

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT SUMBAWANGA

MISC. LAND APPEAL NO. 25 OF 2020

***(From the decision of the District Land and Housing Tribunal of
Katavi District at Mpanda in Land Appeal No. 30/2019 Original
Mpandandogo Ward Tribunal Case No. 15/ 2018)***

JOHN S/ MGAWEAPPELLANT

VERSUS

ANETH D/O ADAM }RESPONDENTS
JOYCE D/O ALOYCE }

JUDGEMENT

24th August – 24th September 2020

MRANGO, J

The appellant has preferred this appeal challenging the judgement and decree of the District Land and Housing Tribunal for Katavi at Mpanda which was delivered on 12th of February 2020 against the respondents herein. The same is originated from Mpandandogo Ward Tribunal.

At the Ward Tribunal (henceforth the trial tribunal) the appellant herein sued the respondents over trespass on the disputed piece of land measured two (2) acres. The dispute was determined in favour of the

appellant. Aggrieved by such decision the respondents unsuccessfully appealed to the District Land and Housing Tribunal for Rukwa (henceforth the appellate tribunal) as it dismissed the appeal and nullified the judgement of the ward tribunal for wrong citation of the law and as well it ordered retrial of the matter.

Dissatisfied by the outcome of the decision the appellant has lodged this appeal to this court with a petition of appeal comprised of two (2) grounds of appeal as summarised hereunder;

- 1. That the District Land and Housing Tribunal grossly erred in both law and facts to nullify the judgement of the ward tribunal for wrong citation of the law without considering facts that the appellant's case had been proved to the required standard in the ward tribunal.**
- 2. That the District Land and Housing Tribunal grossly erred in law to order retrial of the dispute while the appeal had been dismissed without order of retrial.**

When the appeal was called on for hearing the appellant appeared in person, unrepresented. The appellant fully adopted his grounds of appeal, he had nothing to add. The respondent defaulted appearance, thus the appellant prayed for the matter to proceed ex-parte. This court granted the prayer.

Having considered the grounds of appeal as submitted by the appellant and the entire record of the appeal. The issue for determination before this court is whether the present appeal has merit.

With regard the first complaint as raised by the appellant that the District Land and Housing grossly erred both in facts and law to nullify the judgement of the ward tribunal for wrong citation of the law without considering facts that the appellant's case had been proved to the required standard. It is undisputed that the ward Tribunal determined the dispute on merit until the end, however in its decision it cited section 86 of the Ward Tribunal Act of 1985 to pronounce the appellant as a rightful owner of the disputed land, in fact the said section does not exist. With such irregularity the District Land and Housing Tribunal dismissed the appeal and went on nullifying the judgement of the ward tribunal as well it ordered retrial. The question I may ask myself is whether failure by the

ward tribunal to cite proper citation has occasioned miscarriage of justice to the parties.

With the advent of the principle of **Overriding Objective** brought by the written Laws (Miscellaneous Amendments) (No.3) Act, 2018 Act No. 8 of 2018 which now requires the courts to deal with cases, justly and to have regard to substantive justice; section 45 of the Land Disputes Courts Act, Cap 216 RE 2002 should be given priority to cut back over-reliance on procedural technicalities as it was emphasised in the Court of Appeal case of **Yakobo Magoiga Gichere versus Peninah Yusuph, Civil Appeal No. 55 of 2017**. Section 45 provides thus;

"S.45 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 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."

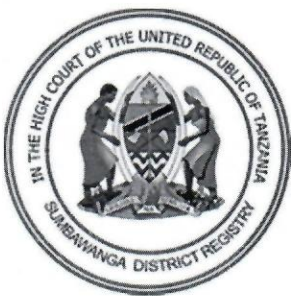
Also **section 13 of the Land Disputes Courts Act** (supra) underscores the spirit of simplicity and accessibility of ward tribunals, by reminding all and sundry that the primary functions of each ward tribunal is to secure peace and harmony, mediating between and assisting the parties to reach amicable settlements. Thus failure by the ward tribunal to cite proper provision did not occasion a failure of justice as both parties were heard along with their witnesses, to maintain the stand taken by the District Land and Housing Tribunal will go against the above spirit of the law. This ground as raised by the appellant is therefore allowed in this appeal.

Addressing the second complaint, that the District Land and Housing Tribunal grossly erred in law to order retrial of the dispute while the appeal had been dismissed without order of retrial. My strict perusal of the appellate tribunal copy of judgement shows that the Chairperson of the tribunal made an order of dismissal of an appeal only, other orders as appeared in the decree of the tribunal like retrial and nullification of the ward tribunal are not reflected in the judgement which to my view is fatal.

It is a principle of the law that any order of the decree is to be extracted from the judgement. In the instant case, Chairperson of the tribunal put more orders which are not to be found in the judgement. Thus as rightly argued by the appellant the tribunal erred in law to order retrial of the dispute while the appeal had been dismissed without such order being pronounced in the judgement.

Having discussed above herein, the judgement of the District Land and Housing Tribunal is hereby nullified and the decision of the ward tribunal is upheld. This court found that the present appeal has merit, and the same is allowed with costs.

It is so ordered.




D. E. MRANGO

JUDGE

24.09.2020

Date - 24.09.2020
Coram - Hon. D.E. Mrango – J.
Appellant - Present in person
Respondent - Absent/without Notice
B/C - Mr. A.K. Sichilima – SRMA

COURT: Judgment delivered today the 24th day of September, 2020 in
presence of the Appellant in person and in the absence of the
Respondent without Notice.

Right of appeal explained.




D.E. MRANGO

JUDGE

24.09.2020