

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI

LAND APPEAL NO. 14 OF 2020

(Arising from Land Appeal No. 21 of 2020 in the District Land and
Housing Tribunal of Moshi, Originating from the Judgement of
Kahe Ward Tribunal in Shauri la Madai No. 9 of 2019)

JOAKIM LESULI APPELLANT

VERSUS

BARNABAS MALLYARESPONDENT

JUDGEMENT

MUTUNGI .J.

This Appeal originates from the decision of Kahe Ward Tribunal in Land Case No. 9 of 2019. The records show there was a dispute over a piece of land measuring 3acres located at Mawala village C/10. The appellant instituted the case at Kahe Ward Tribunal claiming to be the lawful owner of the disputed land of which the same was among the land initially allocated to 120 group members by Nafco in 1994. He was one of those dully allocated. In 2003 the same land was re-allocated to other people for those areas undeveloped. This time around the appellant found the respondent in occupation of the suit land. On the other

hand, the Respondent claimed he was given the suit land in 2010 by Alfonce Francis Macha and Alfonce Francis Macha claimed he was allocated the suit land in 2003 after the previous owners (members) had failed to develop the same. The Ward Tribunal ruled in favour of the Respondent. The Appellant unsuccessfully appealed to the District Land and Housing Tribunal hence this Appeal which is grounded on the following: -

1. That the 1st Appellate Tribunal erred in law and facts in not ascertaining that trial Ward Tribunal erred in law and fact in not recognizing and or ascertaining that the power of Attorney presented by both parties were not registered and thus rendering the whole proceeding null and void.
2. That the 1st Appellate Tribunal erred in not finding out that the trial Ward Tribunal erred in law and fact in failure to recognise and or take judicial notice that Joakim Lesule (appellant) died in 2017 even before commencement of the suit at the Ward Tribunal and administrator of his estate is not yet appointed thus rendering the one who represented him to lack locus stand.
3. That the decision of the 1st Appellate Tribunal lacks legal reasoning.

The parties submitted orally where Mr Innocent Isienge and Mr Gideon Mushi learned advocates represented the appellant and respondent respectively. On the 1st ground on failure to recognise that the two Powers of Attorney were unregistered, the learned advocate submitted, any power of Attorney has to be registered as provided for by **Section 8(1) of the Registration of Documents Act, Cap 117.**

First and foremost the learned advocate challenged the Appellant's Power of Attorney in that, Anna Joakim Lesuli (the deceased's wife) had no powers to instruct Modest Hamis Temu to represent Joakim Lesuli. The said Joakim Lesuli died in 2017 before the institution of this case and Anna (the wife) was not the administratrix of the estate of Joakim Lesuli. In view thereof it was only the name appearing on the trial tribunal's record but in reality Joakim Lesuli was condemned unheard.

Submitting on the second ground of appeal, it was Mr. Innocent Isienge's arguments that, the appellant whose name appears died in 2017 and no administrator had been appointed to administer his estate. Modest Hamis Temu who appeared on behalf of the deceased had never been appointed by any court of law and for that he had no locus standi to prosecute the matter.

Given that the trial tribunal did not take judicial notice of this fact, it renders the ward tribunal's proceedings a nullity. The learned advocate concluded by praying the appeal be allowed by quashing the ward tribunal's decision. He, also prayed for a retrial so that justice can be done to Joakim Lesuli and or any interested party be allowed to institute a fresh case.

Reacting to the 1st ground of appeal on the issue of Power of Attorney, Mr Gideon Mushi contended, the disputed Powers of Attorney cannot nullify the trial tribunal's proceedings in totality. He further argued be as it may, it is a new issue which was not raised before the trial tribunal and thus cannot be raised at this stage. The appellant had an opportunity to raise the same immediately after institution of the matter and before the decision was delivered. He cited the case of **NBC vs Elisasi Mdama [1997] TLR 282** to support his position. He contended further, the appellant's contention does not hold water since both Powers of Attorney were unregistered.

The learned advocate further asserted, the Appellant cannot benefit from his own mistakes. Even though, the Ward Tribunals are not strictly bound by law and regulations providing for power of Attorney.

It was Mr. Gideon's arguments that, one is to go by the record. It is on record the case was between Joachim Lesuli and Barnabas Mallya and it is the said Joakim Lesuli who instituted the same. There was no indication or suggestion that the said Joakim Lesuli was by then dead. He went on lamenting, locus standi is one of the factors to be considered before instituting a case and the appellant was expected to know this common procedure of law. All that was required of the respondent is to appear before the trial tribunal and defend himself against the claims therein.

It was Mr Gideon's further submission that, after institution of the case the parties entered appearance, each tendered exhibits and after a thorough analysis the Trial tribunal was satisfied that the respondent was the lawful owner of the suit land. The learned advocate cited the case of **Stanslaus Lugalla Kasusura vs Phares Kabaye [1982] TLR 338** to cement the point that the trial tribunal made assessment of the facts in issue.

He further submitted the trial Ward Tribunal is by law not tied up by technicalities as per section 45 of the Land Dispute Act, Cap 216 R.E. 2019. To stress this point, he cited the case of **Yakobo Maganga Kichere vs Penina Yusuf Civil**

Appeal No. 55 of 2017 (CAT-Mwanza unreported). He added, on the same line this court is invited to the Overriding Objective Principle as per the Written Laws Amendments Act No. 8 of 2018 to do away with technicalities while dealing with this matter to come to a just decision.

In the upshot the learned advocate prayed for the dismissal of the appeal with costs.

In rejoinder the appellant's learned advocate reiterated his averment on the issue of power of Attorney not being proper. He added indeed both powers of Attorney were not registered as required by law.

