

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 24 OF 2022**

*(Arising from the Judgment and Decree of the District Land and Housing Tribunal for Ilala District at Mwalimu House 6<sup>th</sup> Floor before Hon. M. Mgulambwa Chairman dated 20<sup>th</sup> December 2021, in Land Application No. 163 of 2017)*

**ZENGO DAUDI NZIJE ..... APPELLANT**

**VERSUS**

**FAUSTINE MSEMAKWELI ..... RESPONDENT**

**RULING**

Date of Last Order: 17.05.2022

Date of Ruling: 20.05.2022

**A.Z. MGEYEKWA, J**

At the centre of controversy between the parties to this appeal is a parcel of land. The appellant was aggrieved by the decision of the District Land and Housing Tribunal for Ilala at Ilala in Land Application No. 162 of 2017. The tribunal decided the matter in favour of the respondent. Aggrieved, the appellant lodged the present appeal.

Before hearing the Appeal on merit, the appeal has encountered formidable opposition from the respondent and has demonstrated his resistance by filing a preliminary objection which contains three points as hereunder:-

1. *That the Appeal is incompetent, has no locus standi for the misnomer of Case No. 162/2017.*
2. *That the Execution of the District tribunal is already done, the court lacks jurisdiction to determine the Appeal.*
3. *That, the appeal is incompetent for being preferred vexatious, scandalously instituted without probable cause for purpose of annoying the other party.*

By the court order and consent by the parties, the preliminary objection was argued by way of written submission, whereas, the appellant filed his submission in chief on 10<sup>th</sup> May, 2022. The respondent filed his reply on 13<sup>th</sup> May, 2022 and the respondent filed his rejoinder on 17<sup>th</sup> May, 2022.

The appellant enlisted the legal service of Mr. John Msifuni Msuya in person while the respondent appeared in person, unrepresented.

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the application.

The respondent started to narrate the background of the appeal which I am not going to reproduce in this appeal. Shooting from the hip, the respondent contended that the appellant was not a party to the case in Application No. 163 of 2017 and hence has no *locus standi* in Land Application No. 163 of 2017. The respondent argued that the applicant was involved in Land Application No. 162 of 2017. It was his further submission that the Land Application No. 162 of 2017 and Land Application No. 163 of 2017 are two different citations. He insisted that the respondent was not a party in Land Application No. 163 of 2017. Fortifying his submission he cited the case of **Stephen Masatu Wasira v Joseph Sinde Warioba** (1999) TLR 334.

The respondent's counsel went on to argue that this court lacks jurisdiction in determining this appeal because of the pecuniary jurisdiction of the court. Fortifying his submission he referred this court to section 37 of the Land Disputes Court Act Cap.216 [R.E.2019].

It was his submission that the suit is required to be lodged in the lowest grade. To buttress his submission, he cited section 13 of the Civil Procedure Code Cap.33 [R.E 2019] and the case of **Tanzania Friendship Textile Co. Ltd vs Our Lady of Usambara Sisters** (2006) T.E.R 70.

In conclusion, the respondent urged this court to dismiss the appeal with costs.

In response, Mr. Msuya learned Advocate contended that all the preliminary objections raised by the respondent do not qualify as preliminary objections. It was his submission that the 2<sup>nd</sup> and 3<sup>rd</sup> preliminary objections require facts and evidence in proving the same, contrary to the principles governing the requirement of the objection. To fortify his submission he cited the famous Case **Mukisa Biscuits v West End Distributors** [1969] E. A 696 requires a preliminary objection to include only matters of pure point of law.

It was his further submission that the citation of Land Application No. 163 of 2017 instead of Land Application No. 162 of 2017 was a slip of the pen that can be cured.

In conclusion, the learned counsel for the applicant urged this court to dismiss the preliminary objections with costs.

Having heard the submission of both learned counsels for and against the preliminary objections, the issue for determination is *whether the preliminary objections are meritorious*.

As for me, I will combine and determine the second and third objections together because they are intertwined and the first objection will be argued separately.

On the first limb of the objection, the respondent has moved this court to find that the application before this court is referring to a different application whereas the respondent was not a party. Looking at the Petition of the Appeal it is shown that the appellant is referring to the Land Application No. 162 of 2017. While the records show that the application before the District Land and Housing Tribunal was Land Application No. 163 of 2017. Therefore the cited case of **Stephen Masatu** (supra) does not apply in the case at hand as rightly stated by the learned counsel for the appellant the error is a slip of the pen which can be cured.

In my considered view, the error is minor and the same is cured even by correcting with a pen during the hearing without wasting the time of the court. Section 96 of the Civil Procedure Code Cap. 33 moves this court to correct the clerical errors appearing in the judgment of this court in respect to Land Case No.40 of 2017. For ease of reference I reproduce section 96 of the Civil Procedure Code Cap.33 as hereunder:-

*“ Clerical or arithmetical mistakes in judgments, decree or orders or errors arising therein from any accidental; slip or omission may, at any time be corrected by the court either of its own motion or on the application of any of the parties.”*

Applying the above provision of the law, I allow the appellant to correct the clerical errors appearing in the Petition of Appeal by deleting the No.

162 appearing in Land Application No. 163 of 2017 and replacing the same with No. 163. The same to read Land Application No.163 of 2017.

On the second limb, this Court wishes to set the record straight, concerning the appropriate practice and procedure to adopt when faced with an application for a preliminary objection. The procedure was firmly established by the East African Court of Appeal in the celebrated case of **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd** [1969] EA 696. It was held that:-

*“Objection must be on pure point of law, as in this case it would require calling evidence to prove whether there was board meeting properly constituted, the agenda and the resolution passed so as to prove the said preliminary point of objection.”*

The court in the same case went further by holding that:-

*“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, a plea of limitation, or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”*

Guided by above provision of the law, it is vivid that the second and third objections require some facts and evidence to determine the same for

example one would need evidence in support whether the appellant is no longer a tenant and whether this court lacks pecuniary jurisdiction to determine the appeal.

In the upshot, I find all of the respondent's three preliminary objections with no any merit. I end up overruling the raised preliminary objection with costs.

Order accordingly.

Dated at Dar es Salaam this date 20<sup>th</sup> May, 2022.



  
A.Z.MGEYEKWA  
**JUDGE**  
20.05.2022

Ruling delivered on 20<sup>th</sup> May, 2022 in the presence of Mr. Msuya, learned counsel for the appellant.



  
A.Z.MGEYEKWA  
**JUDGE**  
20.05.2022