

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 55 OF 2022

BETWEEN

RICHARD MROSO APPELLANT

VERSUS

HATIBU ALLY MKETORESPONDENT

JUDGMENT

Date of last Order: 01/11/2022

Date of Judgment: 10/11/2022

A. MSAFIRI, J.

This appeal originates from the Land Dispute No. 6/2021 before Masaki Ward Tribunal, Kisarawe. In the said Land dispute, Hatibu Ally Mketto (now the respondent) instituted a complaint against Richard Mroso (now the appellant). The respondent was claiming that the appellant has trespassed on his farm, located at Kisanga Hamlet, Masaki Ward. That the respondent's father one Ally Mketto sold a piece of land measured at 20 acres to the appellant. However, after the death of Ally Mketto, the appellant now is claiming another piece of land of 20 acres which was owned by Ally Mketto, and which the late Ally Mketto did not sell to the appellant.

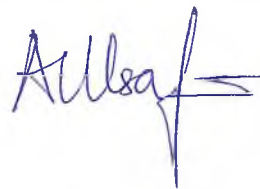
Ally

After hearing, the Ward Tribunal decided in favour of the respondent and declared him the lawful owner of the land in dispute. The appellant was aggrieved by that decision and lodged the first appeal before the District Land and Housing Tribunal of Kibaha at Kibaha (herein as the appellate Tribunal).

After hearing, the appellate Tribunal allowed the appeal, quashed and set aside the proceedings, Judgment and Order of the trial Ward Tribunal and declared that, there was no winner on the matter, and ordered that the parties are liberty to institute a fresh suit according to law if they so wishes.

The appellant, again was aggrieved by the above decision of the appellate Tribunal and has lodged the second appeal which is based on three grounds of appeal as hereunder;

1. That, the first Appellate Tribunal erred in law and fact by failure to decide on the issue of time barred which was the first ground of appeal instead it jumped into the third ground of appeal which is locus standi without any justification.



2. That, the first Appellate Tribunal erred in law and fact by ordering that there is no winner or loser while the Land and Housing Tribunal agree with ground of locus standi.
3. That the first Appellate Tribunal erred in law and fact by failure to order cost to the respondent.

The appellant prayed that the decision and orders of the appellate Tribunal be set aside, and the appeal be allowed with costs.

The respondent has filed a reply to the Petition of Appeal in which he stated that the first appellate Tribunal did not error in its decision. He prayed for this Court to dismiss the appeal with costs. However when this appeal was called for hearing, the respondent was absent without notice, so the hearing proceeded in his absence.

As said before, the hearing was orally, and one sided. The appellant was represented by Mr. Leslie Koini, learned advocate, who submitted in support of the appeal.

I have read the impugned judgment of the first appellate Tribunal, I have considered the submissions by the appellant through his advocate and

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also read the authorities referred to this Court to support the appeal in the determination of this appeal. The issue is whether the appeal has merit.

In defending the appeal, the counsel for the appellant have argued the grounds of appeal separately, so I will also determine the same separately.

On the 1st ground of appeal, the appellant stated that the appellate Tribunal erred when it decided the appeal on the third ground of appeal instead of the first ground of appeal. I have gone through the proceedings and judgment of the appellate Tribunal. The lower Tribunal records shows that the appellant (who was also appellant at the first appeal), lodged an appeal on four grounds of appeal namely;

1. That the trial Ward Land Tribunal erred in law by adjudicating and deciding on the matter which is time barred.
2. That the Ward Land Tribunal erred in law and facts by basing on erroneous matter hence reached into erroneous decision.
3. That, the Ward Land Tribunal erred in law and in facts by failure to understand that the respondent had no locus standi to sue before

it. *Alls*

4. That the trial Ward Land Tribunal erred in law and facts by failure to analyze property evidence adduced by the parts before it.

The appeal at the first bite was heard by way of written submissions. During determination of the appeal, the appellate Chairman determined the appeal basing on the third ground of appeal which was on the issue i.e. the respondent had no locus standi to sue before the trial Tribunal.

The appellate Chairman, analysed the evidence adduced during the trial and agreed with the submissions by the appellant that indeed, the respondent had no locus standi since he was not the owner of the disputed land. The appellate Chairman was of the view that, since the respondent has admitted that, the disputed land was owned by his late father, and since there was no evidence that the respondent was an administrator of the estate of his late father, then he had no locus standi to institute a suit claiming the disputed land.

The appellate Chairman based his findings on Section 100 of the Probate and Administration of Estate Act, Cap. 352 R.E. 2019. He was of the view that, the third ground of appeal is enough to dispose of the appeal

Alls.

and went on to hold that the appeal was allowed on the third ground of appeal.

In the submission before this Court, the counsel for the appellant, arguing on the 1st ground, stated that, they are aware that the Court is not obliged to determine all grounds of appeal, but they insist that the Court should answer the complaints raised by the parties.

The counsel Mr. Koini, averred that, the appellate Chairman should have determined the first ground of appeal since it was on competence of the trial itself. That, the first ground of appeal was challenging the competence of the application at the trial Tribunal, that the matter was filed out of time.

In determination of this ground of appeal, I had to look at the purpose of the appellant when instituting the first appeal. I have seen and read the appellant's Memorandum of Appeal which was filed before the appellate Tribunal on 31/5/2021 and the appeal registered as Land Appeal No. 67 of *Alles* 2021.

