

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPEAL NO. 100 OF 2013

*(From the Decision of the District Land and Housing Tribunal of Mkuranga District
at Mkuranga in Land Case Appeal No. 24 of 2013)*

ABDALLAH OMARY MAMBA.....APPELLANT

VERSUS

OMARY SALUM JONGO.....RESPONDENT

Date of the Last Order: 15/4/2014

Date of the Judgment: 5/6/2014

JUDGMENT

B.R. MUTUNGI, J.

The Appellant Abdallah Omary Mamba has raised two grounds of appeal namely:-

1. That, the honourable chairperson erred in law and fact by refusing the appellant's prayer of arguing the appeal by way of written submission
2. That, the honourable chairperson grossly erred in law and fact neglecting the Appellant's prayer to be assisted by legal assistance institutions.

In view of the above grounds he prays therefore for:-

- i. An order for reinstitution of the dismissed Appeal No. 24 of 2013
- ii. An order that the said Appeal be tried de-novo by another chairperson
- iii. Any other relief that this honourable court deems fit and just to grant.

Mr. Damas learned counsel in support of the two grounds narrated that the dispute was first tried in the Ward Tribunal whereby the Appellant emerged the winner and granted ownership over the suit land. Having been aggrieved the Respondent appealed to the Mkuranga District Land and Housing Tribunal and it was ordered that the matter be tried de-novo for lack of gender balance.

In the second hearing at the Ward Tribunal the Respondent had his day and was granted ownership over the suit land. As would be expected the Appellant appealed to the District Land and Housing Tribunal.

In order to pursue the appeal, the Appellant sought for legal Aid and got the assistance of the Human Rights Centre. As a result the Appellant prayed to the tribunal to have the appeal argued by way of written submissions to be able to have the assistance of the Human rights centre. Despite the Appellant's humble prayer, the District Tribunal proceeded to dismiss the appeal for want of prosecution. This is the core of the Appellant's complaint to this court as he finds that he was not availed a right to be heard. The same should be set aside and appeal restored and the matter heard inter-parties.

In response the Respondent Omary Salum Jongo submitted that after he was granted Judgment in his favour by the trial ward tribunal, the Appellant appealed to the District Land and Housing Tribunal and before the hearing the Appellant chairman informed the parties that as the record and all the proceedings were before the tribunal it will proceed with the Judgment and this is what happened. In the given circumstances it cannot be said that the Appellant was denied a right to be heard.

In order to deliberate upon the filed appeal I have had to re-visit the record and find out exactly what had transpired. In my reading I find the problem mushroomed on 13/8/2013 when the chairman Kaiza and his tribunal duly constituted, gave the appellant a right to speak and he stated:-

"I am ready for hearing through I have a person who wanted to help in writing"

In reply the tribunal is recorded as having stated,

"The appeal is fixed for hearing today"

The conversation went on and the Appellant replied, ***"I am not ready for hearing"***

Having proceeded as above the tribunal came to a ruling that;

"Since the appeal was already fixed for hearing today and the Appellant never indicated that the appeal be head by way of

written submission but proposed this option today when the matter came up for hearing his appeal shall be dismissed with costs. The status quo shall be the same as in the ward tribunal's decision"

In my settled view this was a rather harsh and brutal step taken by the chairman that could lead to injustice. The prayer made by the Appellant before the tribunal presupposes that it was being made by a lay man. There is no legal procedure or requirement in such a situation but practice has made it a procedure that representation is a right of any litigant. As these are lay people and they would like to be represented but have no financial capability then practice demands they be given a right to have their submission in writing so that they get legal services from outside.

It would have been prudent and just for the chairman to have allowed the Appellant even at that stage to have submissions in writing for the sake of justice.

In view of the foregoing I proceed to quash the ruling that was made by the chairman and proceed to order the chairman to allow the parties to proceed by way of written submission to meet the ends of justice. I uphold the appeal and order for re-institution of the dismissed appeal and the same to be heard by a different chairman. Each party to bear own costs.

Right of Appeal Explained.

B.R. MUTUNGI

JUDGE

5/6/2014

Read this day of 5/6/2014 in presence of Appellant and Respondent in person.

B.R. MUTUNGI

JUDGE

5/6/2014