IN THE HIGH COURT OF TANZANIA

(AT DAR ES SALAAM)
PC CIVIL APPEAL NUMBER 37 of 2011

(Originating from District Court of Kinondoni Civil Appeal No. 35 of 2004-RUGEMALILA-RM)

RAMADHANI SALEHE.....APPELLANT

VS

JULIUS MAVELA.....1ST RESPONDENT
SOPHIA UTURUKI.....2ND RESPONDENT
MWEMA CHUMA.....3RD RESPONDENT

JUDGMENT

Date of last Order: 08-11-2011
Date of Judgment: 29-11-2011

JUMA, J.:

This is a second appeal by Appellant RAMADHANI SALEHE. It is an appeal he filed against JULIUS MAVELA (1st Respondent), SOPHIA UTURUKI (2nd Respondent) and MWEMA CHUMA (3rd Respondent). Appellant is aggrieved by the decision of the District Court of Kinondoni (first appellate court) in the Civil Appeal Number 35 of 2004. The learned RUGEMALILA-RM of the first appellate court had dismissed the Civil Appeal Number 35 of 2004 which the Appellant had earlier filed against the decision of the Kawe Primary Court in Civil Case No. 59/2001 delivered by J.I. Msensemi-PCM.

At the primary court, the Appellant alleged that the three Respondents had encroached upon his 4 hectare farmland at Bunju-A. In its decision dated 18 November 2003, the primary court found that the Appellant had not on balance of probability proved his ownership

over the disputed land. Appellant' s appeal to the first appellate court centred on the following five grounds:

1. That, the learned trial magistrate erred in law and fact in considering that the respondents purchased the disputed lands from various sellers without considering whether the said sellers have good titles to transfer the disputed ownership to the respondents.
2. That, the learned trial magistrate erred in law and fact in failing to consider that the respondents' testimonies were contradictory.
3. That, the learned trial magistrate erred in law and fact in holding that the respondents had established their ownership over the disputed land.
4. That, the learned trial magistrate erred in law and fact in holding that the appellant testimony was weak and
5. That, the learned trial magistrate erred in law and fact in holding that, since the respondents had stayed for a long time in the disputed land then they are justified to own the disputed land.

After reading the submissions by both parties the first appellate court concluded that the main dispute between the Appellant and the Respondents was ownership of disputed land. In the opinion of the court of the presiding learned Resident Magistrate, the trial primary court magistrate should have established the issue of ownership first before anything else.

Aggrieved by that decision of the first appellate court, Appellant filed his Memorandum of Appeal to this Court. He is contending that the judgment of the District Court of Kinondoni did not critically analyse the grounds of appeal that this Appellant presented before the first appellate court. Appellant also believes that the appellate District Court erred by concluding that the trial primary court had proceeded to hear the matter without first establishing the position of the parties and concluding that the appellant was an administrator of the land subject of the dispute. Appellant believes that the first appellate court erred in law and fact by holding that the appellant had no *locus standi* and should not have ordered the maintenance of status quo.

I allowed this appeal to be heard *ex parte* through written submissions after the Respondents had failed to appear in, or defend, the appeal.

In his written submissions which he filed on 16th September 2011 Appellant reiterated his position that the learned Resident Magistrate of the appellate District Court did not go through the record of proceedings of the primary court. According to the Appellant, the correct position is that the Appellant filed the matter in the primary court as an administrator of the estate.

Before determining the grounds of appeal before me I propose first to reproduce the relevant portion of the two-paged Judgment of the appellate District Court. The learned Resident Magistrate stated:

> *"As it has **[been]** submitted in the rejoinder of the Appellant **[Ramadhani Salehe]** that he is the*

Administrator of the Estate of his late father one Salehe Athuman in Mirathi No. 348 of 1997, and so his claim is about clan land. But in his evidence at the trial court, he has testified that, on 1/1/2000 when he went to his land he found some development at the area he decided to ask his neighbours who was developing the place, as per page 1 paragraph 3 of the Trial Court Judgment.

