

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

LAND APPEAL NO. 61 OF 2023

***(Originating from Land Application No. 20 of 2022 of District
Land and Housing Tribunal of Singida)***

SELEMANI HAMISI.....APPELLANT

VERSUS

ATHUMANI JUMARESPONDENT

RULING

31.05.2024

HASSAN, J.:

The appellant herein has been pained by the decision of the District Land and Housing Tribunal (DLHT) of Singida at Singida in the Land Application No. 20 of 2022 of which, the respondent emerged victorious.

Now before this court, the appellant preferred four (4) grounds of appeal for court determination. However, after going through the records, I decided not to reproduce the same, and the reason will be apparent soon.

Owing to its profiling sequence, it is healthy to reproduce steps which this case went through before. In the first place, the appellant herein

On 09/05/2018 Mr. Clement Ntandu, a chairman of Nkhoiree village together with other four (4) council members passed over the impugned land parcel to Selemani Hamisi, the appellant herein, which was earlier on mistakenly measured and given to Athumani Juma, the respondent herein. The estimated area of the said disputed land is 25 acres.

Subsequent to the aforementioned decision of the village council, on 11/07/2018 Athumani Juma filed a Land Case No. 2 of 2018 before the Ward Tribunal of Iseke at Iseke against the village chairman of Nkhoiree village (VEO), one Mr. Clement Ntandu and other four members of the village council who handed over the disputed land to Selemani Hamis (the appellant). Therefore, in the decision delivered on 11/07/2018, the Ward Tribunal found the applicant Athumani Juma to have had relevant exhibits to show that he had been given the disputed land by the village council of Nkhoiree in accordance with law. However, instead of giving back the impugned land to the applicant, the ward tribunal directed the village chairman in cooperation with social service committee to give another land which is out of dispute to the applicant.

It follows, after that decision in the Land Application No. 2 of 2018, Selemani Hamisi, the appellant herein filed the Land Application No. 69 of

2019 against the Village Council of Nkoiree as 1st Respondent, and Athumani Juma, to be the 2nd respondent. In the judgment delivered on 07/02/2022, the application was struck out for being incompetent after it was found to have violated section 190 (1) of the Local Government (District Authorities) Act, Cap. 287. The reason being that, the appellant had not issued a notice to the village council as per the aforesaid law.

Seeing that, the appellant herein filed another application in the Ward Tribunal of Iseke against the respondent herein vide Land Application No. 10 of 2022 (exhibit D1). Though, as per available records, a clear date of its decision was unveiled. However, the Ward Tribunal of Iseke entered the verdict by awarding the disputed land to the appellant herein.

Thereafter, on 02/06/2022, unpredictably, the Ward Tribunal of Iseke reversed its earlier decision of the Land Application No. 10 of 2022 of which, it had awarded the impugned land to the appellant (Selemani Hamisi). In that circumstance, the reason given by the Ward Tribunal was as such, the matter was already determined in the District Land and Housing Tribunal of Singida vide application No. 69 Of 2019 and finally determine.

Upon the outcome the Ward Tribunal of Iseke to reverse its earlier decision, once again, the appellant was aggrieved and right away he filed a fresh application No. 20 of 2022 before the District Land and Housing Tribunal of Singida against the respondent for the same cause of action. After hearing, the respondent emerged victorious. Thus, again pained, the appellant comes up with this appeal.

On 23rd April, 2024, the appeal was called on for hearing and the appellant Selemani Hamisi was present himself unrepresented by counsel. Whereas, on the other hand, the respondent Athumani Juma has also entered presence unrepresented by counsel, and the matter proceeded orally.

However, before parties were invited to sail their submissions, the court *suo motto* observed an irregularity touching the root of the matter, of which, it needs satisfaction of the court as to its appropriateness. The issues observed by the court is that, initially, this matter was tried by the ward tribunal of Iseke and finally determined vide Land Application No. 10 of 2022 and the appellant emerged victorious. However, after a short while, the ward tribunal of Iseke recalled its earlier decision and reviewed the same. Seeing

that, I invited the party to address the court on the legality or otherwise of what has been transpired by the ward tribunal of Iseke.

Thus, on his part, the appellant was too brief as he faulted the tribunal for default it caused. On that, he leaves the saga to the court for determination. On the other hand, the respondent was even more brief, as he only prayed the court to dismiss the appeal with costs.

Now, going through the records, it is obvious that, the appellant had initially filed an application against the respondent in the Ward Tribunal of Iseke vide Land Application No. 10 of 2022. And, at first the appellant emerged glorious, later the Ward Tribunal reviewed its decision by revoking its earlier verdict.

Pained by the decision of the Ward Tribunal of Iseke, the appellant then filed a fresh application to the District Land and Housing Tribunal of Singida vide Land Application No. 20 of 2022, instead of lodging an appeal against the decision of Ward Tribunal of Iseke for adjudicating the matter without jurisdiction as the case may be and later, review the same.

In my considered view, the steps taken by the appellant to lip-frog the earlier decision of the Ward Tribunal, and filing a fresh application in the

District Land and Housing Tribunal of Singida, had amounted to abuse of legal process. At that juncture, in my view, the proper route to follow should have been, first to deal with the hanging decision of the Ward Tribunal of Iseke through appeal of which, issue of jurisdiction could have been raised. However, as of now, since the verdict of the Ward Tribunal have not been reversed by upper tribunal, the same remain intact regardless of its validity or otherwise.

That said, I am of the firm view that, the filling of the Land Application No. 20 of 2022 has been mistimed. If at all, for instance, the appellant herein was not satisfied by the outcome in the Ward Tribunal of Iseke, a proper remedy was for him to appeal at the District Land and Housing Tribunal where such decision could have been verified. And obviously, as I believe, a proper direction of what to do next, could have been given by the upper tribunal.

In the circumstance, since the application which is the subject to this appeal had been initiated under the wrong footing, the same should have not stood as it was filed incompetently. To that effect, I hereby invoke the power bestowed to this court by virtue of section 43 of the Land Disputes Courts Act, [Cap. 216 R.E 2019], to nullify the entire proceedings of the Land

Application No. 20 of 2022, quash the judgment and set aside the orders meted out.

And, with respect to the appeal at hand, I strike it out for being derived from untenable application. In the end, parties are directed to deal with what was transpired by the Ward Tribunal of Iseke first, in the Land Application No. 10 of 2022, and review which came thereafter. I also order for each party to bear its costs.

Accordingly ordered.

DATED at DODOMA this 31st day of May, 2024.

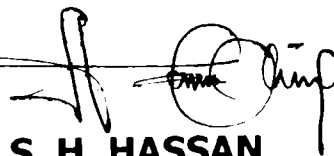


S. H. HASSAN

JUDGE

31/05/2024

This Judgment delivered this 31th day of May, 2024 in the presence of the both parties.



S. H. HASSAN

JUDGE

31/05/2024