

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT- LAND DIVISION

(IN THE DISTRICT REGISTRY OF MUSOMA)

AT MUSOMA

Misc. LAND APPEAL CASE No. 67 OF 2022

(Arising from the District Land and Housing Tribunal for Mara at Musoma in Misc. Land Application No. 1082 of 2021; originating from Sirori Simba Ward Tribunal in Land Application No. 12/BT/MR of 2016)

JARIBU WAIKORI MWITA APPELLANT

Versus

**1. ROCK CITY TAKERS LTD
2. WILLIAM SAMSON
3. LAURENCIA WAIRUNGU** } **RESPONDENTS**

JUDGMENT

24.02.2023 & 24.02.2023

Mtulya, J.:

On 24th June 2022, the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Misc. Land Application No. 1082 of 2021** (the application) had resolved that:

*Kwa mazingira haya maombi haya yameletwa
kinyume na utaratibu za kisheria hivyo yanatupiliwa
mbali kwa gharama*

This decision emanated from a preliminary objection hearing on a point of law resisting the jurisdiction of the tribunal in the

application. The point was raised by learned counsel for the respondent, **Mr. Wambura Kisika**, which was replied by **Mr. Amosi Wilson**, learned counsel for the appellant. Mr. Wilson was satisfied with the Ruling on the raised point of law, but was uncomfortable with the use of the words: *maombi haya yanatupiliwa mbali* in the final page of the Ruling. According to Mr. Wilson, the order is similar to *dismissal order* in English language and that is contrary to law as the application was not heard and determined on merit.

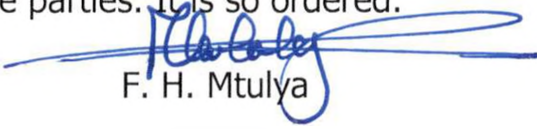
Following his dissatisfaction, Mr. Wilson approached this court and filed **Land Appeal Case No. 67 of 2022** (the appeal) praying for proper interpretation of the law in situations like the present one. Today morning when the application was called for hearing, Mr. Wilson was very brief praying for directives of this court on the subject. However, his complaint was well received by Mr. Kisika interpreting the words: *maombi haya yanatupiliwa mbali* to mean *struck out order*, and supported the practice of courts to the effect that matters which were not resolved in merit are to be struck out.

I have perused the record of the present appeal and found the words: *maombi haya yanatupiliwa mbali* as displayed at page 3 of the Ruling of the tribunal in the application and grasped the submissions of the learned minds, and think that they are in

agreement that that the words: *maombi haya yanatupiliwa mbali* from a decision on point of law are interpreted in plain English language as: *this application is struck out*. Available practice on the subject shows that rulings or orders that end proceedings emanating from preliminary hearing proceedings produce struck out orders (see: **Meet Singh Bhachu v. Gurmit Singh Bhachu**, Civil Application No. 144/02 of 2018).

Having noted so, I allow the appeal and invoke section 43 (1) (b) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019], to interpret the words: *maombi haya yanatupiliwa mbali* in the application to mean *this application is struck out*. I do so without any costs as the contest may take its new course and in any case Mr. Kisika and Wilson acted as officers of this court in assisting justice to the parties. It is so ordered.




F. H. Mtulya

Judge

24.02.2023

This Judgment was pronounced in Chambers under the Seal of this court in the presence of **Mr. Amosi Wilson**, learned counsel for the applicant, and in the presence of **Mr. Wambura Kisika**, learned counsel for the respondent.


F. H. Mtulya

Judge

24.02.2023