

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

MISCELLANEOUS LAND CASE APPEAL NO. 51 OF 2019

(From Appeal Judgment of District Land and Housing Tribunal for Kibaha District, Land Case Appeal No.91 of 2017, originating from the Ward Tribunal of Kerege Ward in Application No.63 of 2017)

RASHID SALIMU (On behalf of Dr. Pili).....APPELLANT

VERSUS

SABINA SUMARI.....RESPONDENT

JUDGMENT

OPIYO J.

The appellant here in above has faulted the District Land and Housing Tribunal for Kibaha District, here in after called the 1st appellate tribunal, for deciding the appeal in favour of the respondent, based on the reason that the Power of Attorney granted to Rashid Salimu by Dr. Pili is not registered.

The background of this appeal goes as follows; the case started at the Ward tribunal of Kerege Ward, in Bagamoyo District, the trial tribunal. It was Mr. Rashidi Salim holding a Power of Attorney for Dr. Pili, who sued the respondent, Sabina Sumari for trespassing into the suit land measuring 2 acres. The trial tribunal decided in favour of the appellant, but when the respondent appealed before the first appellate tribunal, the decision of the trial tribunal was overturned for reasons that the power of Attorney was not registered resulting to the appeal at hand.

This appeal was heard by way of written submissions, the appellant enjoyed the legal services of Advocate Symphorian Revelian Kitare while the respondent was represented by Advocate Elisha Kiula. In his submissions in favour of the appeal, Mr. Kitare for the appellant was of the view that, under section 96 of the Land Registration Act, Cap 334 R.E 2002 which was relied upon by the 1st appellate tribunal in its decision, has 6 sub provisions, the judgement doesn't show exactly which part of section 96 of the Land Registration Act, supra was relied upon. Secondly, the appellant was denied the right to be heard as it was held by the 1st appellate tribunal that, since the power of attorney is not registered, then the appellant lacks the *locus standi* to sue or be sued in respect of the suit land, thereby declaring the proceedings of the trial tribunal to be null and void. This ground was raised *suo motu* by the chairperson and proceeded to decide on it. His decision goes against Article 13(6)(a) of the Constitution of the United Republic of Tanzania and also contravenes section 18(2) of the Land Dispute Settlement Act, Cap 216 R.E 2019, where it has allowed that a relative may appear on behalf of the other person before it. Therefore, the no-registration of the Power of Attorney by itself cannot prevent the appellant to represent Dr. Pilli at the trial tribunal as he is a relative of the said Dr. Pili. Above all the decision of the 1st appellate tribunal goes against the provisions of section 15(1) of the Ward Tribunal Act, Cap 206 R.E 2002. He maintained that, since the Power of Attorney is regulated by Order IX Rule 1 of the Civil Procedure Code, Cap 33 R.E 2019, and the said law is not applicable in Ward tribunals, then the 1st appellate tribunal would have correctly invoked the application of section 15 (1) of the Ward Tribunal Act, (supra).

In reply Mr. Elisha Kiula for the respondent maintained that, it is a misdirection on part of the appellant when his advocate claims that the appellant was not heard while both parties were heard through written submissions at the 1st appellate tribunal. Hence Article 13(6) of the Constitution, was perfectly complied with. He went on to argue that, it is true that, under section 18(2) of the Land Disputes Court's Act, R.E 2019, a tribunal is allowed to permit a relative upon request by such party to appear and act for the said party. The appellant did not prove any of the mandates to institute the case on behalf of Dr. Pili, as given in the said provisions save that he appeared by Special Power of Attorney. Since the said document was found to have defects, it is obvious that the appellant lacked the legs to stand on as stated in the case of **Lujuna Shubi Balonsi Snr versus Registered Trustees of CCM (1996) TLR, 203** where it was observed that,

"Locus Standi is governed by Common Law, according to which a person bringing a matter to court shall be able to show that his rights or interest has been breached or interfered."

He added that, the law does not bar the tribunal chairperson from making her decision *suo motu* where it is clear that, there is a matter of law which has not been addressed by the parties and the same if left untouched may affect the end of justice. The appellant was representing the said Dr. Pili through an unregistered power of attorney, which is illegal, if he so wishes he may choose another way among those provided for by the law or follow the rules to make the Power of Attorney legal.

going through the submissions for and against this appeal as presented by the counsels for the parties, the only issue of determination entered on the violation of the right to be heard on part of the appellant before the 1st appellate tribunal and the validity of the power of attorney granted to the appellant by one Dr. Pili. The first appellate tribunal rendered a decision *suo motu* that the Power of Attorney which gave authority to the appellant to sue on behalf of Dr. Pilli was not registered, therefore the appellant lacked *locus standi* owing to non registration of said document. The records further shows that, the appellant at the appellate tribunal mentioned such defect in her petition of appeal as paragraph number four, but in her submissions, she chose to abandon the defect. **(see the judgment of the District Land and Housing Tribunal Mwanza District, at page 2)**. It is based on these facts which are on record, the appellant's counsel faulted the 1st appellate tribunal for denying the appellant his right to be heard provided for under Article 13(6) of the Constitution

a trite law as per the holding in the case of **Ausdrill Tanzania Ltd vs Joseph Kumili and Another, Civil Appeal No. 78 of 2014, Court of Appeal of Tanzania at Mwanza (unreported)**, that,

"When a Judge observes a defect in the course of composing a judgment/ruling, he should stop composing the judgment and re-summon the parties with a view of requiring them to address him on the point. Only then that he can properly continue writing the judgment".

The court went on to state that....

"Right to be heard (aud alteram partem) is a fundamental principle which the courts of law jealously guard against. In this country natural justice is not merely a principle of common law: it has become a fundamental constitutional right. (Article 13(6)(a)."

The above quoted principles being a settled position of law of our land as far as administration of justice. For that principle, I agree with the appellant's counsel that the 1st appellate tribunal decided without abiding to this principle. is illegal for violating the parties right to be heard. The point to which the impugned decision is centered was not argued by either party as the same was abandoned, although it formed a ground of appealed in the first trial tribunal. The proper procedure to rule on the same would have been to require the parties to address it before the decision came out. By this finding, I would have allowed the appeal, but for what is on I am about to say, I will not do that.

I took time to revisit the records of Kerege Ward Tribunal to satisfy myself if what was noted by the 1st appellate tribunal do real exist. I did that because at this point the parties had the opportunity to argue in their submissions on the legality or otherwise of the faulted Power of Attorney given by Dr. Pilli to the appellant, the chance they missed at the 1st appeal. On record there are two documents, firstly is the Power of Attorney, the same was truly not registered as required by section 96 of the of the Land Registration Act, Cap 334. Also there is another document written in swahili language, titled "*KUKASIMISHA MADARAKA*". The same looks like

a Power of Attorney but it was not signed by the said Pilly Ally. Also, the said document was not attested. Under these circumstances, there is a thick dust surrounding the appellant's locus standi as far as the case before the trial tribunal is concerned. It is in my settled view, it will not be correct to turn a blind eye and reinstate the decision of the trial Ward Tribunal of Kerege as the same is tainted with incompetency based on the appellant's locus standi in pursuing the matter.

That being said and done, I proceed to quash the decisions of both tribunals for the reasons I have wondered to provide here in above. The parties are restored to their original position as they were before the institution of the claim at the Kerege Ward Tribunal. Each party will have his/her own costs. If any party is still interested in pursuing his rights over the disputed land, he or she can initiate a land case at a proper tribunal competent to adjudicate the same.



A handwritten signature in black ink, appearing to be "M.P. OPIYO", written over a horizontal line.

M.P OPIYO
JUDGE
26/8/2021