

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

MISC. LAND APPEAL NO. 11 OF 2020

[Arising from a decision of the District Land and Housing Tribunal of Manyoni for Manyoni dated 1st February 2020 in Land Appeal No. 33 of 2019 and which originated from Nkonko Ward Tribunal in Land case No. 07 of 2018]

ANTONY KIDASHI APPELLANT

VERSUS

NILI USHISHI RESPONDENT

JUDGMENT

21st May, 2021 & 19th August, 2021

M.M SIYANI, J.

Antony Kidashi, who is the appellant herein, was the respondent at Nkonko ward tribunal where Nili Ushishi, instituted a suit against him claiming ownership of a piece of land. The appellant lost the suit following the ward tribunal's decision that the land belonged to the respondent herein. Dissatisfied, Anthony Kidashi appealed to the District land and Housing

tribunal at Manyoni presenting five grounds of appeal against the said decision. His appeal was promptly followed by a notice of preliminary objection that the appeal was bad in law for being argumentative contrary to Order XXXIX Rule 1 (2) of the Civil Procedure Code Cap 33 RE 2002.

Having heard the preliminary objection, the first appellate tribunal sustained the same and consequently strike out the appeal with costs. Still aggrieved, the instant appeal which contains the following ground, has been preferred.

That, the appellate Tribunal erred in law and facts by striking out the appeal by relying on the provision of the law not applicable at the appeal stage in the District Land and Housing Tribunal.

Both parties to this appeal had legal representation in this court. While the appellant had the services of counsel Christopher Malinga, the respondent on the other hand, was represented by counsel Saleh Ibrahim Makunga. For convenience, I directed that appeal be disposed of by way of filling of written

submissions. I am grateful by the learned counsel's brief submissions filed in accordance with the schedules provided.

Through his written submission, counsel Malinga argued that the first appellate tribunal wrongly strike out the appeal basing on Order XXXIX Rule 1(2) of the Civil Procedure Code which to him, was inapplicable in District Land and Housing Tribunal for matters originating from the ward tribunals. In his view, the law applicable and which ought to have been relied with, was the Land Dispute Courts Act Cap 216 RE 2019 and it's Regulation of 2003. The learned counsel went on to argue further that having found some of the grounds of appeal to be argumentative, the District Land and Housing Tribunal, instead of striking out the entire appeal, ought to have simply expunged such offensive grounds and proceed with hearing of the remained ones.

In response to the above submission, counsel Makunga argued that where there is inadequacy in the Regulations, District Land and Housing Tribunal are allowed under section 51 (2) of the Land Disputes Courts Act, Cap 216

RE 2019, to fill the gap by resorting to the provisions of Civil Procedure Code (supra). He submitted that as neither the Land Dispute Courts Act (supra) nor its Regulations of 2003, provides for the format on how grounds of appeal should be, then Order XXXIX Rule 1 (2) of Civil Procedure Code Cap 216 RE 2002 came into play and the first appellate tribunal was therefore correct in applying the same.

Regarding striking the entire appeal instead of expunging only those grounds which appeared argumentative, counsel Makunga was of the view that the same was purely in the discretion of the court. That notwithstanding, the learned counsel contended that since the words used under Order XXXIX Rule 1 (2) of the Civil Procedure Code has been couched in mandatory terms to the effect that a memorandum of appeal shall not contain arguments or narratives, then the first appellate tribunal was justified in its decision to strike out the appeal as even the principle of overriding objectives under section 3A of the Civil Procedure Code, could not cure an appeal which offend the said provision. To support his stance, counsel Makunga cited this Court's decision in **Mabela Nkinga Vs Kishapu District Council and Two**

Others, Land Appeal No. 22 of 2017 and **Amini Ndama Mziray Vs Capt. Milton Lusajo Lazaro**, Civil Application No. 39 of 2019. Reference was also made to a Court of Appeal of Tanzania decision in the case of **Mondorosi Village Council and Others Vs Tanzania Breweries Ltd and Others**, Civil Application No. 66 of 2017.

