

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: MWARIJA, J.A., LILA, J.A., And KWARIKO, J.A.)

CIVIL APPEAL NO. 134 OF 2017

REV. FRANK MUSHI
APPELLANT

VERSUS

**THE REGISTERED TRUSTEES OF EVANGELISTIC
ASSEMBLIES OF GOD TANZANIA**
RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Moshi)

(Mutungu, J)

Dated 15th day of April, 2011

in

(Land Appeal No. 6 of 2010)

JUDGMENT OF THE COURT

28th November & 13th December, 2018

MWARIJA, J.A.:

This appeal arises from the decision of the High Court of Tanzania (Mutungi, J) in Land Case Appeal No. 6 of 2010. In the impugned decision, the High Court dismissed the appeal lodged in that court by the present appellant, Rev. Frank Mushi who was the respondent in Moshi District Land and Housing Tribunal (the Tribunal), Application No. 160 of 2008.

In that application, the present respondent, the Registered Trustees of Evangelistic Assemblies of God Tanzania (the EAGT) who was the applicant, instituted the application claiming for the following reliefs against the appellant:-

- “(a) Vacant possession of the centre with all unexhausted improvements intact;*
- (b) Handing back to the Applicants all the items listed in Annexure A ‘1’.*
- (c) An order requiring (sic) the Respondent from using the name of the Applicants’ Church;*
- (d) General damages for inconvenience and expenses;*
- (e) Costs of the Application.”*

The facts giving rise to the dispute between the parties and consequently this appeal, are not complicated. The appellant was until the material time of the application, the Resident Pastor at the respondent’s church premises known as Maweni Christian Centre, situated on Plot No. 149912 PB, Block “DDD”, Section III within Moshi Municipality (hereinafter “the Centre”). The appellant was handed over the Centre on 22/4/1995 by his predecessor Resident Pastor, one Rev. Melkizedeck Mungure.

Later on however, on 2/10/2007, the appellant was removed from his position after having been found, by the respondent, to have committed an act of insubordination. The respondent's decision to remove the appellant was communicated to him through a letter signed by the General Secretary of the respondent. As a result of its decision, the respondent required the appellant to hand over the Centre and all the properties intact. The appellant refused to give vacant possession hence the action taken by the respondent to institute the application in the Tribunal.

Before the hearing of the application, the Tribunal heard and determined a preliminary objection raised by the appellant. In his written statement of defence, the appellant raised the following points; that:

- “(i) The Honourable tribunal has no jurisdiction to entertain this application as the nature of the complaint is not a Land dispute*
- (ii) The application is incompetent and bad in law as it is not signed by the trustees.”*

In its ruling dated 3/4/2009, the Tribunal overruled both grounds of the preliminary objection. It held firstly that, since the respondent was seeking to evict the appellant from its Centre, the contention that it entertained a labour dispute is not correct. It entertained a land dispute and thus had jurisdiction. It held further, as regards the 2nd ground of the preliminary objection, that because there was no dispute as regards the position of the person who signed the application, that he was the Zonal Bishop, his signing of the application as a representative was proper. Having overruled the preliminary objection, the Tribunal proceeded to hear the application.

During the hearing of the application, the respondent relied on the evidence of two witnesses, Rev. Julius Mboya (PW1) and Rev. Melkizedeck Mungure (PW2). On his part, the appellant who testified as DW1, relied on his evidence and that of two other witnesses, Dina Damson Mgoloka (DW2) and Grace Makwazo (DW3).

PW1 testified that he has been a Bishop, Kilimanjaro Diocese since 2004. He was at the material time, under the leadership of

Bishop Leonard Mwizarubi, the Bishop and the leader of the EAGT, Arusha Zone. PW1 testified further that from his leadership position, he had known the appellant as from the time when he was the Assistant Bishop of Kilimanjaro region. Later however, he said, the appellant was transferred to the Centre to take over from Rev. Mungure who was transferred to Arusha. It was PW1's evidence further that, sometime in 2001, in its meeting held at Dar es Salaam, the Central Committee (Kamati Kuu) of the Church resolved that all pastors had to go to Bible Colleges for Bible knowledge studies. As a follow-up exercise, in 2004, a meeting was held at Moshi by the respondent and a resolution was made that all the pastors who had not gone for studies must do so. The appellant refused to undertake the studies and as a result, the respondent decided to remove the appellant from his position. Following his removal, he was required to hand over the Centre but refused. The respondent thus filed the application in the Tribunal. With regard to PW2, in his evidence, he confirmed that he handed over the Centre to the appellant on 22/4/1995.

