

**IN THE HIGH COURT OF TANZANIA  
(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**LAND APPEAL NO. 15 OF 2023**

*(Originated from District Land and Housing Tribunal for Katavi at Mpanda in Misc. Land Application No. 382 of 2022)*

**JACKSON ISAKA ZIGUYE .....APPELLANT**

**VERSUS**

**NIKODEMU KAYEGHE.....RESPONDENT**

**JUDGMENT**

*28<sup>th</sup> February, 2024*

**MRISHA, J.**

The appellant **Jackson Isaka Ziguye**, being totally aggrieved by the decision of the District Land and Housing Tribunal for Katavi at Mpanda henceforth the trial tribunal, which was delivered on 27.03.2023 in favour of the respondent **Nikodemu Kayeghe**, has approached this court with a Memorandum of Appeal which contain a single ground of appeal which is to the effect:

1. That, the trial tribunal erred in law and fact by striking out appellant's application and its failure to note that the fact of affirming and swearing both connotes the same meaning in affidavits as per the decision of the Court of Appeal in **Mekefason Mandali and Others**

**vs Registered Trustee of Archdiocese of Dar es Salaam**, Civil application No. 397/17 of 2019, Court of Appeal of Tanzania, DSM (unreported).

With the above ground of appeal, the appellant has urged the court to allow his appeal, quash and set aside ruling and drawn order with costs and order the application be heard on merits.

On the adversary side, the respondent filed his reply to the appellant's appeal through which he disputed the above ground of appeal and prayed that the appeal be dismissed with costs and the decision of the trial tribunal be upheld.

When the appeal was called on for hearing Ms. Tunu Mahundi, learned advocate who hold brief for Ms. Pendovera Nyanza, learned advocate and the one who was engaged to represent the respondent rose up and submitted that after going through the ground of appeal and case referred by the appellant in his memorandum of appeal, the learned advocate support the appeal with no order for costs.

On the other side, the appellant who appeared in person and unrepresented, submitted that he agrees with the respondent's prayer, but he pressed for costs.

Upon hearing the submission of Ms. Tunu Mahundi that the counsel for respondent supports the present appeal with no cost, together with the one by the appellant who has submitted that he concurs with the prayer made by the respondent's counsel, save for the prayer to dispense with an order for costs, I have observed that both parties herein, are of the same view that the instant appeal is competent before the court and meritorious. However, their only dispute is on whether the appeal should be allowed with costs.

On my part, I am of the settled view that the present appeal deserves to be allowed by the court as agreed by both parties. I say so because after going through the impugned typed Ruling of the trial tribunal particularly at page 2 of the said Ruling, I have noticed that the Honourable learned Chairman of the trial tribunal agreed and relied on the argument of the respondent's counsel who argued that the act of the appellant (who then was the applicant) to affirm in his affidavit instead of swearing while he was a Christian, made the said affidavit to be defective.



However, in supporting the instant appeal, the respondent's counsel has categorically conceded that following the decision of the Court of Appeal in **Mekefason Mandali and Others vs Registered Trustees of Achidiocese of Dar es Salaam** (supra) which was cited by the appellant to support his appeal, there is no difference between swearing and affirming in as both are meant to make a promise before the court that the witness will tell nothing, but the truth.

In that case, the Court of Appeal stated, *intel alia* that,

*"...the differences between the two aspects touches on the particular person's religious belief, but in essence, a person who swears and the one who affirms are in effect making promises to speak the truth."*

In my view, the circumstances which transpired in that case in relation to the argument regarding swearing and affirming are similar to the ones in the present case. Actually, the issue for my determination, would be whether the difference between swearing and affirming as appearing in the applicant's (appellant) affidavit, would affect his application before the trial tribunal.

However, since the parties in the case at hand, have joined hands that there is no difference between the two words, I find that the application before the trial tribunal was competent and the trial tribunal ought not to struck it out on ground of the defects in regard to the appellant/applicant's of affirming instead of swearing.

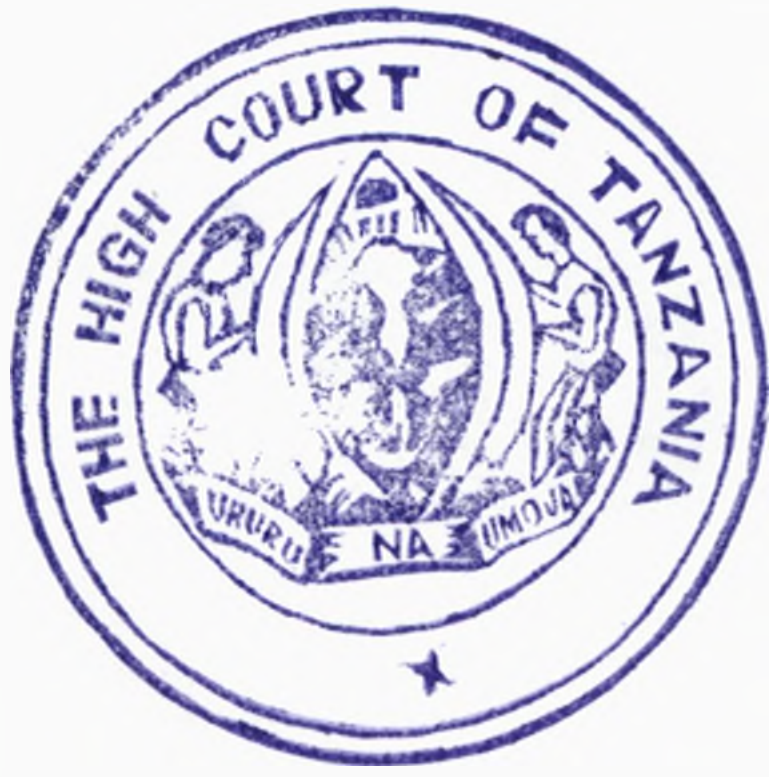
Hence, owing to the above reasons, I allow the present appeal for being meritorious, quash the decision of the trial tribunal as well as the order passed thereto. I also order that the original case file be remitted back to the trial tribunal for it to hear the applicant's application on merit.

Concerning the parties' rival submission in relation to costs, I refrain from making any order in that respect because the respondent has saved not only the time of the court, but also the time of the parties which would have been spent had the matter gone to hearing on merit.

It is so ordered.

  
**A.A. MRISHA**  
**JUDGE**  
**28.02.2024**

**DATED at SUMBAWANGA** this 28<sup>th</sup> day of February, 2024.



  
**A.A. MRISHA**  
**JUDGE**  
**28.02.2024**

ORIGINAL