

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

LAND APPEAL CASE NO. 48 OF 2022

*(Originating from Land Application No. 81 of 2018 by Land and Housing Tribunal for
Morogoro)*

HELENA AUGUSTINE APPELLANT

VERSUS

ANTONIA BENEDICT RESPONDENT

RULING

*Hearing date on: 01/08/2023
Ruling dated on: 04/08/2023*

NGWEMBE, J:

The appellant Helena Augustine was dissatisfied with a judgement and decree delivered by trial tribunal of Morogoro District Land and Housing Tribunal for Morogoro, whereby the tribunal declared the respondent as rightful owner of the suit land. As such the appellant herein was also the applicant at trial, the decision at trial declared the suit land belong to the respondent.

Perusing the whole records of trial tribunal and the records of Ward tribunal of Konde where the appellant and another person called John Andrew who proved to own one piece of land. Again, the appellant sued

another person called Jasti Dangadanga. Quite interestingly the appellant has been very busy almost every year struggling on corridors of justice over the alleged pieces of land. However, the source of this appeal is the decision of the District Land Tribunal in application No. 81 of 2018 which was delivered on 14th January, 2022 which decision facilitated both learned counsels to seek indulgence of this court as will be discussed herein after.

The trial tribunal's decision was to the effect that: -

1. ***Mjibu maombi ndiye mmiliki halali wa eneo bishaniwa;***
2. ***Mleta maombi ametamkwa kuwa mvamizi kwenye eneo bishaniwa;***
3. ***Amri ya zuio ya kudumu imetolewa kwa mjibu maombi, mawakala wake na yeyote atakayefanya kazi kwa niaba yake kutofanya jambo lolote kwenye eneo bishaniwa; na***
4. ***Maombi haya yamefutwa kwa gharama "dismissed with costs"***

Such orders of the trial tribunal were doomed from being realized and executed. The same position was raised by learned counsels on the hearing date. Fortunately, both parties procure legal representations, while the appellant was represented by Baraka Lweeka learned advocate, the respondent had the legal services of advocate Niragira. Both counsels prior to arguing grounds of appeal, unanimously raised serious contradictions apparent on the face of the trial court's judgement as follows: - the learned advocate Lweeka for the appellant raised the following; (a) that the trial tribunal's judgement is vague and incapable of being executed; (b) the judgement has no description of the suit land, boundaries and size. While the appellant alleged five (5) acres of land in dispute, the respondent alleged two (2) acres. The question is which land is in dispute, its size and

boundaries if any? Lastly prayed that the trial tribunal's judgement be dismissed forthwith and parties be at liberty to institute a fresh suit if they so wish. Each party should bear her own costs.

In turn the learned advocate Niragira supported the submission of his learned friend and added that the appellant had no locus standi from the beginning to sue over her father's land without being appointed as an administratrix; second - the original complaint did not specify the size of the disputed land and its location; as such the decision of the tribunal is incapable of being executed, same should be dismissed with instruction to parties to file their disputes afresh when they so wish.

The arguments of learned advocates have attracted my attention to peruse inquisitively on the proceedings and judgement of the trial tribunal, unfortunate the trial chairperson faulted all legal principles of proper judgement writing. The complaints of the learned advocates are correct and the whole proceedings, judgement and decree of the trial tribunal are incapable of being followed properly and its decree is inexecutable.

I need not to labour on *locus standi* of the appellant, because the issue of locus standi is well discussed in many authoritative precedents beginning with the case of **Lujuna Shubi Balonzi Vs. Registered Trustees of Chama cha Mapinduzi [1996] T.L.R 203** followed with countless cases. I think it is just and equitable to discuss deeply on the requirements of judgement writing which the trial chairperson faulted.

Notably, it is vividly seen that the tribunal did not ascertain the nature of the dispute, location of the disputed piece of land, its size if any, and *locus standi* of parties in dispute. In the proceedings, the appellant herein, claimed the land in dispute belong to her father who is deceased, but she

had no capacity to do so for she did not acquire status to step in the shoes of the deceased for she had no letters of administration. The situation of this appeal has reminded me the contents of **Rule 4 of Order XX of the Civil Procedure Code** which provide as follows: -

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

This rule is intertwined with the reasoning of the late Judge Buxton D. Chipeta in his book **Civil Procedure in Tanzania, A Student Manual**, at page 203 where he defined judgement in a civil suit including land cases to mean: -

"A reasoned account and exposition of the principles of law applicable to such facts and the decision to the rights and liabilities of the parties to the suit"