On his part, the appellant stated in his defence that he started to work as a pastor in 1990. He admitted that the Centre

was handed over to him on 22/4/1995 by PW2. It was his defence however, that he was wrongly removed from his position because going for further studies is not a mandatory requirement under the Constitution of the Church. He said also that in 2004 when he was required to go for further studies, he was sick and could not therefore comply with that requirement. He also complained that his termination by the General Secretary of the EAGT was ineffective because the said official did not have such powers. DW3 supported the evidence of DW1 that in 2004, he fell sick and could not, as a result, go for further studies as directed by the respondent.

On her part, DW2 who said that she was, at the material time, one of the Church members at the Centre, testified that the Centre is the property of the Church members with the appellant as their leader. She contended that the value of the premises was TZS.176,555,000.00. She could not however, substantiate that value because the valuation report, which she intended to rely on, was found to be inadmissible in evidence.

In its decision, the Tribunal found that, since the appellant had been in the occupation of the premises by virtue of his employment as a Resident Pastor, after his removal from that post, the right to use the premises was extinguished. He was therefore, ordered to give vacant possession of the Centre.

Aggrieved by the decision of the Tribunal, the appellant appealed to the High Court. We find it instructive to reproduce the grounds of appeal raised by the appellant in the High Court: They are as follows:

- “1. That the trial Tribunal erred in law and fact, for determining the dispute without a due appearance or representation by the Respondent/then Applicant.*
- 2. That the Tribunal erred in law and fact in determining the dispute while the value of the suit property was above the pecuniary jurisdiction of the tribunal.*
- 3. That, the trial Tribunal erred in law for seizing a labour dispute without having jurisdiction.*
- 4. That, the Tribunal erred in law by giving a decision which is not found on evidence.*

5. *That the Tribunal erred in law and fact by determining the service tenancy prior to determination of the labor relationship of the parties.*
6. *That the Tribunal erred in law and fact in ordering the Appellant to vacate suit land despite the development and improvement made by the Appellant on the suit premises.*
7. *That, the trial Tribunal erred in law and fact by rejecting the proposed issue for determination.*
8. *That, the Tribunal erred in law and fact by finding that the then Respondent now Appellant was terminated by the Respondent.*
9. *That, the Tribunal erred in law and fact by finding that the then Respondent now Appellant was lawfully terminated.*
10. *That, the trial Tribunal erred in law and fact hence its decision is not efficate."*

Having heard the submissions of the learned counsel for the parties on those grounds of appeal raised by the appellant, the learned first appellate judge found firstly, that the person who signed the application, Rev. Mwizarubi was eligible to do so on behalf of the Church. The learned judge was of the view that, on

account of his position as the Zonal Bishop and thus the Principal Officer of the Church, Rev. Mwizarubi had the capacity of signing the application on behalf of the respondent. He found further that, in any case, the signing of the application by the said person did not occasion any injustice to the appellant because, in the event of any irregularity, the same is curable under Art. 107A (2) (e) of the Constitution of the United Republic of Tanzania.

With regard to the contention that the Tribunal did not have jurisdiction to entertain the application on account of the value of the property and the nature of the claim, like the Tribunal, the High Court found firstly, that since the respondent was seeking an order of vacant possession not ownership of the premises, and secondly, because the Tribunal was not moved to determine the legality or otherwise of the appellant's termination, the reliefs sought were well within the jurisdiction of the Tribunal.

Upon his scrutiny of the evidence, the learned judge found that since the basis of seeking eviction of the appellant was termination of his services at the Centre and because the appellant did not challenge his removal, the right to use the

premises ceased upon his termination. He found therefore, that the appeal was devoid of merit and consequently dismissed it.

The appellant was further aggrieved by the decision of the High Court hence this second appeal. In his six grounds memorandum of appeal, he basically maintains the points which he had raised in the grounds of appeal filed in the High Court. His grounds are as follows:

- “1. That the learned High Court Judge erred in law and fact by failing to hold that the trial tribunal erred in determining the dispute without due appearance or representation of the trustee (the Respondent/the Applicant before the District Land and Housing Tribunal for Moshi at Moshi.)*
- 2. That the learned High Court Judge erred by holding that, the trial tribunal had pecuniary jurisdiction to determine the dispute.*
- 3. That, the learned High Court Judge erred by affirming the decision which was not found on evidence.*
- 4. That, the learned High Court Judge erred by affirming the decision which was based on labour dispute a fact outside the jurisdiction of the trial tribunal.*

5. *That, the learned High Court Judge erred by holding that the tribunal was right on determining the alleged service.*
6. *That, the learned High Court Judge erred in fact and law by adding a witness who in fact did not testify.”*

At the hearing of the appeal, the appellant was represented by Mr. Elikunda Kipoko, learned counsel while the respondent was represented by Mr. Kuwengwa Ndonjekwa, learned counsel.

