

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

LAND APPEAL NO. 358 OF 2024

(Arising from District Land and Housing Tribunal for Mwanza in Land Case No. 224/2021)

ZAGALUU RAJABU HISSA APPELLANT

VERSUS

IDD HAJJI KARUNDU RESPONDENT

JUDGMENT

12th and 18th March 2024.

CHUMA, J.

Aggrieved by the order of the District Land and Housing Tribunal for Mwanza at Mwanza in Land Case No. 224 of 2021, the appellant preferred this appeal fronting one ground: -

- 1. That the trial chairman erred in law for failure to grant costs to the applicant without giving reasons.*

Briefly counted, in 2021 the respondent filed a case against the appellant before the tribunal which survived until 21.11.2023 when it was withdrawn for discrepancy in proper description of the suit property. The respondent however was given the liberty to refile and he has already filed Application No. 58 of 2024 which is pending before the tribunal.

When the matter came for hearing, the applicant was represented by Ms. Mwendela John while the respondent enjoyed representation by Mr. Arsein Molland. For the appeal, Ms. Mwendela argued that the

Tribunal withdrew the application without awarding the cost. That is a matter of law for a court to award cost and failure of which, reason has to be given under section 30 (2) of **Civil Procedure Code** Cap 33 R.E. 2019 (hereinafter the Code). Ms. Mwendela seeks reliance on the case of **Rashid Muna Mwangi Vs. Haji Muna Mwangi and two others** Misc. Land Appeal No. 43 of 2022 HC of Tanzania at Dodoma and the case of **Mohamed Salmin Vs. Jumanne Omary Mapesa** Civil Appl. No. 4/2014 CAT at Dodoma (both unreported) to the effect that the established principle is that cost would usually follow the event; unless there are reasonable grounds for depriving a successful party of his costs. That, on 21.11.2023 the respondent's advocate prayed to withdraw the Land Case No. 224 of 2021. Although the appellant's advocate registered no objection, he prayed for an award of cost because the matter has been pending in that tribunal since 2021 and was in a hearing stage. The appellant engaged an advocate to represent him and was incurring expenses.

According to her, failure by the trial Tribunal to award cost was contrary to the law. She backed her position with the case of the **Registered Trustee of Moravian Church in Southern Tanzania Vs. Tanzania Zambia Railways Authority and 3 Others (unreported).**

That the trial Tribunal had no reason not to award cost. She consequently prayed for the appeal to be allowed with cost and for the respondent to be ordered to pay the cost in Application No. 224 of 2021.

In reply, Mr. Molland opposed the appeal that, the cited case of **Rashid Mwangi** (supra) is not binding in this court. The District Land and Housing Tribunal has its laws governing its procedures. That, according to Regulation 21 of the Land Disputes (District Land and Housing Tribunal Regulation, GN. No. 174/2003 (hereinafter the regulations) the tribunal is empowered to make such orders as to cost in respect of the case as it deems just. That, according to section 51 (2) of Land Disputes Court's Act Cap 216 R.E. 2019 (elsewhere the Act), the Civil Procedure Code will only apply in the case of Lacuna.

That, the cited case of **Rashid Mwangi** (supra) was heard on its finality contrary to the instant appeal which was withdrawn after raising concerns about the proper description of the property. The matter was withdrawn with leave to refile and is already filed before the tribunal as Application No. 58/2024; hence the issue of cost can still be determined in pending proceedings. That, the issue as to why the reasons were not given by the trial tribunal, is not the respondent's fault but rather the trial tribunal. The respondent should not be punished by the omission of the

trial tribunal. I was referred to the case of **Mount Meru Flowers Tanzania Ltd Vs. Box Board Tanzania Ltd** Civil Appeal No. 260/2018 which held on page 10 that parties should not be punished for errors committed by the court.

He further submitted that both parties incurred costs. Regarding the overstay of the matter since 2021, Mr. Molland submitted that the recent chairperson took the matter from his predecessor who is no longer there.

In rejoinder, Ms. Mwengela submitted that section 51 (2) of the Act is applicable where there is Lacuna. While Regulation 21 of the Regulation provides for an order as to cost, section 30 (2) of the Code provides for the reasons to be given when costs are not awarded.

Having considered the rival submissions of both learned counsels for the parties. I will now consider whether the sole ground of appeal has merit. From the submissions of parties, the ground of appeal has three limbs; **first**, whether the Code is applicable at the Tribunal in the award of costs; **second**, whether the trial chairman was duty bound to state the reasons for not awarding costs, and **third** whether the Tribunal erred in not awarding cost to the appellant.

The Settled law is that a successful party to the proceedings needs to be awarded costs to reimburse him for the costs incurred in prosecuting the matter. Costs are awarded neither to punish the losing party nor to enrich the winning party. They are only awarded to compensate the latter for the costs reasonably incurred in prosecuting or defending the case.

