

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 15 OF 2022

(Arising from the District Land and Housing Tribunal for Rukwa at Sumbawanga in Application No. 222 of 2021 and originated from Misc. Land Application No. 156 of 2021 before the District Land and Housing Tribunal for Rukwa at Sumbawanga)

FESTO MKWASAMA PETER.....APPELLANT

VERSUS

YUSTO NGAMBIE.....RESPONDENT

JUDGMENT

31st January & 28th March, 2024

MRISHA, J.

This is a first bite land appeal case by the appellant **Festo Mkwesama Peter** who upon being aggrieved by the decision of the District Land and Housing Tribunal for Rukwa at Sumbawanga (the DLHT), has implored me to consider the five grounds of appeal contained in his petition of appeal, allow his appeal, quash the impugned judgment of the said tribunal with costs and declare him as the owner of the disputed land. He has also urged me to make an eviction order should the court grant the above prayers.

The ground of appeal upon which the appellant's base of grievance stems, are as follows: -

1. That the DLHT erred in law and fact by deciding the matter in favour of respondent without considering the evidence adduced by the appellant that the Korongwe ward Tribunal has no jurisdiction.
2. That the DLHT erred in law and fact by not disregarding the decision of the Kabwe Ward Tribunal which have competent territorial jurisdiction.
3. That the DLHT erred in law and fact by quashing its own decision by considering the irrelevant evidence adduced by respondent.
4. That the DLHT erred in law and fact by ignoring the evidence adduced by the Appellant that the Korongwe Ward Tribunal tried the suit expert.
5. That the DLHT erred in law and fact by failure to determine the issues of jurisdiction of the ward tribunals.

The hearing of the present appeal was canvassed by way of written submissions subject to the scheduled order of the court which was well complied with by the parties. Hence, this judgment. In his submission in respect of the first, second and fifth grounds of appeal which he proposed to deal with together since they all revolve around the issue of jurisdiction, the appellant submitted that section 10 (1) of the Land Disputes Courts Act, Cap 216 R.E. 2019 (the LDCA) provides that:

"10. Ward Tribunal"

(1) Each Ward Tribunal established under the Ward Tribunals Act shall be a Court for the purpose of this Act, the Land Act and the Village Land Act and shall have jurisdiction and powers in relation to the area in which it is established."

In the light of the above provisions, it was the submission of the appellant that the DLHT received two decisions from different ward tribunals, one from Kabwe Ward Tribunal and another from Korongwe Ward Tribunal, but instead of executing the decision of the former tribunal which according to him, had competent jurisdiction to inquire and determine the land dispute between him and the respondent, the DLHT disregarded that decision by quashing it without considering the issue of jurisdiction contrary to the provisions of section 10 (1) of the LDCA.

In regard to the third and fourth grounds, the appellant had it that the records shows that the decisions of the abovenamed ward tribunals were made ex parte, but the DLHT ignored that fact and decided to choose the decision of Korongwe Ward Tribunal while ignoring the issue of jurisdiction.

He also submitted that the decision of the DLHT to quash the decision of Kabwe Ward Tribunal was unjust because both decisions of the said ward tribunals were made ex parte as the appellant stated in his reply to the applicant's application that also in the Korongwe Ward Tribunal the matter was heard ex parte.

The appellant further submitted that the decision of the DLHT treated the decision of Korongwe Ward Tribunal as if it stemmed from interpartes trial while not. It was

his view that such act by the DLHT hindered the right to be heard on the part of the appellant because the law requires that each party to the case must be given equal opportunity to be heard at the full trial. Thus, based on the above submissions, it was his prayer that this court be pleased to allow his appeal with costs.

In reply, the respondent strongly disputed the submission of the appellant by submitting that the instant appeal lacks merits and should be dismissed with costs due to the following reasons.

Starting with grounds number one, two and five as argued by his counterparty, the respondent contended that those grounds of appeal have no merits because the DLHT received Misc. Application for Execution No. 156 of 2021 filed by the respondent, executed the judgment of Korongwe Ward Tribunal and ordered the appellant to vacate from the disputed land since Korongwe Ward Tribunal had jurisdiction on the matter.

He also submitted that after such decision of the DLHT, he received some information that the appellant also filed Misc. Land Application for execution in respect of the decision of Kabwe Ward Tribunal while the execution on the same dispute had already been dealt with by the DLHT.

