

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA

LAND APPEAL NO. 20 OF 2023

(Arising from the DLHT for Mwanza in Land Application No. 160/2022)

SHIJA SIMEON APPELLANT

VERSUS

NDETTO INVESTMENT CO. LTD RESPONDENT

JUDGMENT

23 & 31/8/2023

ROBERT, J:-

This is an appeal arising from the decision of the District Land and Housing Tribunal (DLHT) for Mwanza in Land Application No. 160/2022. The appellant, Shija Simeon, seeks to challenge the DLHT's decision which was rendered in favor of the respondent.

The appellant initially lodged a land dispute before the DLHT against the respondent. However, the respondent filed a preliminary objection, contending that the case was filed in violation of section 13 of the Land Disputes Courts Act as amended by section 45(4) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2021. This provision stipulates that land disputes must first be brought before the Ward Tribunal, unless the matter remains unresolved within thirty days, in which case the

dispute can be taken to the District Land and Housing Tribunal without the need for a certificate from the Ward Tribunal.

The DLHT found that the appellant's case was indeed filed at the DLHT without the requisite certification from the Ward Tribunal. Nevertheless, the DLHT proceeded to evaluate the evidence presented and issued a decision on the merits of the case before striking out the application, awarding costs to the respondent. Aggrieved by this decision, the appellant lodged the current appeal, raising five distinct grounds of appeal.

The appellant's grounds of appeal are summarized as follows:

- 1. The Chairman of the DLHT erred in law by addressing the preliminary objection without affording the parties the right to be heard.*
- 2. The Chairman of the DLHT erred in law by issuing orders for the removal of the appellant from the business premises in question and transferring them to the respondent.*
- 3. The Chairman of the DLHT erred in law by ordering the deduction and payment of TZS 3,500,000/= from the appellant's bank account.*
- 4. The Chairman erred in law by adjudicating on the contracts submitted by the appellant in the application.*
- 5. The Chairman erred in law by determining that the dispute did not originate at the Ward Tribunal.*

During the hearing of the appeal, Mr. William Muyumbu, counsel for the respondent, conceded to all grounds of appeal and requested the Court to nullify the proceedings and decision of the DLHT. He further

advocated for the case to be remitted back to the DLHT for a fresh hearing.

In response, Mr. Kabago Godwin, counsel for the appellant, noted that the respondent's concession to all grounds of appeal was acknowledged. He therefore urged the Court to allow the appeal and grant costs to the appellant.

The Court has thoroughly reviewed the record of proceedings, the DLHT's decision, and the arguments presented by both parties. The appellant's grounds of appeal primarily revolve around procedural errors committed by the DLHT, including its failure to adhere to the requirement of commencing land disputes at the Ward Tribunal as stipulated by the relevant law.

It is apparent that by deciding on matters beyond the preliminary objection raised by the Respondent the DLHT did indeed deviate from the procedural provisions of the Land Disputes Courts Act by not strictly adhering to the requirement that land disputes should first be referred to the Ward Tribunal and deciding on the merit of the case without affording parties the right to be heard. These procedural flaws undermines the validity of the DLHT's proceedings and decision.


Considering the respondent's concession to the grounds of appeal and the evident procedural errors in the DLHT's proceedings, this court

finds merit in the appellant's appeal. Accordingly, the DLHT's proceedings and decision in Land Application No. 160/2022 are hereby quashed and set aside. The case is remitted back to the DLHT for a fresh hearing of the preliminary objection in accordance with the proper procedures prescribed by law.

Given that irregularities that prompted this appeal were caused by the actions of the DLHT rather than the parties involved, it is deemed fair and equitable that each party shall individually bear the costs incurred in this current appeal

It is so ordered.




K.N.ROBERT
JUDGE
31/8/2023