

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LAND APPEAL NO. 102 OF 2008

*(From the Decision of the District Land and Housing Tribunal of **MOROGORO** District at **MOROGORO** in Land Case Appeal No. 22 of 2006 and Original Ward Tribunal of Mabwerebwere Ward in Application No. 98 of 2005)*

MAKONYO MAKANGAAPPELLANT

VERSUS

IDD SAID KISAUKERESPONDENT

JUDGMENT

FIKIRINI, J:

Aggrieved by the decision of the Morogoro District Land and Housing Tribunal, the appellant Makonyo Makanga appealed to this court. The appellant had a total of 8 grounds of appeal which were reduced into four:

- 1. That the chairman erred in law and fact in holding that the matter before it was an appeal from the Ward Tribunal.*
- 2. That the chairman erred in law and fact that the matter before him was appealable.*

3. *That the chairman erred in law and fact in failing to direct the matter before him to be sent back to the Ward Tribunal for trial.*
4. *That the chairman erred in law and fact in failing to see the lower tribunal had no pecuniary jurisdiction on the matter in dispute.*

Based on the above he prayed for the appeal to be allowed with costs. The appeal was argued orally and herein below is the appellant's submission, that the sitting was not that of the Ward Tribunal or reconciliation as it had 22 members. The proceedings from such sitting was therefore not that of the Ward Tribunal and hence not appealable to the District Land and Housing Tribunal. Furthermore, the Ward Executive Officer could not sit as a Tribunal Chairman.

In light of the above it was thus the appellant's submission that the District Land and Housing Tribunal ought to have seen that and nullify the proceedings and decision alleged to be of the Ward Tribunal and order retrial.

Reacting to the appellant's submission, the respondent submitted that the matter was properly before the District Land and Housing Tribunal as the matter originated from Mabwerebwere Ward Tribunal as Application No. 98 of 2005. He further submitted that it was the present appellant who appealed and the appeal was dismissed. Otherwise the minutes referred before the District Land and Housing Tribunal were those of the Village Council and not Ward Tribunal.

In a short rejoinder, the appellant maintained that the referred minutes were actually the proceedings from "Afisa

Mtendaji wa Kijiji” and were signed by the “*Mwenyekiti wa Serikali ya Kijiji*.” In addition, he submitted that the Mabwerebwere Ward is not a Ward Tribunal.

I have gone through the record and the submissions by the parties and will respond to the grounds of appeal seriatim. As regard the first ground that the appeal before the District Land and Housing Tribunal was not from the Ward Tribunal and hence not proper. From the record it is clear that the Mabwerebwere Ward Tribunal existed and therefore proceedings and decision there from were proper and valid. The District Land and Housing Tribunal chairman was therefore right in holding that the matter before him was an appeal from the Ward Tribunal.

I did not see what made the appellant dispute that fact, because the record showed the tribunal existed and was conducting itself as one with hearings and decision given. The hearing were conducted in the presence of assessors and not with 22 members as highlighted by the appellant. The first ground therefore fails.

Coming to the second ground, based on the first ground this ground fails as well. In my opinion the appeal before the District Land and Housing Tribunal was a matter appealable and hence properly before it.

As for the third ground, since the two above grounds have not been sustained this one will as well not survive. There was no need for retrial based on the arguments raise by the appellant. The District Land and Housing Tribunal was content that the convened sitting was that of the Mabwerebwere Ward Tribunal therefore the proceedings and decisions there from were valid and not subject to

nullification and order for retrial. This ground therefore fails as well.

The last ground was not submitted on I therefore will not dwell on it. For the foregoing and based on the opinion of the two members Mr. Adolf Morris and Ms. Hellen Joseph that this appeal has no merit/do concur that this appeal lacks merit and hence proceed to dismiss it with costs.

It is so ordered.

Judgment Delivered this 04th day of October, 2012 in the presence of parties.

P.S. FIKIRINI

JUDGE

04TH OCTOBER 2012

Right of Appeal Explained.

P.S. FIKIRINI

JUDGE

04TH OCTOBER 2012