullify all proceedings and decisions emanating from land dispute no.52 of 2020, the present land appeal no. 60 of 2023 inclusive for the above assigned reasons. The Parties are ordered to comply with current law of the Land Disputes Courts Act, that the Ward Tribunal shall have mandate to mediate land dispute no.22 of 2018 and in case of failure to reach an amicable resolution, the matter shall be referred to the DLHT for hearing. During proceeding either party may wish to apply for amendment.

Consequently, the present appeal is dismissed for having rooted from a nullity proceeding. Each party to bear its own cost

IT IS SO ORDERED.

DATED at MOROGORO this 21st July, 2023.

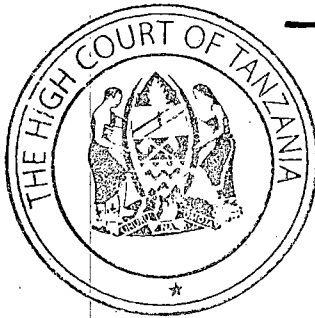


G. P. MALATA

JUDGE

21/07/2023

RULING delivered at **MOROGORO** in chamber this 21st July, 2023




G. P. MALATA

JUDGE

21/07/2023