It was the further submission of the respondent that he subsequently filed with the DLHT a Misc. Land Application No. 222 of 2021 to set aside the ex parte order and requested the matter to be heard interpartes. That he previously filed Land Dispute

against the appellant which dispute was heard inter partes by Korongwe Ward Tribunal on 05.01.2021 and the same was determined on 13.04.2021 in his favour.

He further submitted that even after delivery of such decision, the appellant failed to appeal against it, but decided to file a fresh Land Dispute with Kabwe Ward Tribunal on 29.03.2021 which was heard ex partes against him and its judgment was handed down on 10.03.2021 in favour of the appellant.

From the foregoing, the respondent contended that the appellant misled both the Kabwe Ward Tribunal and the DLHT while knowing that the land dispute between him and the appellant had already been determined by Korongwe Ward Tribunal after the Kabwe Ward Tribunal to have stopped working. Hence, he was of the view that the decision of Kabwe Ward Tribunal was res judicata.

To cement on the above proposition, the respondent made reliance to a number of authorities including, but not limited to the cases of **Yazidi Kassim t/a Yazid Auto Electric Repairs vs The Hon. Attorney General**, Civil Application No. 354 of 2019 CAT at Bukoba and **Jaribu Mrisho vs Hon. A.G & Others**, Land Case No. 49 of 2021 HCT at Dar es Salaam.

Turning to ground three and four of appeal, the respondent submitted that the DLHT was justified to execute the judgment of Korongwe Ward Tribunal after considering the fact that both parties were given the rights to be heard, but the appellant infringed his right to appeal and decided to mislead the Kabwe Ward Tribunal by filing a fresh suit while knowing that the land dispute involving the suit

land had already been determined in favour of the respondent by Korongwe Ward Tribunal.

It was his further submission that the records of the Korongwe Ward Tribunal depicts clearly that both parties appeared and participated at the hearing of the land dispute, but the appellant did not appeal against the decision of the abovenamed ward tribunal.

Again, in a bid to back up his proposition regarding the principles of natural justice, the respondent referred the court to the cases of **Grand Regency Hotel Limited vs Pazi Ally & Others** [2017] TLR 154 and **Nshinga Liangwa vs Joseph Mpori Mwalawaa**, Land Appeal No. 49 of 2022 HCT at Mbeya.

After making the above submission, the respondent urged the court to dismiss the present appeal, uphold the judgments of Korongwe Ward Tribunal together with that of the DLHT, declare the respondent as the rightful owner of the disputed land and make an order for costs. The appellant did not make rejoinder submission. Hence, that marked the end of the rival submissions by both parties.

Having gone through the rival submissions of both parties along with the records of the DLHT, the typed ruling of the said DLHT as well as the grounds of appeal, it is my view that the instant appeal can be disposed of based on the fourth ground of appeal. This is because in Application No. 222/2021, the parties herein contested on whether the ex parte decision of the DLHT vide Misc. Land Application No. 156/2021 (which application stemmed from the Land Dispute No. 05/2021 before Kabwe Ward

Tribunal) should be set aside by the DLHT so that the matter could be heard inter partes.

The records of the DLHT reveals that upon hearing the oral submissions of both parties in respect of Application No. 222 of 2021, the DLHT granted such application by setting aside its previous orders made through Misc. Land Application No. 156 of 2021 with costs. Nowhere in the proceedings of Application No. 222 of 2021 did the parties herein battle on the issues of res judicata or their testimonies before the Kabwe Ward Tribunal.

It is also my settled view that Land Application No. 222 of 2021 which was handled down by the DLHT on the 11th day of May, 2021 in favour of the respondent, was about execution proceeds and not an appeal. Hence, in the circumstance, it was not correct for the appellant to raise the first, second, fourth and fifth grounds of appeal at this appellate stage as if the said DLHT was dealing with an appeal from Kabwe Ward Tribunal, save for the third ground which, for the reasons to be disclosed shortly hereinafter, was properly raised by him for the purpose of challenging the decision of the DLHT to set aside its previous orders in respect of Misc. Land Application No. 156 of 2021 and this is why I have on the outset, indicated plainly that the third ground of appeal is enough to dispose of the appeal now before me.

Having said the above, it is now my task do determine whether the DLHT was justified in its decision of setting aside its previous order in respect of Misc. Land Application No. 156 of 2021.

Before responding to that issue, however, I find it very important to make it clear that in Misc. Land Application No. 156 of 2021, the appellant (who was the applicant in that application and a judgment creditor in Land Dispute No. 05/2021 before Kabwe Ward Tribunal) urged the DLHT to execute the decision of Kabwe Ward Tribunal dated the 10th day of October, 2021.

