IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT MWANZA

MISC. LAND CASE APPEAL NO. 27 OF 2008.

(From the Decision of the District Land and Housing Tribunal of MARA District at MUSOMA In Land Case Appeal No. 53 of 2007 and Original Ward Tribunal of NAMUHULA Ward in Application No. 1 of 2007.)

KAMBARAGE KAJURA ..... APPELLANT
VERSUS
LADSLAUS MAHENDEKA..... RESPONDENT
NELSON WILSON ..... RESPONDENT

J U D G M E N T

A.F. Ngwala,J.

This is an appeal by way of Petition from the decision of the District Land and Housing Tribunal of Musoma at Mara Region in Land Appeal No. 53 of 2007 arising from Application or Ward Cause No. 1/2007 at Namuhula Ward Tribunal, Bunda District the facts and the matter for decision are stated in the judgment of the chairperson of that tribunal who held:-

> *"The appellant through his advocate is saying that the ward tribunals do not enjoy appellate jurisdiction and that the village councils are for mediation purposes, that the contesting parties may agree whether or not to use the service of a village land council. The leant council cited for us the provisions of section 61and 62 of the Land village Act, 1999, (Act No. 5/99). He also bought our attention to section 13 of the land Disputes Court's Act, (Act No. 2 of 2002). The Learnt advocate is arguing that as this matter was admitted as*

appeal that was unprocedural and against the Laws of the Land. The Leant advocate for the respondents on the other hand vehemerity contended that the advocate for the appellant should not capitalize on letters that's to substance. He says that the village land councils are manned by lay people who cannot differentiate between the word reference and appeal. He says that although there is a word" Rufaa" here and there in the records of the trial Court that does not mean " an appeal." what they meant is a "dispute" the leant advocate is also arguing that witness are called in the trial.

I must agree with submission of her. Makunga leant advocate for the respondent that letters should not occasion miscarriage of justice. I am of the considered view that although the word " Rufaa" appears several times in the records of the trial court, the parties presented their case, for instance when are premises the records there are the following words MAELEZO YA MJIBU RUFAA NI KAMA: Waomba rufaa wanalima shamba la Baba yake Mkewe Muanga shamba hili alilipata tangu mwaka 1948.

MAELEZO YA WAOMBA RUFAA: mmoja Ladslaus Mahendeka anadai yeye shamba hili ni mali yake alilipata kipindi cha Operesheni Bijiji (1974) toka kwa Orado Obede aliyehama na kuliacha wazi.

To me this means each party presented his case before the trial tribunal and the tribunal decided thereon. Honestly I find no good reason to interfere within the decision passed by the trial court. All grounds raised by the appellant are unsustainable; I disallow the appeal with costs.

Signed
Kitungulu,E
Chairman
16/07/2007"

Accordingly on 1st November, 2007, the appellant again petitioned to the High Court, and the Petition was admitted and

filed in the District Land and Housing Tribunal in accordance with the provisions of Section 38(2) of the Land Disputes Court Act, No. 2/2002 [Cap. 33 R.E. 2002]. The Petition together with the records of proceedings in the Ward tribunal and the District Land and Housing Tribunal were dispatched to the High Court (Land Division) Mwanza sub-registry on 15/7/2008, as per section 38(3) of the same Act.

When the matter came up for Hearing on 9th June 2009 before this court and two assessors who sat with me in accordance with the provisions of Section 39(1) of Act No. 2/2002(Cap. 216 R.E. 2002), the appellant insisted that it was wrong for the chairman to entertain the appeal which proceeded from purported appeal proceedings and not from a trial as enjoined by law. In that it did not follow the rules of procedure established in the District Land Disputes Settlement Act, 2002. The appellant submitted further that, the findings of the Ward Tribunal were contradictory, because, it did not established for how long the respondent have been in possession of the land in dispute nor how they acquired the title to the said land. He insisted the respondent were not given the *"Shamba"* by the village Council which had power or authority to allocate land. For this reason he contended on the preponderance of available evidence the appellant's claim against the respondent had been established and he ought to have been declared the rightful owner of the land in dispute.

In reply, Mr. Makunja the learned counsel who represented the respondents stated that it is the duty of the tribunal to file a decree in the High Court, as provided for under Section 38(2) of the Land Disputes Courts Act, rather it is upon the appellant to file the Petition in the District Land and Housing Tribunal from the decision or order appealed from so that the same can be transmitted to the High Court.

