

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT – LAND DIVISION
(MUSOMA SUB REGISTRY)

AT MUSOMA

Misc. LAND APPEAL No. 81 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Appeal No. 69 of 2022; originating from Nyambono Ward
Tribunal (Musoma) in Land Dispute No. 12 of 2019)*

JITU JORAM MAIGA APPELLANT

Versus

LABANI MASATU MAFURU RESPONDENT

JUDGMENT

14.08.2023 & 14.08.2023
Mtulya, J.:

The scanning of present record shows that justice is blind. However, courts of law have eyes to see and ears to hear disputes. After hearing of the parties in disputes, courts deliver justice to the parties based on relevant materials produced on record. The parties in the present appeal have received a total of five (5) separate decisions from the lower land tribunals in four (4) years.

In the indicated period of four (4) years, the parties were meandering in the tribunals' corridors without their dispute being heard and determined on merit to the finality. In order to appreciate how all that was possible in our jurisdiction, the following facts are displayed on the record. I will briefly, narrate.

On 23rd October 2019, **Mr. Mutani Masatu Mafuru** (administrator of the estates of **Mr. Mafuru Lameck Nyamfumira**) [*Mzee Mutani*] had approached **Nyambono Ward Tribunal** (the ward tribunal) and filed **Land Dispute No. 12 of 2019** (the dispute) against **Jitu Joram Maiga** (the appellant) for trespass on the alleged deceased's land sized three point five (3.5) acres.

On 1st April 2020, the dispute was resolved in the ward tribunal in favor of Mzee Mutani. However, the decision aggrieved the appellant hence on 23rd April 2020 rushed to the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) and lodged **Land Appeal No. 81 of 2020** (the first land appeal) attached with six (6) reasons of appeal.

However, before hearing proceedings in the tribunal could take its course, Mzee Mutani was reported expired, as per proceedings of the district tribunal conducted on 30th April 2022. Following demise of Mzee Mutani, his clan members had declined to propose and appoint an administrator of the estates of the deceased, **Mr. Mafuru Lameck Nyamfumira**.

The record shows that the appellant had complained before the district tribunal and prayed to withdraw the appeal with leave to refile upon appointment of the administrator of the deceased. The district tribunal on the same date had granted the prayer and

ordered that: *the matter withdrawn with leave to refile*. It was unfortunate that the district tribunal had remained mute on specific time within which the appeal should be filed or upon appointment of the administrator of the estates of the deceased, **Mr. Mafuru Lameck Nyamfumira**.

While awaiting an administrator of the estates of **Mr. Mafuru Lameck Nyamfumira**, the appellant was prompted by execution proceedings in **Misc. Application No. 1141 of 2021** (the first application) in the district tribunal to enforce the decision of the ward tribunal in the dispute by a stranger person in the dispute by the name of **Mr. Rabani Mafuru Masatu** (administrator of the estates of **Mr. Mutani Masatu Mafuru**) [the respondent]. As the appellant was unaware of the respondent, he declined summons of appearance.

Following decline of the appellant to appear to protest the execution, the district tribunal in the first application was scheduled for hearing on 7th December 2022. On this day, without summons of hearing to the appellant, and without any prayer to proceed *ex-parte*, and without any order to proceed *ex-parte*, the district tribunal *suo moto* moved to grant the execution and ordered **Mugabo Auction Mart** to take charge of the order. However, the

record is silent on what then transpired as there is no execution report registered on the record.

Seeing things are unusual and taking ungreased courses, the appellant, approached the district tribunal on 5th May 2022 seeking for enjoyment of his leave to refile fresh appeal in **Land Appeal No. 51 of 2022** (the second land appeal) as it was ordered by the district tribunal in the first land appeal on 30th April 2021.

However, the second appeal was turned down by struck out order for want of proper application of the law on 21st July 2022. Following the struck-out order, the appellant on 2nd August 2022 approached the district tribunal again and lodged **Land Appeal No. 69 of 2022** (the third land appeal), but it was dismissed for want of time limitation in filing land disputes in the district tribunals for decisions originated in ward tribunals. It was unfortunate that the same district tribunal had declined to cite or interpret the leave granted to the applicant in the first land appeal issued on 30th April 2021.

The appellant was hurt by the dismissal order, hence decided to approached this court and preferred **Misc. Land Appeal No. 81 of 2022** (the appeal) with three (3) reasons of appeal to dispute decision of the district court in the third appeal, which in brief show that: first, the appellant was punished at the district tribunal for

wrong committed by the stranger in the dispute, the respondent; second, the district tribunal had dismissed the third land appeal without good reasons; and finally, the appellant had proved its case at the ward tribunal.

