

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

LAND APPEAL NO. 18 OF 2022

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land
Application No. 205 of 2020.)

YALINDA SINKONDE.....APPELLANT

VERSUS

MENGO MWALUGALA.....RESPONDENT

RULING

Date of Last Order: 06/10/2022
Date of Ruling : 22/12/2022

MONGELLA, J.

This matter concerns a piece of land measuring 4 acres located at Izyanuche village in Songwe district, Songwe region (the suit land, hereinafter). The respondent filed a case in the District Land and Housing Tribunal for Mbeya (the Tribunal, hereinafter) claiming to be declared the rightful owner of the suit land. He claimed to be the rightful owner of the suit land and that the appellant had invaded. That he was given the suit land by his brother in law named Ngonile and has been in use of the land for 22 years. The dispute arose in 2019.



The appellant also claimed to be the rightful owner of the suit land. He claimed that the land was being used by his father from 1985 to 2005 when he shifted to another place. The Tribunal ruled in favour of the respondent. Aggrieved, the appellant filed the appeal at hand on four grounds, to wit;

1. *That the district land and housing tribunal for Mbeya at Mbeya erred in law and facts for failure to consider the erroneous (sic) made by and decide in favour (sic) for respondents.*
2. *That the district land and housing tribunal for Mbeya at Mbeya erred in law and fact for failure to consider the appellant time for usage of the disputed land.*
3. *That the district land and housing Tribunal for Mbeya at Mbeya erred in law and facts after pronounce (sic) judgment which was contradictory on itself. (sic)*

Both parties appeared in person and prayed to argue the appeal by written submissions. The prayer was granted. Both parties filed their submissions in adherence to the orders scheduled by the Court, except that the appellant opted not to file his rejoinder submission. I wish to deliberate first on the 3rd ground and if need be I shall deliberate on the rest of the grounds.

Addressing the 3rd ground the appellant contended that there is contradiction between the judgment and the decree of the Tribunal. He

quoted paragraph 2 at 6 of the judgment in which the Tribunal Chairman states that “***nakubaliana na ushauri wa wazee wa baraza hili waliosema kwa pamoja kuwa shamba ni mali ya mdaiwa. Gharama za kezi zilipwe na mdaiwa***” and said that the same differs from what is stated in the decree whereby it is stated that “***Mdai ametangazwa kuwa ni mmiliki was shamba lenye mgogoro.***”

The phrases quoted by the appellant shows that in the judgement the Tribunal remarked that the suit land is the rightful property of the respondent (now appellant), while in the decree the applicant (now respondent) was declared the rightful owner. He found the same contradictory and defective. Referring to the case of ***Nassoro Abubakar Khamis & Azam Marine Service vs. Wakf and Trust Commission Zanzibar, The Administrator of Estate of Farida Ali Nassor and Another***, Civil Appeal No. 245 of 2020, he argued that if the decree does not agree with the judgment, it is defective although it may be amended and refilled.

In reply to this 3rd ground, the respondent disputed there being any contradiction. He said that the decree by the Tribunal declared the respondent the owner of the suit land and the same has been reflected in several parts of the Tribunal judgment. On the other hand however, he conceded to the defect as complained by the appellant while arguing that it is a typing error. He further contended that the defect is curable under **section 45 of the Land Disputes Courts Act, Cap 216 R.E. 2022** which states that:



"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.

He proceeded to argue that the Tribunal decided the matter rightly and justly and the respondent has already executed the Tribunal decree on 03rd March 2022. He prayed for the appeal to be dismissed.

After considering this ground of appeal and gone through the Tribunal judgment and decree, I agree with the appellant that there is contradiction within the judgment itself and between the judgment and decree. Within the judgment, the Tribunal at one point remarked that the applicant (now respondent) proved his case and thus the suit land is his; and at the other point remarked that the suit land is the property of the respondent (now appellant). In the decree it is stated that suit land is the property of the respondent. Though the respondent found the defect being just a typing error, I find the same rendering the appeal untenable. This is because on appeal the Court has to deal with a clear decision of the lower court. The Tribunal judgment contains two distinct verdicts thus unclear.

However, I agree with the respondent that under **section 45 of Cap 216**, the decision cannot be reversed or altered by this Court on account of the mistakes in it as pointed out. Considering the decision in the case of



Nassoro Abubakar Khamis & Azam Marine Service vs. Wakf and Trust Commission Zanzibar, The Administrator of Estate of Farida Ali Nassor and Another (supra), the defect is curable by allowing the parties to approach the Tribunal to rectify the anomaly in its decision and then the appeal shall proceed. However, for interest of justice to the unrepresented parties and purposes of saving time, I order for the case file to be remitted back to the Tribunal for it to rectify the mistake and thereafter the appellant shall file an amended memorandum of appeal for the appeal at hand to proceed on merits. Costs be in the course.

Dated at Mbeya on this 22nd day of December 2022.



L. M. Mongella
L. M. MONGELLA

JUDGE