Mr. Makunja submitted that the appellant had no right to recover the land through the application which was brought in the Village Council and Namuhula Ward tribunal, because the land had been in possession of the respondents since 1974. It was after they had occupied the land for more than 33 years, after the expiration of the Limitation period that the respondent were prompted to file the appeal in the Ward Tribunal in Daawa Na. 1/2007. With regards to the word "Appeal" which has been used as "Reference" and taken to mean as an appeal by the appellant, Mr. Makunja argued that the word goes as "Rufaa" in Kiswahili and that before the Namuhula Ward Tribunal the matter was not called for an appeal but as reference as indicated in *"Daawa Na. 1/2007"* because it is also in record that there is the evidence of Fokanya and Mahendeka Mbebi who were heard as witnesses. Mr. Makunja submitted that as it is provided under the provisions of Section 9 of the Land Disputes Court's Act, that where parties to the dispute before the Village Council are not satisfied with the decision of the Council, the dispute in question shall be referred to the Ward tribunal in accordance with Section 62 of the Village Land Act,

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1999; hence this matter was determined by the Ward tribunal which dealt with it by way of Reference.

For this reasons, Mr. Makunja submitted that the irregularity of indicating Appeal instead of Reference cannot vitiate the proceedings as the same is curable under the provisions of Section 45 of the Land Disputes Courts Act, and the holding by Samatta, J as he then was, in the case of Mwl. John Mhozya Vs. Attorney General (1996) TLR 130 where he held that procedure is a desirable thing that courts must strike at substance rather than the form"

My reflections on the aforesaid submissions and perusal of all the records involved in this matter or appeal, reveals that there is an entire disregard of the procedures as provided for under the provisions of **Sections 9 and 13 of the Land Disputes Courts Act, [Cap. 216 R.E. 2002]** which gives the general jurisdiction of the Ward Tribunals whose primary function shall be to secure peace and harmony in the area established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter and to enquire into and determine disputes arising under the **Land Act, 1999** and the **Village Land Act, 1999**

The learned advocate Mr. Makunja has admitted the irregularity, which he says the same cannot vitiate the proceedings. Though the argument sound vital but they are not valid in law considering the grounds of appeal and the submissions which have been raised, that the Ward Tribunals and the District Land and

Housing Tribunal being creatures of legislation are bound to operate within the dictates and parameters of the law under which they are established. That is the **Land Disputes court Act, No. 2/2002 [Cap. 216 R.E. 2002]** for purpose of maintaining uniformity, clarity and justice.

I agree "in toto" with the appellant's complaints and disagree with Mr. Makunja, Here there was a clear misdirection and inaction on the part of the chairman to follow plain rules of interpretation on statutes that procedural omission or irregularity on the part of the chairman is an incurable error which cannot be left uninterfeared.

The chairman's statements on his reasoning which I have quoted in extensor which is based on "Honestly Speaking" cannot be the basis or a reason for a decision without clear observation of the principles or rules of natural justice, fair play and without violation or breach of any legal provision or regulation.

This statement by the chairman that *"Honestly Speaking" I find no good reason to interfear with the decision passed by the trial court, All grounds raised by the appellant are unsustainable"* without reasons clearly show biasness. The complains of unprocedurality or illegality were disregarded. That hasty decision was reached without jurisdiction in contravention of rules of Natural Justice. The chairman did not determine whether the Ward Tribunal acted in accordance with the provisions of **Section**

13(2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2002]. The Chairman did not ask if the Ward Tribunal inquired whether it had jurisdiction to determine the matter as an appeal or if it performed its functions of mediation and applied the customary principles of mediation and natural justice; and whether the Ward Tribunal attempted to reach a settlement by mediation in relation to the dispute in which it was exercising its jurisdiction.

In my considered opinion that decision was reached without jurisdiction or in contravention of the rules of natural justice. I am satisfied that the Ward tribunal had no jurisdiction to entertain the matter and or even to admit the case, or an appeal as it did. The fact that it was clearly indicated that it was an appeal, there is no way an appeal can turn to a reference when the words are so certain and quite clear that the matter was on Appeal.

It is for the said reasons that in my judgment I have to make the proper order as follows:-

That the Appeal made by the appellants in the District Land and Housing Tribunal and all its proceedings are nullified for being void. The proceedings in the Ward Tribunal too are null and void for lack of jurisdiction.

Each party to bear their own costs. This order is made without prejudice to either party considering the circumstances of the case being brought before the Ward Tribunal, in the District

Land and Housing Tribunal and in this Court. For avoidance of doubt to the parties, the decision of Village Council of Muranda, cannot be enforced by any Court of law because those are matters for mediation to assist the parties to reach at a mutually acceptable settlement of dispute of any matter concerning land in its area of jurisdiction.

Consequently, the appeal is allowed.

A.F. Ngwala,

JUDGE,

21/02/2012"

21/02/2012.

Coram : A.F. Ngwala,J.

Appellant : Present

Respondent : Both Present

Court: Judgment delivered in court, in the presence of the parties.

Court: Right of Appeal to the Court of Appeal of Tanzania explained.

A.F. Ngwala,

JUDGE,

21/03/2012.