However, the appeal in this court had faced two (2) points of objection resisting the jurisdiction of this court to entertain the matter. Today afternoon, the appeal was scheduled in this court for the points hearing raised by the respondent's learned counsel. The two points of protest, in brief show that: first, the appellant joined stranger party in the appeal without leave of this court as per requirement of the precedent in **Salim Amour Diwani v. The Vice Chancellor, Nelson Mandela African Institution of Science and Technology & Attorney General**, Civil Application No. 116/01 of 2021; and second, the appeal is in abuse of court process as it emanated from the third appeal which was lodged out of time in the district tribunal.

However, after registration of necessary materials for and against the points of protest, it was vivid that the raised points of objection touch the merit of the case, and needed further evidence on record to be properly resolved. It was also at glance that the source of the confusions in changing the names of the parties in the dispute is the respondent. Following the appreciation of the

materials on record and submissions of the parties, this court had declined to resolve the protests and invited the parties to cherish the right to be heard under the circumstances to explain the status of the present record.

According to **Mr. Ostack Mligo**, learned counsel for the respondent, the records at the district tribunal on the dispute are confusing and the only remedy to do justice to the contesting parties is revise all the disputes recorded at the district tribunal and this court may issue necessary directives as it sees fit to settle the matter. The appellant, being a lay person without any legal representation, had prayed this court to scrutinize the record and do justice to the parties.

This court, apart from its usual powers, it has additional powers to revise any proceedings resolved in the District Land and Housing Tribunals in exercising their original, appellate or revisional jurisdiction, if it appears that there are errors material to the merits of the case involving injustice to the parties. This court is also empowered to make any order as it thinks necessary for interest of justice to the parties (see: section 43 (1) (b) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act) and precedent in **Benson Ndaro Makulie & Another v. Rose Makenge Ruge**, Land Revision No. 8 of 2023).

It is now established practice that this court and Court of Appeal, being the courts of records, have additional mandates to ensure proper application of the laws by the courts below. Where there are vivid irregularities on record, this court and Court of Appeal cannot justifiably close their eyes in glaring irregularities. The indicated courts are duty bound to address and rectify the same, where necessary (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 and **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021).

In the present appeal, there is vivid breach of the law regulating appeals, leave to file fresh and proper appeals, change of parties without leave of the court and right to be heard. Of all the rights violated, the right to be heard is fundamental that cannot be easily ignored, unless there are good reasons to do so (see: article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002](the Constitution); Regulation 11 (1) (c) the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations); **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251; and **Tanelec Limited v. The**

Commissioner General, Tanzania Revenue Authority, Civil Appeal
No. 20 of 2018).

In the result, I invoke the additional mandate of this court enacted under section 43 (1) (b) of the Act, to nullify all proceedings and quash all decisions of the district tribunal in the: second land appeal; the third land appeal; and the first application for want of proper application of the law and right record. I maintain the decision of the ward tribunal in the dispute and first land appeal at the district tribunal and its order issued on 30th April 2021.

However, for interest of justice and speed trial, I amend the order of the district tribunal delivered on 30th April 2021 and insert the following words: *within thirty days*. The order shall currently be read as follows: *the matter withdrawn with leave to refile within thirty days*. I further order the first appeal be heard and determined to the finality with another pair of the learned chairman and assessors, in accordance to the Act and Regulations.

I order no costs in the present appeal as the wrong was committed by the tribunal in inviting and proceeding with the wrong party in the first application and moved further to deny the appellant the right to be heard. In any case, the dispute is still on the course at the district tribunal.

For the foregoing reasons, I find the present appeal was brought to this court with sufficient reasons to protest the decisions of the district tribunal. The same has merit and hereby allowed without costs.

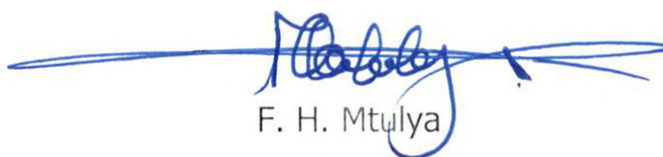
It is so ordered.

Right of appeal explained to the parties.




F. H. Mtulya
Judge
14.08.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of the appellant, **Mr. Jitu Joram Maiga** and in the presence of the respondent's learned counsel, **Mr. Ostack Mligo**.


F. H. Mtulya
Judge
14.08.2023