IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MANYARA
AT BABATI
LAND APPEAL No 26498 of 2023
(Arising from Land Application No 58 of 2022 of Hanang' District Land and Housing Tribunal)

FESTO GIDASAIDA .....APPELLANT

VERSUS

GINYAWISHI GINYOKA.....RESPONDENT
(Suing as administrator of the estate of the deceased Ginyoka Gidamwidaqat)

JUDGMENT

8th and 25th April, 2024

MIRINDO J.:

The appellant, Festo Gidasaida, moved from Bassotu Village to Mulbadaw Village and in 1996 he obtained a plot from his clan member, the late Ginyoka Gidamwidaqat. In 2004, the deceased's wife, Unongu Gichenoga, went to Bassotu Ward Tribunal complaining that she did not know how the appellant obtained eight acres of land from her late husband.

It would appear that the matter was settled and Ginyoka Gidamwidaqat passed away in 2018. In 2022 the respondent, Ginyawishi Ginyoka, the administrator of estate of the late Ginyoka Gidamwidaqat brought an action against Festo Gidasaida before Babati District Land and Housing Tribunal for a declaration that eight acres occupied by Festo Gidasaida belonged to the estate of his deceased father.

At the trial before Hanang District Land and Housing Tribunal, where the action was later transferred, the respondent's case was that appellant obtained two acres of land from his late father in 1996; and either in 2001 his late father gave the appellant eight acres of land on the condition that he should return them or the appellant trespassed into those acres of land. In his defence, the appellant stated from 1996 he purchased different portions of land on different occasions from the deceased which amounted to ten acres. At the conclusion of the trial, the Tribunal held that there was no evidence that eight acres were sold to the appellant and rejected different exhibits produced by the appellant indicating sales taking place at Bassotu Village instead of Mulbadaw.

The appellant, Festo Gidasaida, was dissatisfied with this finding and has appealed to this Court on five grounds.

Before dealing with other grounds of appeal, I will first address the second ground of appeal which touches a procedural issue. While the respondent sued as an administrator of the late Ginyawishi Ginyoka, the title of the judgment does not make refer the respondent as the administrator. Was this proper? The appellant's counsel, Mr Tadei Lister argued that it was not. The respondent's counsel, Mr Kuwengwa Ndonjeka, contended that it was upon the appellant's duty to have the judgment of the trial tribunal reviewed under Order 42 Rule 42(1) (b) of the Civil Procedure Code [Cap 33 RE 2019] and since the appellant has not done so, the appellant has appealed against a person who was not a party, and there is no appeal before this Court. Given

that the judgment of the trial tribunal declared that the disputed land belonged to the estate of the late Ginyawishi Ginyoka, reference to the respondent in the title of the judgment in his personal capacity rather than his representative capacity as the administrator is a rectifiable oversight. It is therefore ordered that in this judgment the respondent will be referred to as the administrator of the late Ginyawishi Ginyoka, and the judgment of this Court will be titled as such.

The first ground of appeal raises a jurisdictional issue whose factual background is the following: When this action was first instituted before the Babati District Land and Housing Tribunal, it was struck out because the settlement process before a ward a competent ward tribunal had been overlooked in contravention of the provisions of subsection (4) of section 13 of the Land Disputes Courts Act, Cap 216 RE 2019]. The subsection was introduced by section 45(c) of the Written Laws (Miscellaneous Amendments) (No 3) Act No 5 of 2021. Later on, the dispute was re-instituted before the trial tribunal with the respondent pleading a letter from the Mulbadaw Ward Executive Officer that that the tenure of the members of the Mulbadaw Ward Tribunal had ceased and the Tribunal was inoperative.

Mr Lister, learned counsel, who partly advocated for Festo in the trial tribunal and who represented the appellant in this appeal, argued that there was no proof of the respondent approaching the Mulbadaw Ward Tribunal or proof of its inexistence. It was the counsel's argument that as the letter was not produced in evidence, there was no basis from which to conclude that the

requirement of settlement was complied with. Mr Lister asked the Court to nullify the proceedings before the Katesh District Land and Housing Tribunal. Responding to this formidable attack on the respondent's case before the trial tribunal, Mr Ndonjekwa, learned counsel, appearing for the respondent, simply stated that the letter in the proceedings was sufficient proof that the Mulbadaw Ward Tribunal was inexistence.