Mr. Kipoko argued the 4th and 5th grounds together and did so also for grounds 1 and 6. As for the 2nd ground of appeal, he argued it separately. Ground 3 is generally based on evidence, that the decision of the Tribunal was not founded on evidence. On the 4th and 5th grounds, the learned counsel reiterated the arguments which he made in both the Tribunal and the High Court. He submitted firstly, that the nature of the dispute which the Tribunal relied upon to grant the application thereby ordering the appellant's eviction from the Centre is a labour dispute. Secondly, Mr. Kipoko argued that the Tribunal entertained and decided the issue whether or not the appellant was terminated

while it did not have jurisdiction to do so and the High Court wrongly affirmed that decision.

With regard to the 1st and 6th grounds, it was the learned counsel's submission that the Tribunal did not have pecuniary jurisdiction to entertain the application. He contended that from the record, the appellant had shown that the value of the property was TZS.176,555,000.00. far above the pecuniary jurisdiction of the Tribunal. Relying on S.33 (2) (a) of the Land Disputes Courts Act [Cap. 216 R.E. 2002], Mr. Kipoko argued that the learned High Court judge erred in upholding the decision of the Tribunal on the ground that the proceedings did not concern a dispute over ownership of the property. The learned counsel stressed his argument that the Tribunal did not have jurisdiction to entertain the application.

In another vein, Mr. Kipoko submitted that Bishop Mwizarubi who signed the application did not have the mandate of doing so because the respondent did not authorize him to institute the application. Furthermore, he argued, the said person did not testify in the Tribunal, instead, it was Julius Mboya (PW1) who

gave evidence. Mr. Kipoko argued therefore that, in the circumstances, since Rev. Mwizarubi did not testify, it is not certain that he signed the application.

The respondent's counsel responded to the appellant's submission in the order in which the appellant's counsel had argued his grounds of appeal. As to the submission on the 4th and 5th grounds, Mr. Ndonjekwa argued that the Tribunal properly exercised its jurisdiction because what was sought by the respondent was an order of eviction after the appellant had been terminated from the service of the EAGT. The learned counsel was emphatic that the Tribunal did not deal with a labour dispute.

On grounds 1 and 6, Mr. Ndonjekwa submitted in reply that the two grounds should be found to be lacking in merit. Relying on S.30 of Cap.216, he argued that, a party in the Tribunal may appear in person or by an advocate, a relative or an authorized officer of a body corporate. As for the signing of the application, he contended that, Regulation 3 (2) of The Land Disputes Courts (The District Land and Housing Tribunal) Regulations, provides the manner on which the application should be filed in the Tribunal.

According to that regulation, he said, the form of application (Form 1) may be signed by the applicant's representative or an advocate. The learned counsel argued therefore, that since the application was signed by the respondent's representative and because there is no evidence that the respondent did not authorize the person who signed it, the complaint by the appellant is unfounded.

With regard to the argument that PW1, having not been authorized to sign the application, should not have given evidence, Mr. Ndonjekwa argued in reply that, to testify in the Tribunal as a witness, PW1 did not require to show that he was authorized for that purpose.

As for the 2nd ground, the respondent's counsel submitted that the estimated value of the premises, which was the subject of the application for vacant possession, was estimated at TZS.30 million and therefore, the Tribunal had jurisdiction. Notwithstanding the estimated value of the property, Mr. Ndonjekwa argued that, as held by both the Tribunal and the High Court, the dispute was not over ownership of the premises. He

submitted that, what was sought by the respondent was an order of vacant possession against the appellant.

In rejoinder, Mr. Kipoko reiterated his submission insisting his arguments that the Tribunal did not have jurisdiction and that the application was filed without the authority of the Registered Trustees of the EAGT.

We have duly considered the submissions of the learned counsel for the parties. We need not be detained much in determining the 4th and 5th grounds of appeal. It is clear from the reliefs sought by the respondent, which we have, for ease of reference reproduced above, that the matter before the Tribunal was not a labour dispute. The issue of appellant's termination came about as a cause for the respondent's application. The respondent sought an order of vacant possession against the appellant following termination of his services by the respondent.

