

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT – LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA

LAND APPEAL No. 14 OF 2023

*(Arising from the District Land and Housing Tribunal for Mara at
Tarime in Land Application No. 36 of 2020)*

ROBI WILLIAM WAHERI APPELLANT

Versus

MARWA KINOGO RESPONDENT

RULING

12.06.2023 & 12.06.2023
Mtulya, J.:

On 20th May 2020, **Ms. Robi William Waheri** (the appellant) had approached the **District Land and Housing Tribunal for Mara at Tarime** (the tribunal) and filed **Land Application No. 36 of 2020** (the application) complaining that **Mr. Marwa Kinogo** (the respondent) had entered and cultivated her land located at Kururya Village within Rorya District in Mara Region, without any justifiable cause.

At the tribunal, the appellant prayed for the tribunal to order the respondent to vacate the disputed land. The tribunal had received all necessary materials from both parties and on 10th November 2022 rendered down its decision against the appellant and its reasoning is found at page 9 of the decision, that:

Ushahidi wa Mjibu Maombi ni mzito kuliko ule wa Mleta Maombi na nakubaliana na ushauri wa Mjumbe wa Baraza hili kuwa aliyethibitisha umliki wa eneo la mgogoro ni Mjibu Maombi. Hivyo, nafukuza haya maombi (dismiss) na kutangaza Mjibu Maombi ni mmiliki halali wa eneo la mgogoro kijiji cha Kururya Wilaya ya Rorya.

The tribunal finally at page 10 of the decision had provided detailed descriptions of the disputed land which the respondent was declared as a rightful owner. Being aggrieved by the decision of the tribunal, the appellant approached this court on 24th January 2023 and lodged **Land Appeal No. 14 of 2023** (the appeal) complaining on five (5) issues which are to be resolved by this court. The appeal was scheduled for hearing on 20th May 2023, and the respondent had protested it for want of time limitation. However, **Mr. Goodwilly Mweya**, learned counsel, who appeared for the appellant had prayed for few weeks leave to prepare for the submission in reply of the registered point of law.

Today, the appeal was scheduled for point of law hearing and the respondent was very brief in submitting the point. In his submission the respondent submitted that the decision of the tribunal in the application was pronounced on 10th November 2022 in the presence of all parties and the learned chairman had

informed them on the right of appeal for any aggrieved party and cited forty-five (45) days were reserved for such purpose.

However, to his surprise, the appellant had preferred the appeal after lapse of forty-five (45) days, on 24th January 2023, without leave of this court. Replying the submission, Mr. Mweya conceded the protest, but registered two (2) prayers contending that the fault was caused by the tribunal in delaying to supply the appellant with copies of the impugned judgment for appeal purposes. The prayers of Mr. Mweya are to the effect that: first, this court may grant the appellant leave to file fresh and proper appeal; and second, this court may waive filing fee as the appellant is a widow and has no monies to register fresh appeal.

Rejoining the submission of Mr. Mweya, the respondent contented that the appellant has no proof of letters to show that the tribunal had declined her the copy of the judgment. Finally, the respondent, being a lay person, stated that he has no dispute if the appellant is granted leave to bring fresh and proper appeal to dispute the judgment of the tribunal.

I have perused the record of the present appeal and found that the application was resolved in the tribunal on 10th November 2022 and filed in this court in 24th January 2023, more than seventy (70) days, contrary to the provision in section 41 (2) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** (the

Act). I am aware the proviso in the enactment of section 41 (2) of the Act, for enlargement of time to file an appeal out of time in this court. However, there must be good reasons to persuade this court to glance necessary materials. In the present appeal, there are no relevant materials to assist this court to resolve the prayer on enlargement of time for the appellant to register her appeal out of time.

The law regulating preliminary objection shows further that once a point of law is raised it has to be resolved first before moving into the merit of the matter (see: **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai**, Civil Appeal No. 179 of 2016 and **FINCA Microfinance Bank & Another v. Bwire Benard Kasereko**, Land Appeal No. 96 of 2021).

Similarly, practice shows that incompetent appeal cannot produce any other orders. That is the thinking of our superior court, the Court of Appeal (see: **Method Kimomogoro v. Registered Trustees of TANAPA**, Civil Application No. 1 of 2005; **Godfrey Nzowa v. Seleman Kova & Tanzania Building Agency**, Civil Appeal No. 3 of 2014; **Mary John Mitchel v. Sylvester Magembe Cheyo & Others**, Civil Application No. 161 of 2008; and **Yazidi Kassim t/a Yazidi Auto Electric Repairs v. The Attorney General**, Civil Application No. 552/04 of 2018).

This court has been following the course of the Court of Appeal without any reservations (see: **Agineda Balisela v. Abila Benedictor**, Land Appeal No. 12 of 2022). For the need of certainty of decisions of this court, established practice of the Court of Appeal, and the need of right record of courts, the prayers of Mr. Mweya cannot be entertained in this appeal.

Having said so, I am moved to struck out the present appeal for want of the indicated law and practice of our courts of record. I do so without costs for interest of justice to the parties. If the appellant is so wish to contest the decision of the tribunal in the application, she may do so in accordance to the law.

Ordered accordingly.




F.H. Mtulya

Judge

12.06.2023

This Ruling was pronounced in Chambers under the Seal of this court in the presence of the appellant, **Ms. Robi William Waheri** and her learned counsel, **Mr. Goodwilly Mweya** and in the presence of the respondent, **Mr. Marwa Kinogo**.


F.H. Mtulya

Judge

12.06.2023