The Appellant was required to disclose his position, because being the Administrator of the Estate of the deceased does not mean you are the owner of the deceased property.

I think the Trial Court reached for the above decision because the evidence was not enough to establish the ownership of the disputed land.

Since the Appellant himself instituted the claim wrongly for failing to disclose his position in the suit and disputed land.

*This Court **[is]** hereby dismiss**[ed]** for lack of locus stand**[i]**, and **nullify the whole proceeding of the trial court.***

Status quo be maintained." **Emphasis added**}

I am fully aware of the settled legal principle that law does not prescribe the length or brevity of judgments. There is similarly no one exclusive style of writing a judgment. Length of judgments in great measure depends upon specific facts of a particular case and principles of law applicable to the given facts.

Appellant' s first ground of appeal raises a fundamental question for my determination regarding, whether the District Court of Kinondoni, as a court of first appeal was required by law to analyse

the grounds of appeal that Appellant presented before it. The answer to this fundamental question is to be gleaned from the law governing contents of judgments of appeals originating from primary courts. The law is now settled that all judgments composed by the District Courts when determining appeals originating from Primary Courts, must comply with the **Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, G.N. No. 312 of 1964.** In terms of Rule 16 of **G.N. No. 312 of 1964,** the two-paged judgment of the District Court (**Civil Appeal No. 35/2004**) as a court of first appeal is in mandatory terms required to be in writing, and is required to satisfy three basic conditions. First, it must state the points for determination. It must secondly contain the decision of the first appellate court on the identified points of determination. Third, the judgment of the first appellate court must contain reasons for the decision it reached.

I can restate the law without any hesitation that any judgment of the district court on appeal from the trial primary court that does not comply with the conditions prescribed by Rule 16 of the **Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules** does not qualify to be considered to be a judgment of the first appellate court.

Looking back at the judgment of the first appellate court subject of this appeal, it is indeed in writing, and therefore complies with the first condition prescribed by Rule 16 of **G.N. No. 312 of 1964**. What is clearly missing in that judgment is the identification of points for

determination (i.e. issues arising from grounds of appeal). After failing to identifying the points or issues for determination, the judgment of the appellate district court inevitably does not give appropriate decision on the identified issues or points of determination. It also does not offer corresponding reasons behind those issues or points of determination.

From the five grounds of appeal that were filed at the District Court of Kinondoni, the first court of appeal was supposed to address itself to at least two basic issues or points of determination. The first of these issues cum points of determination is whether there was evidence before the trial court to enable the district court to conclude as the primary court magistrate concluded that respondents purchased the disputed lands from various sellers. The second issue revolved around the issue whether the respondents' testimonies were contradictory in material particulars. The appellate district court had a duty to give judgment on these salient issues/points of determination.

In my understanding of **Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules**, where an appeal from the trial primary court to the District Court is founded on grounds of appeal, the appellate district court concerned is duty bound to first identify issues arising from the grounds of appeal as its points for determination before making its decision thereon and furnishing corresponding reasons for the decision. Guided by the issues cum points of determination, the district court was expected to re-evaluate

evidence of the trial court and either confirm or come to its own conclusion.

With my foregoing finding that the appellate district court did not in the composition of its judgment, comply with Rule 16 of the **Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules** governing contents of judgments on appeals originating from primary courts. With this finding, I find no utility to address myself to the remaining grounds of this appeal.

In the upshot, I hereby allow this appeal by quashing and setting aside the judgment and decree of the District Court of Kinondoni. The District Court shall on the basis of written submissions which the Appellant and Respondents filed in the District Court, proceed to determine the five grounds of appeal disclosed on page 1 of the judgment of the Kinondoni District Court (Civil Appeal No. 35 of 2004) dated 21st February 2011. No order is made on costs.

I.H. Juma

JUDGE

29-11-2011

Delivered in the presence of Ramadhani Salehe (Appellant).

I.H. Juma

JUDGE

29-11-2011