After hearing the arguments from both parties and reserved judgment, I noticed the jurisdictional issue raised as the first ground of appeal was pleaded by both parties. The respondent pleaded that it had complied with mandatory settlement process and attached, in his pleading, a letter from the Mulbadaw Ward Executive Officer stating that the tenure of the Mulbadaw Ward Tribunal had ceased and the Tribunal was inoperative and asked the Babati District Land and Housing Tribunal to assist the parties. In his written statement of defence, the appellant denied the inexistence of the relevant ward tribunal. It became at once clear that this issue was apparent in the pleadings of both parties but unfortunately the trial tribunal overlooked this jurisdictional puzzle among the issues it framed. Even learned counsel were of no assistance in guiding the trial tribunal in the framing of this issue.

I framed the additional issue and remanded it to the trial tribunal for determination and directed the trial tribunal to return the records to this Court for appellate determination. The additional issue was that:

> Whether there was inoperative ward tribunal when the applicant, Ginyawishi Ginyoka, administrator of the deceased estate of Ginyoka

> Gidamwidaqat instituted the case before the Babati District Land and Housing Tribunal (being the case that was transferred to Hanang' District Land and Housing Tribunal) in September 2023?

The Hanang' District Land and Housing Tribunal summoned the parties on 8/3/2024 and on 25/3/2024 heard evidence from David Wilson, the Mulbadaw Ward Executive Officer who testified that he wrote a letter to the Chairperson of Babati District Land and Housing Tribunal. The letter detailed that the tenure of the members of the Mulbadaw Ward Tribunal had expired and the Tribunal was inoperative. The letter, dated 23/9/2023 was duly admitted and the District Land Housing Tribunal ruled that the Mulbadaw Ward Tribunal was inoperative at the material time when the respondent instituted the suit. The file was returned to this Court on 26/3/2024, and on 8/4/2024, parties submitted before me on the additional issue.

Mr Lister, learned counsel, disagreed with the finding of the trial tribunal and contended that the letter was insufficient proof that the Mulbadaw Ward Tribunal was inoperative. The documentary evidence showing the expiry of the tenure of the members of the Tribunal was available but there was no reason why it was not produced in court. His other point of objection was that there was no indication that either party ever approached the Malbadaw Ward Tribunal. He maintained that since there was no evidence that Mulbadaw Tribunal was inoperative, the trial tribunal erred in determining the dispute before it had gone through the mandatory settlement process. The learned counsel for the respondent, Mr Ndonjekwa contended

that there was no evidence that the Mulbadaw Ward Tribunal was operative and the letter produced in court was sufficient evidence that the Tribunal was in operative.

It is clear that the respondent established a prima facie case of the inexistence of Mulbadaw Ward Tribunal – a fact that has not been rebutted by the appellant. The fact that there might be some documentary evidence which has not been produced is immaterial as long as a prima facie case has been established by the respondent. What matters is the existence or inexistence of the Mulbadaw Ward Tribunal and it is immaterial that either party ever approached the Mulbdaw Ward Tribunal.

What is the legal effect of inexistence of a functioning ward tribunal on the condition that a land dispute cannot be instituted before a District Land and Housing Tribunal before it had gone through mandatory settlement? This question is not directly dealt with in Land Disputes Courts Act [Cap 216 RE 2019] and a question arises as to what should be done under these circumstances. Analogous situation addressed by the legislature is where mediation is impossible when a Ward Tribunal fails to settle a land dispute within thirty days from the date the matter was instituted. The proviso introduced to section 13 (4) by 2021 amendment, mentioned earlier in this judgment, authorises a party to institute a land dispute before a District Land and Housing Tribunal where a Ward Tribunal is unable to settle the dispute within thirty days.

This proviso indicates the legislative intent to recognise thirty days-impossibility of settlement as a delay warranting an exception to a prior mandatory mediation process. It is clear that inexistence of a ward tribunal is a stronger fact constituting impossibility than mere thirty days delay. There is a general presumption that the legislature does not intend to achieve a result that is unreasonable or arbitrary. This presumption was restated in English case of *Inland Revenue Commissioners v Hinchy* [1960] AC 748 at page 768 where Lord Reid said:

> One is entitled and, indeed, bound to assume that Parliament intends to act reasonably and, therefore, to prefer a reasonable interpretation of a statutory provision if there is any choice.

