

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB REGISTRY**

AT TABORA

LAND APPEAL NO. 33 OF 2023

*(From the decision of the District Land and Housing Tribunal for Nzega in Land
Revision No. 28 of 2023, Original Land Application No. 1/2023 before Uduka
Ward Tribunal)*

GEORGE MHOJA..... APPELLANT

VERSUS

SERIKALI YA KIJIKI CHA USONGONHALA..... RESPONDENT

JUDGMENT

Date of Last Order: 02/05/2024

Date of Delivery: 20/06/2024

MANGO, J.

This matter was initiated by the Respondent, Serikali ya Kijiki cha Usongonhala by filing Land Case No. 1 of 2023 before Uduka Ward Tribunal against the Appellant, George Mhoja. It was alleged that, the Appellant extended boundaries of his land as a result, he trespassed into the land belonging to Usongonhala village council. According to the Respondent, the land in dispute was demarcated by the village authority for Village development purposes (Mfumaki) since the year 1974. The Appellant

claimed that he inherited the suit land from his late father Mapalala Mashuda since the year 2014.

After full trial, the trial tribunal declared the Respondent, Serikali ya Kijiji cha Usongonhala to be the lawful owner of the disputed land. The Appellant was not happy with the proceedings and order of the ward tribunal, he therefore filed a Land Revision No. 28 of 2023 before the District Land and Housing Tribunal for Nzega praying for:

1. The DLHT to revise the legality and propriety of the proceedings and findings of the ward tribunal in Land Case No. 1 of 2023
2. Costs of the application be borne by the Respondent
3. Any other reliefs the tribunal may deem fit to grant.

The District Land and Housing Tribunal observed that Uduka Ward tribunal had no jurisdiction to determine the dispute between the parties. It thereafter nullified proceedings of the Ward Tribunal, set aside the decision of the tribunal and ordered retrial of the matter before a competent Court at the option of the parties. The District Land and Housing Tribunal eased the retrial process by mentioning clearly that the matter should be filed before the High Court because the Respondent is a government institution. In his effort to ensure justice is attained, hon. chairperson of the District Land and Housing Tribunal explained in writing as to what should be done by the Appellant if he will opt to re-institute the matter. In this, hon. chairperson explained procedure of instituting a case against government institution as contained in the Government Proceedings Act.

Instead of following guidance given to him by the District Land and Housing Tribunal, the Appellant filed the instant appeal armed with four grounds that:

1. The Chairman of the District Land and Housing Tribunal for Nzega erred in law and fact for allowing the application and issuing orders not pleaded
2. The Chairman of the District Land and Housing Tribunal for Nzega erred in law and fact in ordering the Appellant to institute a suit at the High Court whereas the said Appellant did not seek the said order nor was he a complainant against the Respondent
3. The Chairman of the District Land and Housing Tribunal for Nzega misdirected himself by raising suo motto the issue concerning the procedure to sue the government and deciding without giving parties the right to be heard
4. The Chairman of the District Land and Housing Tribunal for Nzega erred in law and fact for delivering decision against the law

When the appeal was called on for hearing, the Appellant appeared unrepresented while the Respondent was represented by Mr. Samwel Mahuma, learned State Attorney. With leave of the Court, hearing of the appeal proceeded by way of written submissions.

Submitting on the first and second grounds of appeal, George Mhoja challenged the decision of the District Land and Housing Tribunal for ruling that, if the Appellant had any claim against the Respondent should lodge his complaint before the High Court by complying with the legal procedures of suing the government. It was the Appellant's view that, this order is one

sided and it subjects only the Appellant to initiate proceedings rather than giving equal opportunity to either party who wishes to initiate a suit, taking into account that the Appellant was not the complainant in the trial tribunal nor had he sought for such an order. He referred to the case of **Mohamed Musero Vs R**, [1993] TLR 290.

On the third ground of appeal, the Appellant challenged honorable chairperson of the District Land and Housing Tribunal for inclusion of the procedure of instating suits against the government in his decision. He argued that, the issue was raised and determined by the tribunal suo moto without affording the parties right to be heard. He referred the Court to the case of **Mbeya Rukwa Autoparts and Transport Ltd Vs Jestina George Mwakyoma** [2003] TLR 251. He argued further that, since the government had sued the Appellant, there was no reason to state the procedures which were irrelevant to the case at hand.

On the fourth ground of appeal, he challenged the District Land and Housing Tribunal for failure to determine his prayer for costs.

