

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS LAND APPEAL NO. 34 OF 2021

(C/O Land Appeal No. 14/2021 District land and Housing Tribunal for Mpanda
originating from Land Dispute No. 17 of 2020 of Shanwe Ward Tribunal)

(G. K. Rugalema, Chairman)

THOMAS MERKIADES MAZINGO APPELLANT

VERSUS

SHABANI IBRAHIM RESPONDENT

JUDGMENT

Date: 13 & 13/05/2022

NKWABI, J.:

The appellant lodged in this court a petition of appeal which had seven grounds of appeal. He was obviously aggrieved with the decision of Mpanda District Land and Housing Tribunal in Land Appeal No. 14 of 2021. In that appeal, the piece of land in dispute was held by the trial first appellate tribunal to be the property of the family of the respondent in this appeal.

At the hearing which was conducted orally, the appellant was represented by Mr. Lawrence John, learned advocate while the respondent was represented by Ms. Pendoveera Hussein Nyanza, also learned advocate. It is

at that opportunity, Mr. Lawrence John informed this court and sought leave to submit on fatal irregularities they found in the proceedings of first appellate tribunal. Ms. Nyanza concurred and I granted the leave that was sought.

Mr. Lawrence submitted that under section 19(1) of the Land Disputes Courts Act Cap. 216 R.E. 2019, one can appeal to the District Land and Housing Tribunal. The matter originated from Shanwe Ward Tribunal. Then he appealed to the District Land and Housing Tribunal. He stated, the petition of appeal was filed on 15/03/2021 which date differs with the receipt for payment which is dated 10/03/2021. So, there is controversy. He referred me to **Amed Mohamed Sudi & Another v. Mohamed Sudi & 3 Others**, Civil Application No. 12/17 of 2019 CAT at Dar-es-Salaam (unreported) at page 7 to fortify his argument.

On the 2nd anomaly, Mr. Lawrence maintained that on 19/04/2021 the respondent, in this appeal, prayed to amend the memorandum of appeal in the first appellate tribunal which prayer was granted. The respondent filed the same on 29/04/2021 but did not pay any fees for lodgment of the

amended petition. Therefore, he was of the view that the amended petition was a nullity hence it cannot be used in court. He referred me to **Romania Malingumu v. Melkio Kiluka**, Misc. Land Appeal No. 7 of 2021 the decision of this court in which the appeal was struck out for non-payment of filing fee. He also cited **Tumanini E. Mnyone v Bakari Mwawa Mageuza**, Land Revision No. 19 of 2018 also the decision of this court to bolster his submission.

He was, therefore, of the view that since the amendment was not paid for, that nullifies the proceedings and judgment. He urged, the proceedings in the District Land and Housing Tribunal be quashed. The respondent be allowed to file an appeal in the District Land and Housing Tribunal.

Ms. Pendoveera admitted the irregularities but noted that such are to be blamed on the District Land and Housing Tribunal, they paid for and on time, but it was human error the receipts were not filed in the District Land and Housing Tribunal file. The respondent has to file afresh by following the procedure, she observed. On his part, Mr. Lawrence had nothing in rejoinder.

I have gone through the proceedings and records of the appeal, I am satisfied that the pointed procedural irregularities are glaring and clear. The irregularities have the effect of nullifying the proceedings of the District Land and Housing Tribunal in Land Appeal No. 14 of 2021. I proceed to nullify the proceedings in Land Appeal No. 14 of 2021 of the District Land and Housing Tribunal for Mpanda.

In the circumstances, I allow the appeal. The proceedings of the District Land and Housing Tribunal for Mpanda are hereby quashed. Consequently, each party to bear their own costs.

It is so ordered.

DATED at SUMBAWANGA this 13th day of May, 2022.



J. F. NKWABI

JUDGE