

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 22 OF 2022

(Originating from Misc. Application No. 692 of 2020 of Kinondoni District Land and Housing at Mwananyamala)

MRS. TATU MPONDOMOKO APPELLANT

VERSUS

ABASI ABDALLAH MBARUKU RESPONDENT

JUDGEMENT

Date of the last order: 15.07.2022

Date of Judgment: 22.07.2022

A.Z.MGEYEKWA

The present appeal stems from the decision of the District Land and Housing Tribunal for Kinondoni in Land Application No. 548 of 2020. The material background facts to the dispute are not difficult to comprehend. They go thus: the appellant and the respondent are disputing over a piece of land located. The appellant in Land Application No. 692 of 2020 was the respondent. Abasi Abdallah Mbaruku lodged a Bill of Costs at the

District Land and Housing Tribunal for Kinondoni at Mwananyamala and the Chairman awarded the respondent and the appellant raised her claims that she cannot afford to pay Tshs. 2,652,000/= . Unfortunately her prayer was not granted.

Aggrieved, the appellant lodged the instant application before this court against the decision of the District Land and Housing Tribunal for Kinondon. Shes raised two grounds of grievance, namely:-

- 1. That, the chairman erred in law and fact to award the large amount of money to the respondent without documentary evidence to prove the amount claimed.*
- 2. That, the Chairperson erred in law and in fact to award large amount of money to respondent contrary to law hence the decision reached in null and void.*

When the matter was called for hearing on 15th July, 2022, the appellant was represented by Peter Madaha Learned Advocate while the respondent enjoyed the service Abdul Aziz Learned Advocate.

In his submission, Mr. Peter Madaha learned Advocate, in submission in chief stated that the Appellant had been ordered by the taxing master in Misc. Application No. 692 of 2020 to pay Tshs. 5,942,000/= as Bill of Costs. Mr. Peter stated that the appellant has already paid Tshs.

1,000,000/= to the respondent and the appellant was ready to pay the whole amount per the instalment of Tshs. 100,000/- per month but the respondent objected the appellant to pay Tshs. 500,000/- per month.

Mr. Peter contended that there is no such possibility for the respondent who is a widow and sick person to pay the whole amount in one installment. He claimed that the taxing master has taxed huge amount to the appellant. Therefore, he urged for this court to reduce the taxed amount to half amount of the total.

In response, Mr. Aziz contended that this appeal has to be dismissed with costs because it has been brought contrary to the law. He contended that, the execution order of the Bill of Costs is not appealable only in situation there were is irregularities. The learned counsel for the respondent valiantly argued the appellant's counsel has not cited the law which was violated in granting the alleged huge amount of money and that the Appellant opted to abandon his grounds of appeal.

In his rejoinder, Mr. Madaha reiterated his submission in chief and added that the appellant had right to appeal to challenge the amount charged and the mode of payment.

In conclusion, he urged this court to grant the applicant's application with costs.

Having gone through the submissions of the parties and the two grounds of appeal, from the outset the issue for determination is *whether or not the appeal is meritorious*.

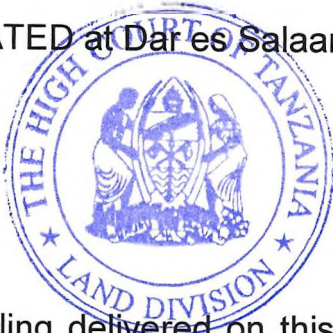
The appellant in both the grounds of appeal is challenging the award made by the District Land and Housing Tribunal. She is claiming that the tribunal awarded huge amount of money. It appears that the Appellant does not challenge the validity of the decision of the District Land and Housing Tribunal but she is challenging the awarded amount of Tshs. 5,942,000/= to the respondent and the appellant is also challenging the mode of payment.

That being the case, I fully subscribe to the submission of the learned counsel for the respondent that the appeal is improper before this court, the appellant was required to come by way of reference otherwise the appellant's counsel's argument is misplaced. Therefore the prayer to order the respondent to pay half payment of the total amount is not a good ground in the eyes of the law. However, it is not disputed fact that in trying to resolve the matter outside the court process the appellant paid the respondent Tshs. 1,000,000/= .

For the aforesaid findings, I find this appeal incompetent before me. Therefore I proceed to struck out the appeal without costs.

Order accordingly.

DATED at Dar es Salaam this 22th July, 2022.




A.Z.MGEYEKWA

JUDGE

22.07.2022

Ruling delivered on this 22nd July, 2022 in the presence of Mr. Adam, learned counsel holding brief for Mr. Peter, learned counsel for the appellant and the respondent.




A.Z.MGEYEKWA

JUDGE

22.07.2022