The appellant's removal from the services of the EAGT and thus from the Centre, is evidenced by a letter Ref. No. EAGT/KM/VOL.III/40 dated 2/10/2007. The appellant did not dispute that fact. He only challenged the authority of the General

Secretary in taking that action. The Tribunal did not determine whether or not the General Secretary had such powers or whether or not the appellant was fairly terminated. Those are matters that are not within the jurisdiction of the Tribunal. As it stood therefore, the fact remained that the appellant was removed from the services of the EAGT hence the ground upon which the Tribunal acted to grant the order of vacant possession as prayed by the respondent. In the circumstances, the High Court did not err in upholding the decision of the Tribunal on that ground. The two grounds are therefore, without merit.

The 1st and 6th grounds of appeal concern the signing of the application by Rev. Mwizarubi and appearance in the Tribunal by Rev. Julius Mboya as a witness. We agree with Mr. Ndonjekwa, firstly that Rev. Mwizarubi had the capacity of signing the application and secondly that the act of PW1 of testifying in the Tribunal, did not render the application incompetent. It was not disputed that Rev. Leonard Mwizarubi was, at the material time, the Bishop of the EAGT, Northern Zone. He therefore signed the application as the representative of the respondent. As submitted

by Mr. Ndonjekwa that is permissible under Reg. 3 (1) of the Regulations which states as follows:

*“3 - (1) Any proceedings before the tribunal shall commence by an application filed by an applicant or his **representative** on payment of appropriate fees prescribed in First Schedule to these Regulations.”*

Reg. 3 (2) provides for matter which are to be contained in the form of application (Form No.1) and the proper person who can sign it. The form is to be signed by an applicant, representative or an advocate for the applicant.

In the present case, the application was signed by Rev. Mwizarubi **for** the Registered Trustees of the EAGT. Signing for someone means signing on his behalf. According to **Collins Cobuild Dictionary**,

“If you do something on one’s behalf, you do it for that person as their representative.”

Furthermore, from the record, the appearance of the respondent was through an advocate, Mr. Jonathan, learned

counsel. That was proper under S. 30 of Cap. 216. That section provides as follows:

“30. Proceedings of the District Land and Housing Tribunal shall be held in public and a party to the proceedings may appear in person or by an advocate or any relative or any member of the household or authorized officer of a body corporate.”

On the complaint that PW1, who was not the person who signed the application, wrongly testified in the Tribunal because he was not authorized by Rev. Mwizarubi to do so, we also do not find merit in that complaint. PW1 appeared in the Tribunal as a witness. His statement that Rev. Mwizarubi had sent him *“to represent to testify (sic) in this case”*, does not in our view, disqualify him from being a witness. The fact is that he was required to go and testify before the Tribunal in the application which was filed by the respondent. He did not therefore, testify on behalf of Rev. Mwizarubi but on what he personally knew about the appellant. These grounds are also devoid of merit.

Turning to the 2nd ground of appeal, it is not disputed that the parties were not at issue as regards the ownership of the Centre. In his evidence, when being cross - examined, the appellant stated as follows:

“Yes the church property were handed to me as per the annexure ‘A.1’ and I understand that is the trustees who own the church properties. The trustees of the church are ones whom represented the church and owner of the church properties.”

The parties’ dispute was on the continued use of the Centre by the appellant after his services with the Church had been terminated.

Notwithstanding the position stated above, the value of the premises was stated under paragraph 4 of the application. The estimated value is TZS.30,000,000.00. As submitted by the respondent’s counsel, under S. 33 (2) (a) of Cap. 216, it is an estimated value of the property which is required to be disclosed. The provision states as follows:

“33 (1) The District Land and Housing Tribunal shall have and exercise original jurisdiction -

(a)

(b)

(2) The jurisdiction conferred under subsection (1) shall be limited -

(a) in proceedings for the recovery of possession of immovable property; to proceedings in which the value of the property does not exceed fifty million shillings”

The contention by the respondent that the value of the property is TZS.176,555,000.00 is, as stated above, unsubstantiated because DW2 who alleged so could not produce evidence to that effect. In the circumstances, the estimated value of the property remained un-challenged. For these reasons we do not, with respect, agree with Mr. Kipoko that the Tribunal entertained the application without jurisdiction.

On the basis of the foregoing, we do not find any sufficient ground to fault the decision of the High Court. In the event, the appeal is hereby dismissed in its entirety with costs.

DATED at **ARUSHA** this 12th day of December, 2018.

A. G. MWARIJA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL