

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO 67 OF 2023

*(Originating from Application No 59 of 2022 in the District Land and Housing Tribunal for
Hanang District at Katesh)*

RIVACU APPELLANT

VERSUS

HAMISI HAPE.....RESPONDENT

RULING

24th and 25th April, 2024

MIRINDO, J.:

The respondent, Hamisi Said Hape instituted a land dispute before Babati District Land and Housing Tribunal against the appellant, RIVACU Ltd. In Paragraph 6(viii) he stated that he approached the Katesh Ward Tribunal but the tenure of the members of the Tribunal had expired. Since settlement could not take place in the Tribunal and thirty days had expired, he was approaching the Babati District Land and Housing Tribunal for the determination of the dispute. In his defence the appellant, pleaded that the dispute was prematurely filed as there was no proof that it was taken to the Katesh Ward Tribunal for settlement.

This issue was not raised in the course of the trial in the Hanang' District Land and Housing Tribunal where determination of the dispute was apparently transferred. The trial proceeded and the respondent testified and the case was set

for defence hearing. The appellant was absent and the Tribunal gave judgment in favour of the respondent. The appellant appealed to this Court and on 28/2/2024, I heard the appeal and reserved the judgment.

In the course of preparing judgment, I formed the view that it is in the interest of justice parties should address the Court on two additional issues. The first issue and which is sufficient to dispose the present appeal is whether the land dispute passed through the mandatory settlement procedure before a competent ward tribunal. I re-summoned the parties who addressed me on 24/4/2024. The learned advocates, Mr Abdallah Kilobwa for the appellant and Mr Paschal Peter conceded that there was no evidence that the dispute passed through the mandatory settlement before a ward tribunal of competent jurisdiction.

Certainly, the current dispute overlooked the mandatory settlement before a competent ward tribunal in contravention of the provisions of section 13 (4) as introduced by section 45(c) of the Written Laws (Miscellaneous Amendments) (No 3) Act No 5 of 2021.

It is quite unfortunate that the trial tribunal overlooked this jurisdictional puzzle among the issues it framed, and it remained unresolved, notwithstanding that it was apparent in the pleadings of both parties.

None of the witnesses for the respondent testified about the jurisdictional issue and the as the matter stand, the action before the Hanang' District Land and Housing Tribunal was untimely.

In a fit case where there is proof of inoperative ward tribunal, the aggrieved party may bring a case before a district land and housing tribunal on the principle that mediation was not forthcoming within thirty days as envisaged in the proviso to subsection (4) of section 13 of the Land Disputes Courts Act [Cap 216 RE 2019]. This was not the case here.

For these reasons, I invoke the revisional powers of this Court under subsections (1) (b) and (2) of section 43 of the Land Disputes Courts Act [Cap 216 RE 2019] and declare that the proceedings before Hanang' District Land and Housing Tribunal were conducted without jurisdiction and I find it necessary at this stage to consider the remaining grounds of appeal.

I would allow the appeal, quash the proceedings before Hanang' District Land and Housing Tribunal, set aside the judgment and decree emanating from those proceedings. Any party feeling aggrieved is at liberty to commence settlement process before a competent ward tribunal and may thereby institute legal proceedings in a land court of competent jurisdiction.

DATED at BABATI this 24th day of April, 2024



F.M. MIRINDO

JUDGE

Court: Judgment delivered this 25th day of April, 2024 in the presence of the appellant's representative and in the presence of the respondent in person



A handwritten signature in black ink, appearing to read 'F.M. MIRINDO', is positioned above the printed name.

F.M. MIRINDO

JUDGE

25/4/2024