

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 47 OF 2022

(Arising from the decision of the District Land and Housing Tribunal for Mkuranga at Mkuranga in Misc. Land Application No. 56 of 2021 Hon. Mwakibuja-Chairperson)

YUSUPH OMARY KAMBANGWA APPELLANT

VERSUS

LIBERATUS EDWARD BUJOGA.....RESPONDENT

20/7/2022 & 10/8/2022

JUDGMENT

A. MSAFIRI, J.

This is an appeal of its own kind. The appellant is challenging the judgment and decree for being issued in Kiswahili language instead of English language. He maintained that because the judgment and decree in Land Application No. 45 of 2019 delivered by the District Land and Housing Tribunal for Mkuranga District sitting at Mkuranga (the trial Tribunal), were in Kiswahili language, the same be declared as not proper judicial documents. A brief background is apposite.

It is on record that the respondent herein instituted Land Application No. 45 of 2019 before the trial Tribunal against the appellant herein and ~~one Omary Salum Boko for trespass on his land measuring about one acre~~

Alls.

situated at Kilongani division in Vikindu Ward. The respondent therefore, claimed against them that he is the lawful owner of the land in dispute and also he prayed for payment of Tsh 50,000,000/-

After hearing the parties, the trial Tribunal decided in favour of the respondent as he was declared a lawful owner of the land in dispute and moreover the appellant and his colleague were ordered to pay the respondent a sum of Tsh 10,000,000/= as loss occasioned for failure to utilize the land in dispute.

The trial Tribunal delivered its judgment in Kiswahili. The appellant being resentful for use of Kiswahili, he preferred Application No. 56 of 2021, under section 95 of the Civil Procedure Code [CAP 33 R.E 2019] requesting the trial Tribunal to expunge the judgment and decree delivered in Kiswahili and re-issue them in English language.

In its ruling dated 2nd February 2022, the trial Tribunal dismissed the said application with costs. Part of the said ruling reads;

"Hukumu na tuzo hiyo viliandikwa kwa Kiswahili kutokana na maelekezo ya viongozi wa serikali mwaka 2021 kwa nia ya kumrahisishia mwananchi kuelewa uamuzi na yaliyomo katika uamuzi huo."

The appellant was therefore dissatisfied with the decision of the trial Tribunal refusing to recomposing the judgment in English hence he preferred the present appeal with two grounds of complaint which can be conveniently paraphrased as follows;

Alls.

- i. That the trial tribunal committed error of law by failing to determine the application in the law language namely English.*
- ii. That the trial Tribunal committed error of law by pronouncing documents namely "Uamuzi" and "Amri" in a unique language namely Kiswahili.*

On 16th June 2022 this Court ordered the appeal to be disposed of by way of written submissions, whereby the appellant appeared in person, he had no legal representation whereas the respondent had the services of Mr. David Elisha, learned advocate.

Essentially the appellant major contention in the present appeal is the use of Kiswahili language contrary to the law namely the Land Disputes Courts Act [CAP 216 R.E 2019) (the Act) as well as the District Land and Housing Tribunal Regulations, 2003.

The appellant has submitted at length faulting the use of Kiswahili contending that the said language does not have enough terminologies hence it is impossible for Courts, Tribunals and other organs charged with the duty of dispensing justice to use Kiswahili in the discharge of their function of dispensing justice. To him, the parliament has not passed or enacted a law which abolishes or bans the use of English in Courts, Tribunals and other institutions charged with the duty of dispensing justice.

The appellant contended that Kiswahili language is one of the underdeveloped languages compared with other languages. Hence he

Alle.

prayed that all the documents issued by the trial Tribunal which are in Kiswahili be declared as not judicial documents.

On reply, the respondent contended that language of the court is a creature of a statute hence the court or tribunal must use the language prescribed by the law. According to the respondent, the Written Laws (Miscellaneous Amendment) Act No. 1 of 2021, which amended Section 32 of the Land Disputes Courts Act, [CAP 216 R.E 2019] as well as Section 84A (1) of the Interpretation of Laws Act [CAP 1 R.E 2019], requires language of the Court, Tribunal or other bodies charged with the duty of dispensing justice to be Kiswahili.

The respondent contended further that the said amendment came into force on 30/4/2021 before the judgment of the Application No. 56 of 2021 and also ruling in Application No. 45 of 2019 were pronounced. The respondent contended further that under the Interpretation of Laws Act, it is provided that, where justice so requires English language may be used in the proceedings and where English has been used the judgment and decree shall be translated in Kiswahili language.

According to the respondent, the trial Tribunal was right in issuing its judgment and decree in Kiswahili and if the appellant was aggrieved with the issuing of judgment in Kiswahili he ought to have requested the trial Tribunal to translate the said judgment and decree in English but not to expunge them.

The respondent contended that both parties to the present application are Tanzanians and both gave their evidence before the trial.

Alle-

Tribunal in Kiswahili hence the trial Tribunal was justified to issue the judgment and decree in Kiswahili.

As to the contention by the appellant that the use of Kiswahili in the judgment and decree of the trial Tribunal obstructs his right to appeal, the respondent submitted that there is no evidence which shows the appellant lodged an appeal and the same was struck because the judgment and decree were issued in Kiswahili. It is for that reason the respondent prayed the appeal be dismissed with costs.

On rejoinder submission, the appellant reiterated the submission in chief. He further contended that language of the Courts in commonwealth countries is English and it cannot be replaced by any language including Kiswahili. He contended further that with the amendment of the law did not abolish the use of English in making judicial documents such as judgments and ruling. He reiterated his stance that the judgment and decree of the trial Tribunal are not judicial documents.

Having gone through the submissions of the parties, rival and in support of the appeal, the sole issue that calls for court's determination is whether the present appeal has merits.

As rightly submitted by the respondent, language of the Court is creature of statute hence the Court has to use the language prescribed by the law.

Atts.

It is common knowledge that prior to its amendment, Section 32 of CAP 216, provided for language to be used in District Land and Housing Tribunal. It reads thus;

32. *"The language of the District Land and Housing Tribunal shall be either English or Kiswahili as the Chairman holding such tribunal may direct except that the record and judgment of the Tribunal shall be in English."*

The appellant would have been right if he were referring to the said provision before its amendment. However following the amendment effected by the Written Laws (Miscellaneous Amendment) Act No. 1 of 2021, language of the courts was declared to be Kiswahili. That means even the record and judgment must be in Kiswahili language.

It follows therefore that the trial Tribunal correctly issued the judgment and decree in Kiswahili because that is how the law provides. Now as rightly contended by the respondent, where the circumstance requires, English language may be used. But in the present matter the appellant did not indicate exceptional circumstances that justified the judgment and decree be issued in English as provided under Section 84A of the Interpretation of Laws of Act.

The appellant has contended his right to appeal has been curtailed with the use of Kiswahili Language, but he could not explain how. There is no evidence suggesting that the appellant was prejudiced by the use of Kiswahili language and indeed as suggested by the respondent there is no evidence that the appellant lodged an appeal and the same was rejected

because of the judgment and decree appealed against were in Kiswahili language.

Consequently I find this appeal to have no merits and I accordingly dismiss it in its entirety with costs. Right of appeal explained.

It is so ordered.



**A. MSAFIRI,
JUDGE
10/8/2022**