In relation to the facts before me, this presumption means that the provisions of section 13 (4) should be given a reasonable and fair reading so that it does not work injustice where a ward tribunal is inexistence. I therefore hold that that inexistence of a Ward Tribunal is an exception to mandatory settlement process on the principle that mediation was not forthcoming within thirty days as envisaged by section 13 (4) of the Land Disputes Courts Act.

For these reasons, I hold that the trial tribunal properly assumed its jurisdiction on the principle of impossibility of prior mediation process through a competent Mulbadaw Ward Tribunal. I would dismiss this ground of appeal.

A third procedural issue formed the basis of the fifth ground of appeal. The learned counsel for the appellant argued that exhibit P 1 was received in

violation of the provisions of Regulation 10 (3) (a) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003. This sub-regulation directs that before a document is received by the tribunal its copy must have been served on the opposite party. The learned counsel argued that when the document was brought before the tribunal, the appellant challenged its admission because the provisions of Regulation 10 (3) was not complied with; the trial tribunal upheld the objection, ordered it should be supplied to the appellant and adjourned the case to another date. The problem is that on the same date when the matter was adjourned, the document was admitted and marked as exhibit P2. The procedure for receiving exhibit was not followed. This was contrary to Regulation 10 (3). This piece of evidence should be expunged.

Mr Ndonjekwa, learned counsel argued that despite what is recorded the document was duly admitted in evidence: the appellant was properly served when the case was adjourned. For two consecutive dates, his advocate was absent and the appellant consented to proceed with the hearing of the case and when advocates resumed to the trial there was no objection.

It is clear from the record that on the second occasion when the appellant's counsel was absent, the trial tribunal ordered the appellant to proceed with the hearing of the case. It is not true that the appellant consented to proceed with the trial. More importantly, in ordering the appellant to proceed with the hearing of the case, the tribunal noted that the case was coming for cross-examination of the third respondent's witness.

Unfortunately, the respondent's counsel apparently assumed that the admission of Exhibit P2 had already been cleared and did not remind the tribunal that the issue of admission of exhibit P2 or the matter of its admission was deemed to have been resolved on the earlier. Whatever the case, I reject the respondent's counsel argument and hold that exhibit P 2 was received in evidence contrary to the law and should not have been acted upon by the trial tribunal.

In the third and fourth grounds of appeal, the appellant contends that Ginyawishi's case was not proved to the required standard and the trial tribunal misapprehended the evidence. The third ground of appeal is that there is variation between the pleading and evidence. Mr Lister, learned counsel, argued that while the pleading states that the appellant was given eight acres of land to use for a certain period and then return it to the appellant, the evidence adduced before the trial tribunal is that the appellant was given two acres which he was not supposed to return but trespassed on the eight acres. This variation, the learned counsel contended, was a violation of the principle that parties are bound by their pleadings and such evidence is valueless to support a finding. In support of this view, Mr Lister referred this Court to various decisions of the Court of Appeal which I find inapplicable to the facts of this appeal. He concluded that the respondent's case was not proved to the required standard.

In response, Mr Ndonjekwa, learned counsel, submitted that the respondent Ginyawishi Ginyoka provided clear evidence regarding the disputed eight acres and there was no departure from the pleading.

Paragraphs 6 a) i) and ii) of the Application presented before the trial tribunal states as follows:

> i) That, the Applicant is the Administrator of the Estate of the late Ginyoka Gidamwidaqat who is the lawful owner of the disputed land measuring Eight Acres (8) located at Mulbadaw Village, Mulbadaw Ward, Hanang District Manyara of Tanzania which he acquired by clearing the bushes since 1974.
>
> ii) That, sometimes in the year 1996 the Respondent ...was invited by the Applicant deceased Father as clan Elder and was temporality[sic] given eight Acres (8) for cultivating with good intention of to return the same to the applicant's deceased father but the respondent without any lawful cause has despite several demands from the applicant's deceased father refused to return the said farm.

There is a slight variation in what the respondent pleaded and his evidence at the trial. In his pleading he claimed that his late father gave the appellant eight acres for cultivation for the purposes of returning it after sometime. The respondent's evidence was that the appellant was either given two acres and either trespassed into the eight acres or was those acres for use for a certain period and was supposed to return them to Ginyoka or to his estate.