In his reply submission Mr. Mahuma submitted on the first and second grounds of appeal collectively. He argued that, the Appellant has no valid claim against the order of the DLHT nullifying the decision of the Ward tribunal for want of jurisdiction. He submitted that, it is not disputed that following amendments of section 13 of the Land Disputes Courts Act, [Cap. 216 of 2019] via Written Laws (Miscellaneous Amendments) Act No. 5 of 2021, Ward tribunals no longer have jurisdiction to determine land disputes. Powers of the Ward Tribunals are limited to mediating land disputes. In case

of a failed mediation, the Ward Tribunal issues a certificate to that effect. Parties to a dispute, may institute the same at the District Land and Housing Tribunal.

The learned State Attorney supported the action of the District Land and Housing Tribunal to include the procedure of instituting suits against Government.

On the third ground of appeal, the learned state attorney is of the view that the order giving the Appellant an option of filing a suit against the Respondent did not occasion justice on the part of the Appellant. He argued that, the Appellant was not compelled to institute a suit against the Respondent, thus the order cannot be considered mandatory.

He faulted the case of **Mohamed Musero** cited by the Appellant and stated that in the case at hand there is no injustice occasioned to the detriment of the Appellant.

On the fourth ground of appeal, Mr. Mahuma submitted that, granting costs of the suit is the discretion of the Court. He supported the District Land and Housing Tribunal for not awarding costs in this matter because neither party contributed to the action of the Ward Tribunal of determining the dispute instead of mediating the same. He argued further that, during revision proceedings before the District Land and Housing Tribunal, the Respondent conceded that the Ward Tribunal had no jurisdiction to determine the dispute. According to him, such circumstances made the District Land and Housing Tribunal to refrain from granting costs.

In rejoinder, the Appellant reiterated his submission in chief and added that he does not challenge the discretion of the Court rather he is concerned as to why the prayer was left unaddressed.

I have considered submissions by both parties and Court record. I will start with the third ground of appeal. Court record establishes that, the District Land and Housing Tribunal after nullifying proceedings of Uduka Ward Tribunal for want of jurisdiction to determine land disputes, it discussed the Ward Tribunal's powers to entertain suits involving government institution. As correctly submitted by the Appellant, parties were not afforded right to be heard on this aspect. However, the act did not occasion justice to any of the parties. It is my considered view that, the inclusion of a discussion of the procedure of instituting suits against Government, though was an academic exercise, it imparted knowledge on the part of the Appellant. With such knowledge the Appellant can pursue properly his grievances against actions of the Respondent, if any.

On the first and second ground of appeal I find the same to have no merits on the reason that, the order though not prayed for by the Appellant, was issued on optional basis. Such orders are very necessary in dispensation of justice. By the order allowing the Appellant to institute legal proceedings against the Respondent, the Appellant is not bound to wait for the Respondent to institute legal proceedings. If he is aggrieved by any other actions of the Respondent over the disputed land, the Appellant may pursue legal proceedings against the Respondent. The order did not compel the Appellant to institute proceedings against the Respondent.

On the fourth ground of appeal, it is not disputed that the District Land and Housing Tribunal did not state anything regarding to costs of the appeal. It should be noted that grant of prayers for costs is the sole discretion of the Court before which the prayer is made. In the matter at hand, the District Land and Housing Tribunal for Nzega. Failure to issue orders regarding to costs may mean that the Tribunal declined to grant costs or it merely forgot to issue such orders. Unfortunately, this Court has no powers to grant such costs. I would have returned this matter for determination of costs by the District Land and Housing Tribunal but I have considered circumstances in this matter and I find it to be in the interest of justice not to issue such orders.

In reaching to such a decision, I considered a number of issues. First, the decision of the District Land and Housing Tribunal did not determine the dispute between parties on merits. It merely nullified proceedings of the Ward Tribunal and ordered the matter to be tried afresh at the option of the parties. In other words, the decision of the District Land and Housing Tribunal returned parties to the position they were before the decision of Uduka Ward Tribunal in Land Case No. 1 of 2023.

Second, the irregularity that caused nullification of the decision of Uduka Ward Tribunal was not deliberately caused by any of the parties. Lastly, I considered the issue that, return of the matter for determination of the prayer for costs, will in my view, delay determination of the dispute between parties to this appeal if it still exists. Considering all those issues, I find it in the interest of justice not to return the matter before the District Land and Housing Tribunal for determination of the prayer for costs.

For those reasons, the appeal is hereby dismissed. Given circumstances in this appeal, I do not award costs

Dated at Tabora this 20th day of June 2024



A handwritten signature in black ink, appearing to read "Z. D. Mango", written over a faint grid.

Z. D. MANGO
JUDGE