

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

LAND APPEAL NO. 70 OF 2019

**(Arising from decision of number No. 322 of 2018 decided by
Kilombero and Ulanga District Land and Housing Tribunal)**

THABIT MAKWEGA.....APPELLANT

Versus

MOSES MAGUBIRA.....RESPONDENT

Date of Last Order: 10.9.2019

Date of Ruling: 27.9.2019

JUDGEMENT

M.P. OPIYO J.

The appellant being dissatisfied with the decision and orders of the Kilombero and Ulanga District Land and Housing Tribunal, dated 2.4.2019, delivered by Hon. Chairman H.E Mwivaha in Misc. Land Application number No. 322 of 2018.

His appeal is based on the following grounds,-

1. That, the Honourable Chairman erred in law and facts in ordering the appellant to pay 1,466,000/- or his properties be attached and auctioned for the debt arising from the bill of costs of which was not properly proved by the decree holder.
2. That, The Honourable Chairperson of Kilombero and Ulanga District Land and Housing Tribunal erred in law and facts by ordering the appellant to pay an amount of money, 1,466,000/- which is higher

than that which was awarded by the Mtimbira Ward Tribunal which is 95000/=.

3. That, the Honourable Chairman L.R Rugarabamu erred in law and facts by delivering the ruling using the decision of the Ward Tribunal of Mtimbira which contained irregularities for not being signed by one of the members out of 8 members.

Both parties argued this appeal by written submissions.

Before moving towards discussing the grounds of appeal in line with the submissions of parties to determine the merits or otherwise of the present appeal, I found desirable to examine the records of both tribunals, Kilombero and Ulanga District Land and Housing Tribunal, in Misc. Land Application number No. 322 of 2018 as well as the records of Mtimbira Ward Tribunal where the present appeal has its roots. I also went through the filled documents attached with this appeal from both parties.

Upon examination of the same, I came across serious procedural confusions that attracted an attention of this court as follows;-

1. The appellant, according to his petition of appeal in this case, has appealed against the decision of Kilombero and Ulanga District Land and Housing Tribunal, delivered Honourable H.E Mwivaha, in Misc. Land Application No.322 of 2018, but the said petition of appeal has been attached with the Ruling of Honourable L.R Rugarabamu, in Misc. Land Application No. 23 of 2018, by the same District land and housing tribunal, of Kilombero and Ulanga Districts.
2. There is a preliminary objection which was raised by the respondent when replying the petition of appeal by the appellant in this case, but

both parties did not address the court in respect of this preliminary objection and proceeded to submit for the appeal.

3. The Original case file from Kilombero and Ulanga District Land and Housing Tribunal which was brought to this court in respect of this appeal is Misc. Land Appeal No. 338 of 2018 instead of Misc. Land Appeal No. 322 appealed against, though it seems like, the parties are the same in both case files.
4. The drawn order of Misc. Land Application No. 322 of 2018 attached with the petition of appeal was made by Hon. H.E Mwivaha ordering the appellant to pay 1,466,000/-, dated 2/4/2019, shows that it arises from Application No. 23 of 2018, while the ruling in the Application No. 23 of 2018 which was delivered by L.R Rugarabamu, the Chairman of the District Land and Housing Tribunal of Kilombero and Ulanga District, delivered on 31/8/2018 and also attached with the petition shows that, the appellant was ordered to pay 95000/- plus costs of the case.
5. Hon. Chairman L.R. Rugarabamu in his ruling of 31/8/2018 (Misc. Land Application No. 37 of 2018) says that, the execution proceedings arose from the decision of Mtimbira Ward Tribunal on Land Case No. 37 of 2017, but the case file from Mtimbira Ward Tribunal shows otherwise, as land case file attached in question was No. 120 of 2011, not the one contained in the ruling of Hon. Rugarabamu.
6. The parties at Mtimbira Ward Tribunal in the Land case No. 120 of 2011 as the attached file with this appeal shows, were MOZESI

KINDEPI vs THABIT MAKWEGA. The same parties appear in the application for execution (Misc. Application NO. 338 of 2018), but the appeal before this court is between THABIT MAKWEGA vs MOSES MAGUBIRA, so as the ruling and drawn order attached with this appeal. it is not understandable how the parties were switched, changed or otherwise to appear as it is in the present appeal.

With such confusions surrounding the appeal case at hand, this court is left only with one option, that is, to struck out the appeal for being incompetently before this court. I have reached this conclusion basing on the following cases decided by the Court of Appeal of Tanzania;-JUMA NHANDI vs REPUBLIC, Criminal Appeal No. 289 of 2012(Unreported).

"This Court, accordingly had no jurisdiction to entertain it, what was before the court being abortive, and not a properly constituted appeal at all. What this court ought strictly to have done in each case was to "strike out" the appeal for being incompetent, rather than to have "dismissed" it.

See also the case of NGONI-MATENGO CORPOERATIVE MARKETING UNION vs ALI MOHAMED OSMAN (1959 E.A 577) and YAHAYA KHAMIS vs HAMIDA HAJI IDD AND 2 OTHERS, Civil Appeal No. 225 of 2018 (unreported).

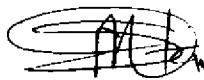
Similarly, in the case of EMANUEL LUOGA vs REPUBLIC, Criminal Appeal No.281 of 2013 (Unreported) where the court stated that....

"We are of the view that, upon being satisfied that the appeal was incompetent for reason it had assigned, it ought to struck out the appeal

instead of dismissing it. The reason is clear that by dismissing the appeal, it implies that there was a competent appeal before it which was heard and determined on merit which is not the case"

Therefore this appeal is struck out. Each party to bear his own costs.

Ordered Accordingly.



M. P. OPIYO
JUDGE
27/9/2019