Not every variance between pleading and evidence is fatal and in every such case the issue is whether the opponent has been prejudiced. As stated by

Dhingra SN and Mogha GC (2013) *The Law of Pleadings in India with precedents*, 18th edn, New Delhi: Eastern Law House Private Ltd at page 112

> Every variance should be carefully watched to see that the opposite party is not taken by surprise... as in all such cases, the real test is whether the other party has been taken by surprise... and where there has been no surprise and parties have understood what each wanted to prove and what the real issue was and justice is better done by deciding the case on the merits as presented by the parties, this technical rule need not be enforced...and the defect in pleading may be remedied by amendment, if necessary...[References omitted]

In the present appeal, the dispute involves eight acres of land and the appellant's case is that he purchased ten acres of land from the respondent's father. From the appellant's perspective, the claim of two or eight acres is of no consequence. It follows that the parties were at once as to the disputed land. I reject this contention and there was no need for amendment.

In his fourth ground of appeal Festo Gidasaida contends that the trial tribunal misapprehended the evidence for not holding that the appellant presented stronger evidence than that of the respondent. The appellant's counsel, Mr Lister, pointed out different portions of the respondent's evidence to convince this Court that no issue of unlawful occupation of land arose before the death of the respondent's father. The learned counsel argued that the appellant peacefully stayed in the disputed land since 1996 and the claim of unlawful occupation arose in 2021. This claim was unfounded because the respondent was at that time absent from Mulbadaw and his late father who was present did not take any action against the appellant.

Mr Lister, learned counsel, sought to discredit the testimony of Unongu Gichenoga, the wife of the deceased and the third respondent's witness. He argued that her evidence was unreliable. Her evidence that she took the dispute before Bassotu Ward Tribunal in 2004 could not carry further the respondent's case. As there is no evidence of what transpired later, the inference is that the dispute between the deceased and the appellant had ended. There is no evidence that any other legal action was taken against the appellant. This peaceful occupation, Mr Tadei Lister concluded, gave rise either to adverse possession because the appellant had been in the suit land for about 27 years or to the inference that the dispute had been settled.

Mr Ndonjekwa, learned counsel supported the decision of the trial tribunal and argued that it had properly evaluated the evidence. The learned counsel stressed that it is clear from the evidence adduced by the respondent that the appellant was given two acres of land and not eight acres. This evidence was corroborated by the evidence of other two witnesses called by the respondent. He stated that the sale agreements between the appellant and the respondent's father do not show the boundaries or location of the disputed land. It is uncertain from the appellant's evidence as to why some sale agreements were concluded at Bassotu while the disputed eight acres are located at Mulbadaw.

In dealing with the fourth ground of appeal, I will now re-examine the evidence adduced at the trial. As alluded to earlier the appellant's evidence was that different portions of the disputed land were sold to him in piecemeal

by the respondent's father until he was able to purchase ten acres. He produced different sale agreements, some concluded at Mulbadaw Village, some at Bassotu Village. He testified that he lost other sale agreements and prayed to tender a copy of the police loss report. However, the tribunal sustained the respondent's objection that it was not submitted earlier before the tribunal. The provisions of Regulation 10 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 sanction receipt of "any material documents which were not annexed or produced earlier at the first hearing" provided that the conditions stated under Regulation 10 (3) are complied with. For this reason, the tribunal erred in not admitting the police loss report.

Nevertheless, I agree with the respondent's counsel that the exhibits are inconclusive evidence as to the sale of the remaining acres. First the exhibits do not show the location of the purchased plots. Second, certain sale agreements were concluded at Bassotu and not Mulbadaw Village and there is no sufficient explanation why the parties signed the agreements at Bassotu. There is no evidence to connect the plot purchased at Bassotu with the disputed land situated at Mulbadaw. I hold that the appellant never purchased the disputed eight acres situated at Mulbadaw Village.

So, was the appellant a trespasser to the eight acres? This appears to be the respondent's case. The respondent's case is that the appellant has been in occupation of the disputed land during the life-time of his father, the late Ginyoka Gidamwidaqat. It is also the evidence of the wife of the late Ginyoka

Gidamwidaqat, the third respondent's witness that she was the one who in 2004 complained before Bassotu Ward Tribunal about the disputed land. If the respondent's case is that the disputed land belonged to his late father, one wonders why his father was unperturbed with the appellant's use of his plot for well over thirteen years.