Having revisited the records and the rival submissions by the learned counsel, it is apparent that the contention in this appeal is whether the District Land and Housing Tribunal was correct in striking out the appeal basing on the provision of Order XXXIX Rule 1 (2) of the Civil Procedure Code. As it was for the learned counsel, I wish to be brief in response. Admittedly, the Land Dispute Courts Act and the Land Dispute Courts Act (the District Land and Housing Tribunal) Regulations of 2003 are the applicable laws in the District Land and Housing Tribunal for matters which originates from ward tribunals. That notwithstanding, section 51 (2) of the Land Dispute Courts Act, gives power to the District Land and Housing Tribunal to apply the provisions of the Civil Procedure Code in case of lacuna or inadequacy in the Land Dispute Courts Act (the District Land and Housing

Tribunal) Regulations of 2003. For reference purposes, section 51 (2) of the Land Disputes Courts Act provides:

(2) The District Land and Housing Tribunals shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code.

The above provision vest power to the Minister responsible for land to make regulations for the better carrying out of the provisions of the Act. It was intended that the Regulations would carter for among other things; the manner in which appeals may be presented or filed and procedure for hearing and determining appeals in the District Land and Housing Tribunals. Such Regulations were issued in 2003 but as correctly argued by counsel Makunga, Land Dispute Courts Act (the District Land and Housing Tribunal) Regulations issued in 2003 does not indicate how the memorandum of appeal should be prepared.

In my considered opinion, as section 51 (2) of the Land Dispute Courts left a room open for the District Land and Housing Tribunals to resort to Civil

Procedure Code in case of inadequacy in the Regulations; and since the Land Dispute Courts Act (the District Land and Housing Tribunal) Regulations of 2003 does not provide the manner in which memorandum of appeals to the District Land and Housing Tribunal should be, then the Civil Procedure Code is applicable in such circumstances. The first appellate tribunal was therefore correct when it applied the Civil Procedure Code to determine the preliminary objection raised.

The above said, the instant appeal being premised on the legality of the District Land and Housing Tribunal to apply the provision of Order XXXIX of the Civil Procedure Code, is without merits and I would have therefore proceeded to dismiss the same. However, I have gone through the memorandum of appeal presented at the first appellate tribunal. The same contains six grounds of complaints as follows:

- 1. That the trial tribunal judgment is bad in law as it lacks some necessary requirements like title of the judgment which comprise a case number.*

2. *That the ward tribunal erred in law and in fact by holding in favour of the respondent and failed to consider the strong evidence adduced by the appellant and his witnesses who are indigenous since 1990 and explained to real know that the disputed land belonged to the appellant.*
3. *That the ward tribunal erred in law and facts by failure to consider strong evidence of one of the tribunal member who is from Mpola village as he had full knowledge of the disputed land and the fact that it belonged to the appellant.*
4. *That the trial tribunal erred in law by failure to direct itself to the laid down land principle of "adverse possession" of which the appellant together with his parents were in possession of the land since 1990 and continued enjoying the same up to the extent of burying their two children on the same land in dispute without any interruption from any person until when this dispute arose.*
5. *That the trial tribunal erred in law and facts by holding in favour of the respondent while relying on the sale agreement between Nili Ushishi and Boniface on the reason that such sale was*

witnessed and signed by the Village Executive Officer without proving the legality of such sale.

6. That the ward tribunal erred in law and facts when it decided in favour of the respondent by relying on weak and ambiguous evidence from the respondent's witnesses.

In its decision, the first appellate tribunal found the fourth and fifth grounds of appeal above to be argumentative and narrative, a conclusion which has been supported by counsel Makunga. With due respect to the learned counsel, I have scrutinised the above grounds and I do not see any of them which offends the requirement of law under Order XXXIX Rule 1 (2) of the Civil Procedure Code Act. In my opinion, the above grounds contains the grounds of objection to the decree appealed from as required by the law and there is no any offensive statement, arguments or narration in any of them. As such I believe the first appellate court erred when it decided to strike out the appeal on the reason that the memorandum of appeal before it, offended the law under Order XXXIX Rule 1 (2) of the Civil Procedure Code.

For the reasons above, I find the instant matter, a fit case for invoking revision powers conferred to this court under section 43 (1) of the Land Disputes Courts Act (supra) by quashing and set aside both the ruling and drawn order of the District Land and Housing Tribunal of Manyoni in land case No. 33 of 2019, orders which I now issue. It is hereby further ordered that the records of the first appellate tribunal be remitted to it for hearing and disposal of the presented appeal on merits. Considering the history, nature and circumstances of this case, I order each party to bear its own costs. It is so ordered.

DATED at **DODOMA** this 19th day of August, 2021



M.M. SIYANI
JUDGE