It is also on record that upon hearing the above application ex parte, the DLHT granted the same and ordered the respondent to hand over the disputed land to the appellant. However, since such decision did not amuse the former, he decided to file Application No. 222 of 2021 in order to have the ex parte orders made against him be set aside so that inter partes hearing in respect of such application could take place.

The records of the DLHT further reveal that after hearing oral submissions of both parties to Application No. 222 of 2021, the DLHT granted the application by setting aside its previous orders in respect of Misc. Land Application No. 156 of 2021 order the appellant to pay costs. The appellant was aggrieved by such decision. Hence, the present appeal.

Back to the main issue above, it should be borne in mind that where the District Land and Housing Tribunal has made its decision ex parte, the party who is aggrieved by such decision has a right to apply to the same tribunal to have the ex parte decision or order be set aside, within the statutory time so that the matter can be heard inter partes.

The above position of the law is provided under regulation 11 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002 [2003] henceforth the Land Regulations which provides inter alia that:

"(2) A party to an application may, where he is dissatisfied with the decisions of the Tribunal under sub-regulation (1), within 30 days apply to have the orders set aside, and the Tribunal may set aside its orders if it thinks fit so to do so..."

In my careful reading of the above provisions of the law, it means that the party who is aggrieved by the ex parte decision of the District Land and Housing Tribunal, may apply to the same tribunal to have the previous orders of such tribunal be set aside and must do so within the statutory period of thirty (30) days from the ex parte decision of that tribunal.

It is also important to note that upon receiving such application, the District Land and Housing Tribunal may set aside its previous orders if it thinks fit to do so.

In the case at hand, it is undisputed that upon receiving an application to set aside its previous orders in respect of Misc. Land Application No. 156 of 2021 and hearing the rival submissions of both parties now the appellant and respondent herein, the DLHT granted the said application with costs and proceeded to set aside its previous orders, as stated above.

In my view, after such decision, the room was open for both parties including the appellant, to present their cases before the DLHT to make it properly determine Misc. Land Application No. 156 of 2021 on merits. However, it appears that the appellant was not happy with such decision which is why he decided to approach the court and urge it to allow his appeal with costs believing that the DLHT was wrong in its decision to set aside its previous orders.

I have revisited his petition of appeal and written submission in support of the grounds of appeal including the third one and observed that apart from complaining that the DLHT erred in law and fact to quash its own decision, no submission, whatsoever, was made by the appellant through his written submission to backup such complaint.

Be it as it may, since the appellant is a layman, I will consider his third ground of appeal as his submission in chief while dealing with it. However, without any disrespect to the appellant and perhaps anyone who might have assisted him in drafting his written submission, what the DLHT did in dealing with Application No. 222 of 2021 after being moved by the respondent, was to set aside its previous orders vide Misc. Land Application No. 156 of 2021 and not to quash its own decision as the appellant would like the court to believe.

The DLHT could not quash its own decision because had there been no application to set aside its previous ex parte decision, the said tribunal could automatically become functus officio and could not alter its previous decision. However, since

what was tabled before it was an application to set aside its previous decisions, the only remedy available before the said tribunal after considering the application of the respondent and the circumstances of the case, was either to set aside its previous orders, as it rightly did, or to refuse to do so and let the appellant to appeal to the High Court.

It follows, therefore, that since the DLHT set aside its previous orders in respect of Misc. Land Application No. 156 of 2021, it means that both parties were allowed to appear and present their cases before the said DLHT.

In the circumstances, I am of the considered opinion that the DLHT was justified to set aside its previous ex parte decision so as to afford both parties a fair hearing, as it is provided under Article 13 (6) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time.

I may also add that had the appellant properly directed his mind, he would have appeared before the DLHT and present his case against the respondent and in case the end results would not be for him, he would appeal to this court against the decision of the said tribunal, as required of him under Regulation 24 of the Land Regulations which provides that:

"Any party who is aggrieved by the decision of the Tribunal shall subject to the provisions of the Act, have the right to appeal to the High Court (Land Division)"

In my view, the foregoing deliberation suffices to make me be in a good position to answer the above issue dispose of the instant appeal. Thus, owing to the aforementioned reasons, I am of the settled view that the present appeal has no merits and it is bound to be dismissed with costs, as I hereby do.

It is so ordered.


A.A. MRISHA
JUDGE
28.03.2024

DATED and **DELIVERED** at **SUMBAWANGA** on this 28th day of March, 2024.




A.A. MRISHA
JUDGE
28.03.2024