

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

LAND APPEAL NO.156 OF 2019

*(From the Decision of the District Land and Housing Tribunal of Kinondoni District at
Mwananyamala in Land Appeal No.69 of 2016)*

DAUDI MONGI.....APPELLANT

VERSUS

ANGELINA SANGIWA.....1ST RESPONDENT

RHINO INVESTMENT.....2ND RESPONDENT

JUDGMENT

OPIYO, J.

The dispute started at Makuburi Ward Tribunal vide Land Case No. 28 of 2014 where the case was decided *ex-parte* in favour of the respondents. In a nutshell the parties are locking horns over piece of land whose size is unknown. Both are claiming to have ownership over the same. The respondent complained before the Ward tribunal that, the appellant as a tenant of the respondent did build business frames on the said land on agreement that the money used by him in construction of the said frames will be paid back through deductions in the rent. According to the respondent he was surprised to learn later that, the appellant claims to have ownership of the suit premises while he was just a tenant.

Aggrieved by the decision of the Ward Tribunal, the appellant unsuccessfully appealed before the District Land and Housing Tribunal for

Kinondoni in a Land Appeal No. 69 of 2016. He has preferred a second appeal before this court on the following grounds:-

1. That, the appellant tribunal grossly erred in law and fact for deciding that there was a proper summons served to the by the Makuburi Ward Tribunal.
2. That, the appellate tribunal erred in law for holding that the secretary to the Ward Tribunal was empowered to sign a copy of the judgment, the fact which makes it difficult to determine as to whether he participate in the decision making or not in the decision making.
3. That, the trial Tribunal erred in fact for not taking into account that the appellant was not afforded with an opportunity to be heard, thus the testimony of the respondent was taking unchallenged, the fact which could be different if the appellant was afforded with an opportunity to cross-examine the respondent's witnesses and he himself defend his case.

The appeal was heard by written submissions, Mr. Hassan Athuman Fatiu, learned Advocate appeared for the appellant while the respondent was represented by Advocate Francis Sabby.

However, before embarking on the disposing the grounds of appeal, the fact that there are different parties to this appeal from those appearing in trial record caught my attention. Therefore, to day when the matter was

scheduled for judgement the court asked the parties to address it on the fact. The respondent as the only part who appeared told the court that, the second respondent was not a party in original proceedings before trial court. He is an auctioneer who was introduced during execution proceedings.

Having gone through the submission of the respondent noted above, I embarked on re perusal of the records and confirmed that, indeed there is difference of parties at different stages of this matter. I noted that, the discrepancy started when the matter was filed as an appeal at the first appellate court. The appeal before the District Land and Housing Tribunal was preferred against different parties who were at the trial tribunal. At the tribunal the parties were only the appellant and the first respondent. But in appeal the parties were three, envisaging the appellant Daudi Mongi appealing against Angelina Sangiwa and Rhino Investment, a total stranger to the trial proceedings. It is a common understanding that, appeal should be against the same parties who were heard in trial. It cannot be preferred against a stranger to the trial proceedings who was not at all heard or a non- party to the proceedings. That means, the appeal was filed against and heard against wrong person who was not a party during trial. In the circumstances, even appeal filed before the District Land and Housing Tribunal for Kinondoni was incompetent for the same reason of being filed against a wrong party. This matter was noted by the first appellate tribunal as per page 2 of the judgement, but still it proceeded to determine the appeal on merits without mending the problem. After such discovery, the first appellate court ought to have struck out the matter straight away instead of continuing with

determination of the grounds of appeal on merits. If there was incompetent appeal before the district court, no a competent appeal can emanate from it, thus this appeal is equally incompetent for being filed against a wrong party. There was therefore no decision to be appealed against to this court. I therefore proceed to nullify the proceedings, judgement and decree of the District Land and Housing tribunal for Kinondoni. If any party still wish to challenge the decision of the trial tribunal he shall file a fresh appeal against parties to the trial proceedings.

Struck out. Respondent is entitled to the costs of this appeal and at the District Land and Housing Tribunal.



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

M.P. OPIYO,
JUDGE
28/6/2021