

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DODOMA DISTRICT REGISTRY  
AT DODOMA**

**MISCELLANEOUS LAND APPEAL NO. 18 OF 2023**

(Originating from Singida District Land Housing Tribunal in Land Appeal No. 32/2022  
original Mkiwa Ward Tribunal in Land Case No. 17/2020)

**1. SAMWEL LABIA SUMBI.....1<sup>ST</sup> APPELLANT**

**2. PHILIMON NKUWI.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**CHARLES ELIAS IFANDA.....RESPONDENT**

**JUDGMENT**

Last Order 30<sup>th</sup> April 2024

Judgment 17<sup>th</sup> May 2024

**MASABO, J.:-**

The appellants herein are disgruntled that the District Land and Housing Tribunal for Singida (the appellate tribunal) denied them costs after they emerged successive in the land case appeal which they were challenging a decision of Mkiwa Ward Tribunal. The sole ground in their petition of appeal is that the appellate tribunal erred in law and fact to deny them costs although they had prayed for it.

By way of background, the appellants were respondents in land dispute number 17 of 2020 before Mkiwa Ward Tribunal which ended in the respondent's (then applicant) favour. Disgruntled the appellant successively appealed to the Appellate Tribunal alleging that they were condemned

unheard as they appeared before the trial tribunal as witnesses, not respondents. Based on this, they prayed that the appeal be allowed with costs. After hearing both parties the appellate tribunal found merit in the appeal and allowed it but no orders as to costs. This disgruntled the appellants further. Hence, the present appeal.

When the parties appeared before me for a *viva voce* hearing on 30<sup>th</sup> April 2024, both parties were unrepresented. They fended for themselves. Addressing the court in support of the appeal, the first appellant submitted that while pursuing the appeal before the appellate tribunal they incurred costs. Those costs owed to have been compensated as they would not have incurred them had the respondent not sued them maliciously while knowing that they had no personal interest in the suit land as they were solely acting in the capacity of village leaders, positions which they no longer hold. Thus, they ought not to have been sued. Surprisingly, the appellate tribunal did not award them the costs although they had prayed for costs and they were entitled to such costs. He concluded by praying that this court award them the costs. The second appellant did not have anything to add. He just supported the submission and prayer by the first appellant.

On his part, the respondent submitted that the appeal should be dismissed as it has no merits. The appellants were not maliciously sued because, as village leaders, they allocated him the suit land while knowing that it belonged to someone else. He submitted further that he is the one deserving compensation as he has lost both, money and the suit land. Additionally, he

submitted and prayed that the money he has spent in pursuit of the lawsuits should be compensated. This was the end of the submissions.

The sole question pending determination is whether the appellants deserved the costs of the appeal. The award of costs in civil suits has been extensively litigated and its principles are well settled that, costs are awarded at the discretion of the court which must be judiciously exercised. That, principally, and save where there are reasonable grounds for depriving a successful party of his costs, the costs should follow cause. There is a plethora of authorities on this rule. The following three cases demonstrate. In the first case, **Nkaile Tozo v. Phillimon Musa Mwashilanga** (2002) TLR 276, the Court of Appeal while dealing with award of costs stated that:-

“... the awarding of costs is not automatic. In other words, they are not awarded as to the successful party as a matter of course. Costs are entirely in the discretion of the Court and they are awarded according to the facts and circumstances of each case. Although this discretion is a very wide one like in all matters in which Courts have been invested with discretion in awarding or denying a party his costs must be exercised judicially and not by caprice.

Cementing this position in **Mohamed Salmini v. Jumanne Omary Mapesa**, Civil Application No 4 of 2014, Court of Appeal of Tanzania at Dodoma (unreported), held that:-

"As a general rule, costs are awarded at the discretion of the Court. But the discretion is judicial and has to be exercised upon established principles, and not arbitrarily or capriciously. One of the established principles is that, costs would usually follow the event, unless there are reasonable grounds for depriving a successful party of his costs. A successful party could lose his costs if the said costs were incurred improperly or without reasonable cause, or by the misconduct of the party or his Advocate."

The second is **DB Shapriya & Co. Ltd vs Regional Manager, TANROADS Lindi** (Civil Reference 1 of 2018) [2018] TZCA 256, TanzLII.

In this case the Court of Appeal held that:-

For a start, it is common cause that costs of, and incidental to, all civil actions are awarded in the discretion of the Court: see, for instance, the decision of the Court in **Tanzania Fish Processors Ltd** (supra). In exercise of its discretion to award costs, the Court is generally enjoined to award costs to the successful party on the basis of the principle that "costs follow the event." Nonetheless, it is also trite that the Court may withhold costs to a successful party on any justifiable ground, which may include that party's misconduct. In this regard, I fully subscribe to the stance taken by the High Court in **Nkaile Tozo** (supra), in particular, that the awarding of costs, being

a discretionary process, is not automatic and that costs are not awarded to the successful party as a matter of course.

The court added further that:-

I would also add that since the discretion in awarding or denying a party his costs must be exercised judicially and not by caprice, the Court is enjoined to state explicitly and specifically which party is to meet the costs of the action of the other party to the action. That is so especially on the reason that an award of costs to one party against the other grants a benefit to the former and imposes a liability on the latter. Such an award, therefore, cannot be merely implicit.

In view of these authorities, it is crystal clear that the issue of cost ought to have been considered and it had to be determined, whether or not, and based on the principles above stated, the appellants herein deserved costs for the case. The omission to consider and determine it was lucidly wrong. In the foregoing, and exercising the revisional powers vested in this court by section 43(1) (b) of the Land Dispute Courts Act, Cap 216 RE 2019, I step into the shoes of the appellate tribunal and do what it ought to have done.

In the foregoing and having carefully considered the record, I see no reason which would justify the denial of the costs to the appellants who emerged successful in that case. Accordingly, I allow the appeal. The costs in respect

of Land Appeal No. 32/2022 before the appellate tribunal are hereby awarded to the appellants and so are the costs of this appeal.

**DATED** and **DELIVERED** at **DODOMA** this 17<sup>th</sup> day of May 2024.



**J.L. MASABO**

**JUDGE**

**17/5/2024**