The appellant was praying for the orders that, **the appeal be allowed with costs and judgment and order from the trial Tribunal be set aside.**

This is exactly what the appellate Tribunal did. Except for the order of costs (which I will determine later), the said Tribunal, allowed the appeal and set aside the proceedings, decision and order of the trial Tribunal.

The appellant through his counsel, has submitted to this Court that the appellate Chairman erred when he failed to determine the first ground of appeal on the issue of the application before the trial Tribunal being time barred. I agree that the appellate Tribunal was not obliged to determine all grounds of appeal rather that ground of appeal which the Tribunal believed could dispose of the appeal.

And the appellate Tribunal believed that the third ground of appeal on the issue of locus standi could dispose of the appeal, which it did, and in favour of the appellant.

On the ground of the application at Ward Tribunal being time barred, having gone through the proceedings of the trial Tribunal, it is my view that this ground was raised for the first time before the appellate Tribunal. During

Alls.

the trial, the appellant (then respondent) told the trial Tribunal that since he has bought the land in dispute, it is now 16 years and the time limitation is 12 years. "*Tangu nilinunue huu ni mwaka wa 16, ukomo wa kisheria ni miaka 12*". However, there was no anywhere in the trial proceedings that the appellant raised the issue of incompetency of the application or claims of the matter being time barred before the trial Tribunal.

Besides that, it is my view that the fact that the appellate Chairman did not determine the first ground of appeal does not vitiate the proceedings of the trial Tribunal. The appellant have failed to show the Court how this has prejudiced his rights and affected him because, the appellate Tribunal allowed his appeal and quashed and set aside the decision of the trial Tribunal as per the prayers of the appellant. As long as the appeal was determined and the main prayers of the appellant were granted, I cannot set aside the decision of the appellate Tribunal as it granted the appeal and prayers which were lodged by the appellant himself. I find the 1st ground of appeal to have no merit and I dismiss it.

The 2nd ground of appeal, is to the effect that the appellate Tribunal erred by ordering that there was no winner or loser while it agreed on the issue of locus standi. *Acts.*

The counsel for the appellant submitted that, it was not proper for the appellate Chairman to declare that there was no winner.

In determining this ground of appeal, I have read the impugned judgment. At page 4 of the said judgment, the appellate Chairman declared that, the appeal is allowed because of the issue of locus standi. The appellate Tribunal then went on to set aside the proceedings, decision and order of the trial Tribunal.

The appellate Tribunal could not declare the appellant a winner if that is what he wanted. This is for the reasons that; first, the appellant did not prayed to be declared so. The reliefs sought by appellant were that the appeal to be allowed with costs and the judgment and order from the trial Tribunal be set aside. The appellate Tribunal allowed the appeal with no order for costs, quashed and set aside the proceedings and impugned judgment of the trial Tribunal. The appellate Tribunal could not reward the appellant with a relief which he did not pleaded.

The second reason is that, the appellate Tribunal could not declare the appellant a winner because in the trial Tribunal, the appellant was the respondent. A land dispute was instituted by the respondent (then the

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applicant) against the appellant. The appellate Tribunal found that the whole proceedings was null and void because it was instituted by the party who has no locus standi. For that reason, the appellate Tribunal quashed and set aside the whole proceedings and judgment.

The appellate Tribunal then was right when it stated that there is no winner. If the proceedings and decision of the trial Tribunal was not proper/valid then no party could be a winner. The remedy was to quash and set aside the proceedings and reconstitute the matter to the former position as if the respondent has not filed a complaint before the Ward Tribunal.

This is also why the appellate Tribunal also advised that the parties have rights to file a fresh dispute/case as per the law. I also find the 2nd ground to have no merit and I also dismiss it.

The 3rd ground was that the appellate Tribunal erred when it failed to order cost to the respondent.

Counsel for the appellant submitted that it is a general rule of law that costs should follow the event. That, since they believe that the appellant was a winner, then the appellate Tribunal should have made an order of costs in favour of the appellant.

Atls.

To cement his point, the Counsel cited the case of **Mkaile Tozo vs. Philimon Musa Mwashilanga**, [2002] TLR 276, and the Book of Mulla on Civil Procedure, 12th Edition at page 150.

I have read the cited case of **Mkaile Tozo (supra)**, which was referred to the Court by the counsel for the appellant. In the said case, it was held that section 30 of the Civil Procedure Code of Tanzania which is in *pari materia* with section 35 of the Indian Code of Civil Procedure has made it trite law that the awarding of costs is not automatic. In other words, the costs are not awarded to the successful party as a matter of course.

It was held further that **costs are entirely in the discretion of the Court and they are awarded according to the facts and circumstances of each case.**

Section 30(1) of the Civil Procedure Code, Cap. 33 R.E 2019 also have laid down that the costs shall be in the discretion of the Court.

Basing on the above principle of law, it is my finding that the order of costs or decision whether to grant or not to grant the said costs was entirely in the discretion of the appellate Tribunal having considered the facts and circumstances of the case during the first appeal where the appellate

Alls.

Tribunal had set aside the proceedings and judgment of the trial Tribunal due to the findings that the respondent had no locus standi.

I also find the 3rd ground of appeal to have no merit and I dismiss it.

Basing on the above findings, this appeal has not merit and I hereby dismiss it. The decision and orders/awards of the appellate Tribunal are upheld. I make no order for costs having regard to the facts and circumstances of the case.



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A. MSAFIRI

JUDGE

10/11/2022