

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

LAND APPEAL NO. 48 OF 2013

AT KIGOMA

HUSSEIN MASUMA AND OTHERSAPPELLANT

VERSUS

KABWE HUSSEINRESPONDENT

RULING

17th July & 13th August, 2014

S.M.RUMANYIKA, J

When the appeal was called on for hearing, I had to have a two limb preliminary point of objection (p.o) taken by Mr. Samwel Shedrack learned advocate for the Respondent disposed off. That (1) the appeal was lodged in contravention of section 38 (1) (2) and (3) of the Land Disputes Courts Act Cap 216 RE 2002 (2) matter was brought by way of a memorandum not as petition of appeal. The 1st Appellant also on behalf two other members of the household, appears in person.

The p.o is actually only one point. Like one is saying, the appeal was incompetent/defective. Liable of being struck out with costs. Having been instituted by way of a memorandum. Instead of a petition of appeal (section 38 (1) (2) and (3) of cap 216 RE 2002). The learned counsel submitted very briefly.

The 1st Appellant on his part, was even more brief. That layman as he was, could not have detected the defect. As his lawyer had prepared for him the document. He simply urged me to overrule the p.o raised.

The issue is whether use of or entitling it "Memorandum", instead of "petition" of appeal renders the appeal incurably defective. It does not! Infact the words "memorandum" and "petition" connote it having originated from a District Land and Housing Tribunal (DLHT) or from a Ward Tribunal. As the case may be.

It goes without saying according to the records, that the appeal originates from the Ward Tribunal – Bangwe Kigoma district (cause No. 2 of 2011). From the impugned decision was referred to the DLHT – Kigoma (Application No. 18 of 2012).

Actually whereas I am not inclined to condone use of the two names interchangeably, the documents are, by common sense and logic essentially one. In other words it is only a question of procedural semantics rather. The Appellant had it in mind that was appealing

herein against the DLHT's decision of 28/07/2013. The Respondent had reason so to know, and in my considered view, it was so known to every reasonable tribunal. All is only about undue legal technicalities this court can not be tied up at the expense of substantive justice. The p.o is overruled. Appellant just to lodge an amended "petition" not "memorandum" of appeal within sixty (60) days of this ruling. Ordered accordingly.

S.M.RUMANYIKA

JUDGE

28/07/2014

Delivered under my hand and seal of the court in chambers. This 13th August, 2014. In the presence of the Appellant and Andrea Machupa for Mr. Samwel for the Respondent.

S.M.RUMANYIKA

JUDGE

13/08/2014