Further, as correctly submitted by the appellant, it is the law that cost shall follow the event. Where the court directs that any cost shall not follow the event, the court shall state its reasons in writing as stated in the case of **Njoro Furniture Mart Ltd Vs. Tanzania Electric Supply gCo Ltd** [1995] TLR 205 (CA). This legal proposition is also found in **Mulla's Code of Civil Procedure**, 12th Edition of 1953, on page 150 which provides;

"The general rule is that costs shall follow the event unless the Court, for good reason, otherwise orders. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him. The Court may not only consider the conduct of the party in the actual litigation but the matters which led up to the litigation."

Nonetheless, the awarding of costs is not automatic and it is in the domain of the trial court/tribunal. They are awarded to the successful

party not as a matter of course but discretion. They are awarded according to the facts and circumstances of each case.

In the case of **Nkaile Tozo Vs. Phillimon Musa Mwashilanga**, [2002] TLR it was held;

"The award of costs is not automatic. In other words, they are not awarded as (sic) 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 "

As correctly submitted for the respondent, the district land and housing tribunal's proceedings are governed by the Act [CAP. 216 R.E. 2019 and the Regulations (GN. NO. 174 of 2003)]. In the case of Lacunae, the Tribunal adopts the procedures provided by the Code. Section 51 (2) of the Act reads;

"The District Land and Housing Tribunals shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code."

There is no lacunae regarding the award of costs in proceedings before the Tribunal. Regulation 21 of G.N. No. 174 provides that "*the tribunal may make such orders as to costs in respect of the case as it deems just.*" unlike section 30 (2) of the Code which requires reasons to be given for refusal of costs, the Regulations does not mandate the Chairman to state reasons for refusal of costs.

That notwithstanding, it is my considered view that when costs are played for, the Chairman of the tribunal is required to state reasons in case it deems fit not to grant the same. I have two reasons; **one**, justice needs not only to be done but also needs to be seen done. By stating the reasons, a winning party who was denied costs will clearly understand the reasons why the same was not granted. **Two**, the court/tribunal is duty-bound to determine every issue raised before it. Therefore, when a party prays for costs, justice requires the issue of cost to be determined by giving reasons for the decision.

My brother Mlyambina J. in the case of **Bahati Moshi Masabile T/A Ndono Filing Station Vs. Camel Oil (T)**, Civil Appeal No 216 of 2018 (unreported), on page 6 gave five rationales for stating reasons for the decision reached; **One**, reasons make litigants to know the extent of how their arguments have been understood and analyzed by the Court.

Two, reasons foster judicial accountability by minimizing arbitrariness. **Three**, reasons facilitate certainty in law by assisting members of the legal fraternity and the general public to know how cases of a similar nature may be decided. **Four**, reasons are the basis for the appellate court to know if the decision was with apparent error. **Five**, reasons make litigants know the Magistrate or Judge's basis of the decision. Therefore, I agree with the appellant that, the trial tribunal erred not to state reasons for denying the appellant costs.

I understand the settled principle that this court cannot interfere with the exercise of discretion by lower court/tribunal unless it is satisfied that the decision by lower court was wrong because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take consideration matters which it should have taken into consideration and in doing so arrived at a wrong decision as stated in the case of **Mbogo and another Vs. Shah [1968] EA 93** at page 94. Therefore, I will determine whether the Tribunal has failed to take consideration matters that it should have taken into consideration in the award of cost.

In the case of **Francis Nyamiti Vs. Bagagi Bomani**, Land Appeal No. 14 of 2022 (HC-Tabora, unreported), factors to be considered to grant

or reject costs were outlined; **one**, mistakes occasioned by unfocussed legal advice to a party; two, unintended mistakes of parties; **three**, time and resources spent in the matter by the opposite party; **four**, illegalities/irregularities raised by the court.

Moreover, in some cases, costs are not awarded unless there are exceptional circumstances to award the same. For instance, where the case was filed under *forma pauperis*, matrimonial cases that involve division of matrimonial properties and probate cases. See the case of **Bahati Moshi Masabile T/A Ndono Filing Station Vs. Camel Oil (T)** (supra) and **John Kashekya Vs. Attorney General**, Civil Application No. 480/03 of 2018 (CAT-unreported).

In the instant matter, as correctly submitted for the appellant the matter was filed on 13.1.2021 it proceeded up to the stage of hearing the 3rd witness of the respondent. The appellant engaged an advocate to represent him. He also filed a Written Statement of Defense. Further, the counsel for the respondent was negligent by failing to give a proper description of the suit. In my view, the appellant was entitled to be compensated for the costs reasonably incurred in prosecuting Land Case No. 224 of 2021. The fact that the respondent has filed a new case cannot be used to deny the appellant costs incurred in the previous withdrawn

case as the previous costs cannot be used to prosecute/defend the subsequent case.

In the upshot, I find merit in this appeal. The appellant is awarded the costs of the trial tribunal and of this court. It is so ordered.

Right of appeal is fully explained to the parties.

DATED **at MWANZA** this 18th day of March 2024.



W. M. CHUMA
JUDGE

Judgment delivered in court before the appellant in person and respondent in person in absence of their advocates this 18th day of March, 2024.

W. M. CHUMA
JUDGE