In similar vein, the Court of Appeal in the case of **Hamis Rajabu Dibagula Vs. R, [2004] T.L.R. 196** emphasized by holding that: -

*"A judgement must convey some indication that the judge or magistrate has applied his mind to the evidence on the record. A good judgement is **clear, systematic and straight forward**. Every judgement should state the **fact of the case**, establishing each fact by reference to the particular evidence by which it is supported and it should give sufficiently and plainly the reason which justify the finding"*

It is unshakable rule of law and justice that, a court of law cannot decide on a suit based on its own facts and findings, rather must strictly be based on evidence adduced during trial. This rule is applicable not only to

the court, but even to the tribunals. **A. D. Singh's on Judgements and**

How to Write them, (4th edition), defined judgement to mean an expression of the opinion of a judge/magistrate arrived at after due consideration of the evidence and of the arguments advanced before him.

It is a cardinal principle, which must not be forgotten that a court judgement should be based strictly on the evidence on record, and not on outside evidence, however acquired. This position is *in pari materia* to Order **XX Rule 4 of CPC**. It goes therefore that; in the absence of any other relevant and reliable evidences the court or tribunal shall dismiss the suit forthwith.

From the above understanding, it is settled in our jurisdiction that tribunal's judgement must be clear in respect of material facts and particulars of the issues in dispute; systematic in regard to flow of logical thinking up to the conclusion; straight forward; and clear in terms of its reasoned conclusion. Meaning the tribunal's decree be capable of being executable. In the contrary, any judgement which is not clear, like the one at hand cannot stand the test of being proper judgement.

Apart from being deficient of content, the judgment was self-contradictory. Among the serious contradiction, the judgment while it purported to declare the respondent as the rightful owner of the disputed land, it proceeded to order permanent injunction against the same respondent who in a common language was a winner. It is even inconceivable to treat such as an error because the decree was as well extracted consistently the same way. In the case of **Issa Juma**

Magono Vs. Athwal's Transport & Timber Ltd, Civil Appeal No.

22 of 2018 the Court held: -

"Generally speaking, judgment writing is an art and it differs from one judge/magistrate to another, there is no hard and fast rule on how judgments should be written, but the law gives the guidelines about the content of a judgment, I will be wrong to challenge the skills of other judge or magistrate just because her writing skill is different from mine"

In the same reasoning, the Court of Appeal in **Chandrakant Joshubhai Patel Vs. R, [2004] T.L.R. 218**, held: -

"No judgment can attain perfection but the most that Courts aspire to is substantial justice. There will be errors of sorts here and there, inadequacies of this or that kind, and generally no judgment can be beyond criticism"

Having strived on the above understanding of a court judgement, I have no slight doubt the land tribunal's judgement subject of this ruling did not meet the minimum requirement of being a judgement. It does not qualify because it is not clear, in terms of material facts capable of being considered by any properly guided court/tribunal; not straight forward, not systematic, and has no executable conclusion. Thus, fit for nothing than to dismiss the whole proceedings, judgement and decree pronounced by the trial tribunal. While the respondent was declared a rightful owner of the suit land, a permanent injunction was issued against her from doing anything in the suit land. Yet, the appellant was a loser and declared to be the trespasser. I have satisfied myself that if the tribunal's judgement

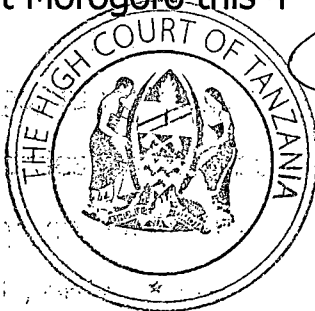


was spared, it would furnace the dispute even more than before because each party would think there is an order to execute against the other.

For the reasons so stated this court proceed to quash the whole proceedings, judgement and decree of the trial court and treat it as if it never existed. Parties are at liberty to commence their dispute in a proper tribunal when they so wish. In the circumstances of this matter, it is just and equitable to order each party to bear her own costs.

Order accordingly

DATED at Morogoro this 4th day of August, 2023.



P. J. NGWEMBE

JUDGE

04/8/2023

Court: Ruling delivered at Morogoro in Chambers on this 4th day of August, 2023 in the absence of both parties.

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E. Lukumai

Ag, DEPUTY REGISTRAR

04/08/2023

Court: Right to appeal to the Court of Appeal explained.

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E. Lukumai

Ag, DEPUTY REGISTRAR

04/08/2023