In her evidence in cross-examination, the third respondent's witness, stated in Kiswahili in the handwritten version of the proceedings:

> Najua kwamba ulihamia pale siku nyingi lakini mume wangu alikuwa hai. Mimi najua kuwa ardhi ya mgogoro hukuuziwa na mume wangu bali ulikaa bure. Mimi sijawahi kusikia unalipa ushuru wa shamba au la mnajuana wenyewe na mzee wangu. Ni sawa umekaa zaidi ya miaka 27 lakini nani alikutaka ulipe ushuru

In her evidence in-chief, the third respondent's witness testified that the appellant has been using the disputed land for cultivation. It is also the evidence of the respondent and his second witness that the appellant has been using the disputed land for cultivation. The fact of cultivation also came out from the appellant's evidence.

What is the legal status of Festo Gidasaida, a grantee of a plot who was not a lessee of the disputed land? Was he a licensee? The Village Land Act [Cap 114 RE 2019] recognises different forms of land usage including mortgage, lease, sale, transfer, and easement and make brief references to licence. A closer provision is section 31 (4) (a) of the Village Land Act [Cap 114 RE 2019] which states the disposition by the occupier of land held under a

customary right of occupancy involving an annual licence or less period "shall not require the approval of the village council." It is clear that the Village Land Act does not disallow licences in the village land but does not specify its conditions.

As a general rule under section 20 (1) of the Village Land Act, customary law applies to a subject-matter which is not governed by the Village Land Act or any other statutory law. Subsection (3) of section 20 disapplies English statutes on village land. Parties cited no rule of customary law as governing licences.

Section 49 of the Land Disputes Courts Act [Cap 216 RE 2019] authorise land courts to apply the laws set out under section 180 of the Land Act [Cap 113 RE 2019]. Section 180 (1) (b) of the Land Act authorises courts to apply the substance of the common law and doctrines of equity which are relevant to the circumstances of Tanzania. Section 180 (3) oblige courts to interpret not only the Land Act but also other "laws relating to land in Tanzania" purposively with due regard to the principles of land policy set out in section 3 of that Act.

Whereas the Village Land Act deals with land held under customary law, the provisions of section 181 of the Land Act establishes the Land Act [Cap 113 RE 2019] as the overriding legislation in land matters in cases of conflict or inconsistency with other written laws.

Under these circumstances, it is appropriate to apply the common law-rules of licences as recognised by the Court of Appeal in *G F Kassam v Amirali Walji and Another* [1997] TLR 14 at pages 17-18. The common law recognises

three classes of licences and I am of the view that the third class of licence, namely, a licence coupled with grant of an interest is relevant to the facts of this case. It is a class of licence that confers a licensee entry right and proprietary interest in the land or forming part of the land and capable of becoming part of the land. It includes carrying agricultural activities; planting trees over the land, cutting them down, and taking them away; and hunting and taking away the animal killed; setting up cattle troughs, and putting up constructions of permanent nature.

At common law, a validly created interest either in writing or by prescription is both irrevocable and assignable. Such license is enforceable in equity as if the grant was formally valid. As a result, a license coupled with grant and interest may give rise to proprietary estoppel. It provides a defence against the licensor and the licensee can maintain an action against a third party. The application of proprietary estoppel in these cases has been outlined in Dixon M, (2005), *Modern Land Law*, 6th edn, London: Routledge-Cavendish, at pages 423-424

> First, proprietary estoppel can provide a defence to an action by a landowner who seeks to enforce his strict rights against someone who has been informally promised some right or liberty over the land. For example, an action in trespass by the landlord can be met by a plea of estoppel, in that the landowner had assured the 'trespasser' that they could enjoy the right now being denied. The landowner is not permitted to plead the lack of formality in the creation of the defendant's rights if this would be inequitable. This is proprietary estoppel as a defence or shield.... Second...proprietary estoppel can have a much more dramatic effect. There is no doubt that, if successfully established, it can generate new property