In answering the complaint of raising a new issue at this stage, the counsel submitted, since it occasioned an illegality then it can be raised at any stage. On the issue of technicalities, he submitted Modest Temu was the one who instituted the case and for justice to be done to Joakim Lesuli, this court should nullify the proceedings.

Having synthesized the rival submissions, the issue which need the determination of this court is whether this appeal has merits. In answering this I will discuss the grounds seriatim.

Before deliberating on the grounds of appeal the court is alive with the common principle that this being a second Appellate Court, is refrained from disturbing the concurrent findings of the two lower tribunals. In the case of **Amrathlar Damadar and Another vs. A. H. Jariwalla (1980) TLR 31** the court held: -

"Where there are concurrent findings of facts by two courts below, the court of appeal, as a wise rule of practice should not disturb them."

Considering the 1st ground of appeal on registration of the Power of Attorney, it is true as submitted by the appellant's advocate that both powers of Attorney presented in the trial tribunal were not registered. The District Land and Housing Tribunal found the mode of appointing representatives at the trial tribunal is not subject to registering of the power of Attorney. This court is of the same stand considering the requirements of **Section 18(2) of Courts (Land Dispute Settlement Act, 2002)** which provides: -

"Subject to the provision of subsection 1 and 3 of this section, a Ward Tribunal may permit any relative or any member of the household of any

party to any proceeding, upon request of such party to appear and act for such party"

In light of the above provision, the law does not make it mandatory or provide for a modality of choosing the representative. With such a relaxed provision, a registered Power of Attorney at the Ward Tribunal is not necessary, to the extent of vitiating the proceedings as prayed by the appellant's counsel. From this position, the 1st ground of appeal collapses.

As for the 2nd ground of appeal, while submitting, the Appellant's advocate contended, Joakim Lesuli died before institution of the case at the Ward Tribunal and for that Modest Temu had no locus standi. Likewise Anna Joakim Lesuli on the other hand had no power to give Modest Temu, she was not the administratrix of the estate of the late Joakim Lesuli. Responding to this, the first appellate Tribunal at page 2 of the judgement had this to say: -

"As for the second ground since he is the present appellant who lodged the complainant at the tribunal is barred from arguing that Anna Joakim Lesuli who appointed him is a deceased since 2017 (sick). He cannot use his own mistakes as a defence on appeal" [Emphasis added].

I painstakingly perused the record of the Ward Tribunal to ascertain what was contained in the proceedings. The proceedings reveal that Joakim Lesuli is the one who instituted the case and gave evidence thereto. If at all the so called Modest Temu was representing Joakim Lekuli for the reason of Joakim's death, then it was expected Modest Temu should have stated so and the same put on record.

Be it as it may, the law is very clear on the issue of representation at the level of Ward Tribunal. Under **section 18(2) of the Land Dispute Act (supra)** which allows relatives or members of the household to appear for such party, it was therefore not illegal for Modest Temu to represent Joakim Lesuli. The foregoing notwithstanding, in absence of a death certificate and evidence in support thereof, one cannot conclude with certainty that Joakim Lesuli was dead at the time when the case was instituted.

From the above point of view, the District Land and Housing Tribunal had no foundation upon which could form an opinion and declare with certainty that Joakim Lesuli (Appellant) died in 2017 before the commencement of the suit.

As already stated earlier in the judgment, in respect of the holding in **Damadar and Another (supra)** this court should not disturb the concurrent findings of the lower tribunals. Further under **section 45 of Land Dispute Act, Cap 216 R.E. 2019** it provides: -

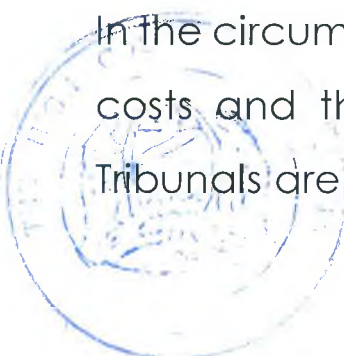
*"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be **reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings** before or during the hearing or in such decision or order or on account of the improper admission 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."*[Emphasis added].


Buying the words of the above provision of law, it follows the evidence which was presented before the Ward Tribunal did in no way occasion injustice worth the reverse/alteration of the trial Tribunal's decision. Even though, this court finds it strange that the appellant is now complaining of his own wrongs or mistakes and indeed trying to convince this court and the first Appellant Tribunal

to benefit from his own doings through the backdoor. Allowing this appeal will defeat the spirit of the well settled legal principle that, no one is to benefit from his/her own wrongs as rightly submitted by the Respondent's Advocate. Needless to say, the error complained of in the proceedings if blessed at this stage (second appeal) will prejudice the respondent and will create room for the appellant to fill the gaps in his case. This ground fails for lack of merit.


Regarding the third ground of appeal that, the decision of the first appellate tribunal lacks legal reasoning. The Appellant did not submit on the same. Even though, having gone through the 1st appellate tribunal's judgment it is observed for each ground of appeal, the Appellate Chairman did give reasons for his decision, even where he differed with one of the assessors. For that the ground is dismissed for lack of merits.

In the circumstances therefore, this appeal is dismissed with costs and the decision of both the trial and appellate Tribunals are upheld. It is so ordered.





B. R. MUTUNGI
JUDGE
17/6/2021

Judgment read this day of 17/6/2021 in presence of Mr. Cosmas Thomas the Appellant's relative and in absence of the Respondent and his Counsel duly notified.


B. R. MUTUNGI
JUDGE
17/6/2021

RIGHT OF APPEAL EXPLAINED.


B. R. MUTUNGI
JUDGE
17/6/2021