

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

MISCELLANEOUS LAND CASE APPEAL NO. 106 OF 2018

(Arising from the decision of the District Land and Housing
Tribunal for Kilombero/Ulanga at Ifakara in Land Application
No. 196 of 2016)

THABITI KIPaulama APPELLANT

VERSUS

FARAHANI NAFURISA RESPONDENT

JUDGEMENT

S.M. KALUNDE, J:

In this appeal the Appellant, **THABITI KIPaulama**, is aggrieved by the judgement and decree of the District Land and Housing Tribunal for Kilombero/Ulanga at Ifakara ("**the DLHT**") in Land Appeal No. 196 of 2016. The main complaint of the appellant is that, having quashed the proceedings and set aside the decision of the Idete Ward Tribunal ("**the ward tribunal**") in **Land Case No. 31 of 2016**, it was wrong for the DLHT to award costs to the respondent.

Briefly, the facts leading to this appeal are that, in 2016 the appellant filed, against the respondent, Land Case No. 31 of 2016 before the ward tribunal. At the ward tribunal the appellant alleged that the respondent trespassed into a piece of land, the property of the family of the late **Salum Abdallah Lipande**. The ward

tribunal decided in favour of the respondent by declaring that the respondent was the lawful owner of the suit property.

The appellant was aggrieved by the decision of the ward tribunal, as a result, he filed an appeal to the Ifakara DLHT. Before determining the appeal on its merits, the DLHT noted that the appellant was not a member of the family of the late Salum Lipande, and further that he was not appointed as an administrator of the estate of the late Salum Abdallah Lipande.

Further to that, the DLHT observed that the Secretary to the ward tribunal was recorded as a member of the ward tribunal. On account of the above two reasons the tribunal invoked its revisional powers under section 36 of Cap. 216, it quashed the proceedings and set aside the judgment and orders of the ward tribunal. It also awarded the respondent costs of the appeal and those at the trial at the tribunal. It is this decision which the appellant is not happy about.

In his submissions the appellant complained that it was wrong for the DLHT to award costs to the respondent after it had revised the decision of the ward tribunal. The appellant reasoned that, since the proceedings before the ward tribunal were a nullity on account of inclusion of the secretary, a non-member of the ward tribunal, then he should not be penalised for the faults which are not his. In his view the decision of the DLHT was unjust and unfounded at law. He thus prayed that the proceedings and judgment of the DLHT be quashed and set aside respectively.

On his part the respondent argued that awarding of costs is the discretion of the Court and in award costs the Court considers circumstances of each case judiciously. It was the respondent's contention that the Chairman of the DLHT awarded costs to him on the account that the appellant had wrongly instituted the case against him whilst knowing he had no locus to institute the same. To bolster his argument, he cited the case of **Mohamed Salimin vs. Jumanne Omary Mapesa**, Civil Appeal Application No. 4 of 2014, CAT (unreported). The respondent prayed that the appeal be dismissed for lack of merit.

I have considered submissions made by both parties. It is apparent that the appellant main complaint is costs. In essence he complains that he was not to blame for the ward tribunal actions in admitting his case whilst he was not supposed to be allowed to file the same. His view was that, since the ward tribunal proceeded to entertain him, then the ward tribunal should take the blame and he should not be condemned to costs.

In light of the above foundation, the question for my determination would be whether it was proper for the DLHT to award costs to the respondents in the ward tribunal and DLHT. As observed above the decision of the ward tribunal was quashed on two reasons: firstly, that the applicant, now appellant, had no locus; secondly, that the proceedings before the ward tribunal were marred by incurable irregularities which, apparently, affected its jurisdiction.

It is trite law that that the awarding of costs is not automatic, and that costs are awarded at the discretion of the Court upon

consideration of circumstances of each case. That position was stated in **Nkaile Tozo vs. Phillimon Musa Mwashilanga** [2002] TLR 276, wherein the Court observed that:

*"The respective interpretations of these two identical provisions have now made it trite law that the awarding of costs is not automatic. In other words, they are not awarded 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 the discretion in awarding or denying a party his costs must be exercised judicially and not by caprice (See the Indian case of **Naramma v. Kotamma** (1965) 1 and WR 433). Thus, when a party successfully enforces a legal right and in no way misconducts himself, he is entitled to his costs as of right. **Civil Service v. GSN Company** [1903] 2 KB 756 CA." [Emphasis added]*

The above position was also affirmed by the Court of Appeal in recent decision in Civil Reference No.1 Of 2018) [2018] TZCA 256; (18 September 2018, **DB Sharpyiya & Company Limited vs Regional manager, TANROADS Lindi**, where the Court (Ndika, J.A) made the following observation:

"...it is common cause that costs of, and incidental to, all civil actions are awarded in the discretion of the Court... In exercise of its discretion to award costs, the Court is generally enjoined to award costs to the successful party on the basis of the principle that "costs follow the event." Nonetheless, it is also trite that the Court may withhold costs to a successful party on any justifiable ground, which may include that party's misconduct" [Emphasis added]

The court added that an award of costs must be made specifically and explicitly in the final disposal order. Specifically, the Court said:

"I would also add that since the discretion in awarding or denying a party his costs must be exercised judicially and not by caprice, the Court is enjoined to state explicitly, and specifically which party is to meet the costs of the action of the other party to the action..."

The Court went on to say that:

*I would reiterate my earlier position that for the reason that an allocation of costs to one party against the other grants a benefit to the former and correspondingly imposes a liability on the latter, **such an award must be made specifically and explicitly in the final disposal order, upon the basis of the principles discussed earlier. Adding to or implying anything in the Court's order under focus beyond, what the Court stated so expressly, would be wide of the mark.**"*
[Emphasis added]

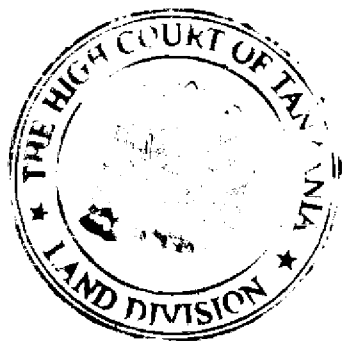
In the present case the ward tribunal did not award costs to the respondents. Apparently for a good reason that the ward tribunal have no mandate to award costs. Surprisingly, the DLHT found it justiciable to award costs in the ward tribunal when the ward tribunal itself did not consider the matter. Whilst the jurisdiction to award costs is the discretion of the DLHT that discretion was to be exercised within the established principles. That said, I find that it was not appropriate for the Chairman of the tribunal to award costs to the respondent in the ward tribunal.


Nonetheless, mindful of the position that Courts are enjoined to award costs to the successful individuals on the basis of the principle that "costs follow the event", I uphold the decision of the DLHT in awarding costs to the respondent in the appeal at the

DLHT. Given the circumstances, each part shall bear their own costs in the present appeal.

It is so ordered.

DATED at DAR ES SALAAM this 16th day of April, 2021.




S.M. KALUNDE
JUDGE

ORIGINAL