> interests in favour of a claimant. As is commonly stated, proprietary estoppel can be a sword in the hands of a claimant who has relied on an assurance by a landowner that they will be given some right or privilege over the land...[References omitted]

This type of licence creates a binding contract so long as the interest for which the licence was granted exists for the duration for which the grant was made. This legal position is summed by Dixon M, (2005), *Modern Land Law*, 6th edn, London: Routledge-Cavendish, at page 412 where it is stated that:

> ...The licence merely facilitates the achievement of the primary purpose; it is not a purpose in itself. So where, as is the case with profits, the right granted is proprietary in nature (i.e. it is an interest in land), the licence which attaches to it appears also to be proprietary, because it lives or dies with the profit. The licence will last for as long as the profit exists and will be enforce-able against whomsoever the profit is enforceable against because it is an inherent component of the greater right. Likewise, should the grantee of the profit be unlawfully denied the right granted, the normal remedies will be available to prevent interference with it or to compensate for its denial. Nevertheless, the licence only has these characteristics because it is coupled with a grant; it has no proprietary status of its own.

After the fusion of law and equity by the Judicature Acts of 1873 and 1875 the rule of equity of prevails is position of the law as was stated n Burn EH and Cartwright, J, *Maudsley and Burn's Land Law: Cases and Materials*, 9th edn, Oxford: Oxford University Press, 2009 at page 1085:

> It is an anciently established rule that a licence coupled with a proprietary interest (in land or in a chattel) is irrevocable... The interest must, of course, have been correctly granted...In the grant of incorporeal hereditaments in realty at common law, a seal was needed; but, since the Judicature Act, a specifically enforceable contract to grant an interest suffices to create in equity the equivalent interest. [References omitted]

The equitable rules apply in Tanzania as part of the received law unless the local circumstances of Tanzania dictate otherwise. The application of the principle of proprietary estoppel is consistent with one of the fundamental principles of the national land policy enacted under section 3 (1) (c) of the Village Land Act: recognising long standing occupation or land use

Returning to the present appeal, the following facts have been established.: (1) the late Ginyoka Gidamwidaqat informally gave the disputed land to Festo Gidasaida; (2) the disputed land was given to Festo Gidasaida for the purpose of cultivation; (3) for well over thirteen years the late Ginyoka Gidamwidaqat, the owner of the disputed land never had any serious dispute with Festo Gidasaida over the land; (4) Festo Gidasaida continues to cultivate the disputed land. These facts suggests that the intention of the licensor, the late Ginyoka Gidamwidaqat, was to leave the disputed land to his clan member, Festo Gidasaida. The action to expel the appellant from the disputed land is contrary to the intention of the licensor the late Ginyoka Gidamwidaqat and is also barred by proprietary estoppel.

The more difficult question is for how long does the appellant remains a licensee? A successful plea of estoppel may indefinitely suspend the landowners' right to recover possession of his or her piece of land and indirectly terminates his or her ownership altogether. This is a conclusion with unpalatable consequences on land ownership. On the other hand, where the licensee has acted on the landowner's assurance to continue to use the land by exploiting the proprietary interest, ejecting the licensee may amount to an act

of unjust enrichment. In resolving these competing interests, court may allow the landowner to repossess the land subject to compensating the licensee for detriment which will be suffered as a result of being ejected from the land. The term detriment has been described in *Van Laetham v Brooker* [2005] EWHC 1478 (Ch), [2006] 2 FLR 495, [74] as follows:

> [d]etriment is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.

Both parties to this appeal agree that the disputed land is being used by the appellant for cultivation. Owing to the nature of the evidence adduced before the trial tribunal, I am unable to assess the compensation for the appellant. For this reason, I remand the case to Hanang' District Land and Housing Tribunal with the direction that the appellant is at liberty to apply to be compensated for his plants, crops or both which are currently situated at the disputed land. For avoidance of doubt any party aggrieved by the decision in that application may appeal to this Court.

Otherwise, the appeal is partly allowed to the above extent. Each party to bear its own costs.

Order accordingly.

DATED at BABATI this 21st day of April, 2024

F.M. MIRINDO

JUDGE

Court: Judgment delivered this 25th day of April, 2024 in the presence of Advocate Phides Mwenda for the appellant and in the presence of the respondent in person.

F.M. MIRINDO

JUDGE

25/4/2024