

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

AT MUSOMA

LAND APPEAL No. 66 OF 2023

*(Arising from the District Land and Housing Tribunal for Mara at
Musoma in Land Application No. 43 of 2022; originated from Bomani
Ward Tribunal in Land Dispute No. 43 of 2022)*

JOSIA MRIMI **APPELLANT**

Versus

1. REBEKA NYANKOBA KINYARA
2. KINYARA NYANKOBA
3. NYAMOHANGA NYANKOBA **RESPONDENTS**

JUDGMENT

20.10.2023 & 20.10.2023

Mtulya, J.:

The Parliament of the United Republic of Tanzania on 11th October 2021 was moved to enact section 45 of the **Written Laws (Miscellaneous Amendment) (No. 3) Act No. 5 of 2021**, (the amending Act) to amend section 13 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act) to strip off powers of the ward tribunals in *determining land contests*.

However, the ward tribunals are empowered under section 13 (1) of the Act to *secure peace and harmony in their areas of jurisdiction by mediating and assisting parties to arrive at mutually acceptable solutions of their land disputes*. In order to make matters concerning land disputes emanated from ward tribunal to the district tribunal well appreciated, after deleting the mandate of determining

land matters, the Parliament via section 45 of the amending Act had moved further to insert sub section 4 in the Act. The sub section 4 of section 13 of the Act currently reads, in brief:

...the District Land and Housing Tribunal shall not hear any proceedings affecting the title to or any interest in land unless the ward tribunal has certified that it has failed to settle the matter amicably.

In the instant appeal, record shows that **Bomani Ward Tribunal** (the ward tribunal) had determined **Land Dispute No. 43 of 2022** (the dispute) and declined to issue the certificate contrary to the enactments in section 13 (1) and (4) of the Act. The faults were noted by the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal) in **Land Application No. 43 of 2022** (the application) originated from the ward tribunal in the dispute. Noting the faults touch the merit of the application, the tribunal observed that:

Kimsingi maombi hayaongelei chochote kuhusu suluhu kufanyika na matokeo ya suluhu. Pamoja na hilo, kiambatanisho kinachotajwa katika orodha ya vielelezo katika aya ya 6 (B) (V) ya maombi hakijaambatanishwa. Uhalali wa maombi haya hapa Barazani ni lazima yawe yamepitia Baraza la Kata kwa

suluhu na suluhu ikishindikana, na haya lazima yaelezwe katika maombi ili Baraza liwe na uelewa huo, sio kubaki ndani ya uelewa wa wadaawa peke yao.

After the observation, the district tribunal had moved to struck the application out with costs for want of proper application of section 13 (4) of the Act. The struck-out order was brought in this court in **Land Appeal No. 66 of 2023** (the appeal) for contests of two issues, namely: first, the district tribunal did not consider the record of the ward tribunal in totality; and second, award of costs in the circumstances of the application.

In this court, the appeal was scheduled today afternoon for hearing. It was fortunate that both parties had hired legal services. The appellant had called **Mr. Daud Mahemba** to argue for the appeal whereas **Mr. Samson Samo** was marshalled by the respondents to protest the appeal. However, this court had taken the learned minds through the record of appeal to learn the complaint of the appellant. After perusal of the record, it was vivid that there was no certificate issued by the ward tribunal to display mediation has taken its course and failed. It was unfortunate that the record of the ward tribunal was not certain whether it was proceeding with determining or mediating the parties.

It is from the record that Mr. Mahemba had prayed the law in section 13 (1) and (4) of the Act to take its course for proper record. The move was supported by Mr. Samo. This is a court of justice, but it is also a court of record. It encourages the invitation and use of section 3 A (1) and (2) of the **Civil Procedure Code [Cap. 33 R.E. 2022]** (the Code). However, the court also prefers decent records (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 and **Jirabi Ruhumbika Biseko v. Kirigini Saoke**, Civil Appeal Case No. 29 of 2021).

Having said so, I am moved to decline the present appeal and uphold the decision of the district tribunal. However, under the circumstances of this court, and noting Mr. Mahemba acted as officer of this court, and considering the enactment of section 43 (1) (b) of the Act, I am moved to quash the order of costs issued by the district tribunal and decline to order the same in the present appeal. Each party shall bear its costs. The parties, if so wish, may consult the ward tribunal again in accordance to the laws regulating land contests at the ward tribunal.

Ordered accordingly.

 
F.H. Mtulya
Judge
20.10.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of **Mr. Daud Mahemba**, for the appellant and in the presence of **Mr. Samson Samo**, for the respondents.



F.H. Mtulya

Judge

20.10.2023