

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB – REGISTRY

AT MUSOMA

LAND APPEAL NO.91 OF 2023

*(Arising from the Decision of the District Land and Housing Tribunal for Tarime at
Tarime in the Land Application No. 117 of 2018)*

SANGE WILLIAM WANGOYA..... APPELLANT

VERSUS

JACOB NDIRA..... 1ST RESPONDENT

MARTINI OCHORA NDIRA..... 2ND RESPONDENT

BERNARD FESTO NDIRA..... 3RD RESPONDENT

JUDGMENT

14th&14th March, 2024

M. L. KOMBA, J.:

Appellant herein was dissatisfied by the decision of the District Land and Housing Tribunal for Tarime at Tarime in the Land Application No. 117 of 2018 where the appellant herein sued respondents for trespassing into his land and make a path within a farm. The action by respondents damaged applicants crops and make the home unsafe as the path has become a public road. Applicant demanded for stop order and restrain respondents

from passing through the farm and compensation to the tune of Tsh. 70,000,000/.

Respondents denied the allegations by applicant claiming ownership of the disputed land as it was inherited. The DLHT decided in favour of respondents. Aggrieved by the decision of the DLHT the appellant has now knocked the door of this court, armed with six grounds of appeal.

When the appeal was ready for hearing, Mr. Emmanuel Paul Mng'arwe represented appellant and Mr. Onyango Otieno represented all respondents.

Before submission Mr. Mng'arwe informed this court that he shall abandon four grounds and fended only two grounds that;

- 1. That the Tribunal Chairman erred on point of fact to apply double standard method to deny the appellant his rights.*
- 2. That the Tribunal Chairman erred on point of law to raise issue suo motto and use it to determine the matter without involving the parties.*

After selection of grounds, he intends to submit on, Mr. Mng'arwe submitted that at page 10 of the judgment Chairman confirmed that the disputed land has no size but only demarcations. But he based his

argument and reasons for decision on that issue. The bitter side is even respondents in their counter claim did not mention the size of land bearing in mind that counter claim is treated as a plaint. See **Biabana Ltd vs. CRDB Bank**, Land case No. 137 of 2015. It was further submission that application and counter claim has to adhere to Regulation 3 (2) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003 (the regulation). He was of the position that so far as both applicant and respondents in counter claim did not mention the size, none of them should benefit to that wrong instead, chairman was supposed to direct parties to correct their pleadings.

Arguing for the second ground it was his submission that Chairman noted failure by parties to mention size of the land is fatal and mentioning the size during submission is bringing the new thing. To his surprise Hon. Chairman continue to discuss the issue of the size which was not in pleading, to him the action by Chairman prejudice parties as they were not accorded right to be heard, which is constitutional right.

He referred this court to **Alisum Properties ltd vs Salum Selenda Msangi**, Civil Appeal 39 of 2018 where the court faulted the trial judge for raising the new issue as it infringes the right to be heard. Comparing to

submission by parties, counsel said even respondent mention the size during submission so they should not benefit from that wrong too. he prayed this court to find the appeal has merit and nullify the proceedings of the DLHT.

In a different note he prayed to abandon prayers in, and maintain just one prayer that the decision by trial court be quashed and set aside.

Mr. Otieno had a very short and scholarly submission that parties are bound by their own pleadings and both parties herein did not mention the size of their land during trial. In avoidance of more disputes during execution he pray the appeal to be found with merit as discrepancies goes to the root of the case. He prays any party who wish to pursue any right to do so by instituting a fresh suit as per law.

Before I analyse what has been submitted by counsel. I find prudent to thank both counsels in the case for their short straight submission. They real show to be officers of the court by assisting court to do justice.

Now, it is my duty to analyses whether the appeal is properly before this court. Starting with the issue of the size of the disputed land. In determining land disputes, lower tribunals must assure themselves with

size, location, demarcation and value of the land is known. This is the requirement of the law under Regulation 3 (2) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003 (the regulation) and precedents in **Daniel D. Kaluga vs. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015; **Rev. Francis Paul vs. Bukoba Municipal Director & 17 Others**, Land Case No. 7 of 2014, **Martin Fredrick Rajabu vs Ilemela Municipal Council and Another**, Civil Appeal No. 197 of 2019, **Aron Bimbona vs Alex Kamihanda**, Misc. Land Case Appeal No. 63 of 2018, **Hashim Mohamed Mnyalima (Administrator of the Estate of the late Mwanmtumu Shehe Mashi) vs. Mihamed Nzahi and 4 others**, Land Appeal No. 18 of 2020 and **Robert Mnanka Robert Mnanka vs Semeni Samwel**, Misc. Land Appeal No. 33 of 2022.

From the record of DLHT applicant when filing Land Application No. 117 of 2018 only explained location and demarcation of the land and the village which the disputed land is. The application is silent over the size. Failure to adhere to this requirement is fatal, the decision of the DLHT cannot stand in an appeal stage. Importance of adhering to cited regulation is to

distinguish the disputed form other land and to enable execution of the decree.

So far as the two grounds have the same and similar issue on size, I find the analysis done is suffice to dispose the appeal at hand as conceded by counsel for respondents.

I am aware of the provision of section 45 of the Land Dispute Courts Cap 216 [R.E 2019], that this court should consider when forming its decision, that no decision of the trial tribunal will be reversed or altered on account of any error, omission or irregularity in the proceedings, unless such error, omission or irregularity has in fact occasioned a failure of justice. Nevertheless, in the circumstances of the case at hand and for the aforesaid shortcomings, my mind is settled that the omission of the chairman to entertain the land dispute without knowing the size occasioned miscarriage of justice to both parties as first they were not heard but second; the decree is un-executable bearing in mind that in the disputed area there are other people too.

I therefore, proceed to exercise this courts' revisional powers bestowed under section 43(2) of the Land Dispute Courts Act, Cap 216 R.E 2019, by

nullifying and setting aside the entire proceedings and judgement of the District Land and Housing Tribunal of Tarime at Tarime with regard to Land Application No. 117 of 2018.

As to the way forward for justice to be done, I direct that a party who still wishes to pursue the matter, he may institute afresh suit before a Tribunal of competent jurisdiction subject to the current legal requirements.

I make no order as to costs.

It is so ordered.



NK
M. L. KOMBA

JUDGE

14 March, 2023

Judgment Delivered in chamber in the presence of Mr. Onyango Otieno and Mr. Paulo Mng'arwe both advocates representing parties.

NK
M. L. KOMBA

JUDGE

14 March, 2023