

TANZANIA / JUDGMENT

20120615 TZHC Mwanza6

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JUDGMENT.

A.A.Nchimbi,J. This is an appeal of a matter arising from Nyakato Ward Tribunal in Application No. 234 of 2006 where the appellant lost. He unsuccessfully appealed to the District Land and Housing Tribunal for Mwanza at Mwanza, in Land Case Appeal No. 93 of 2003~ Dissatisfied by the decisions of the two Tribunals he has now lodged this second appeal advancing three grounds of complaint. Arguing the appeal the appellant has opted to combine all the three grounds as one ground of appeal as he believes that they all hinge on a point of law that the decision by the District Land and Housing Tribunal and that of the Ward Tribunal were a nullity. 1 ,. The three grounds are these:- · . [1]. That, the honourable District Land and Housing Tribunal for Mwanza erred categorically for not observing that the appellant is entitled to the payment of damages he had suffered due to electricity power disconnection and water services caused by either Intention, or negligence and or recklessness of the Respondent [2]. That, the learned honourable Chairperson of the tribunal she has patently misdirected in assessing and awards the Appellant only the costs incurred to repair the water meter; basing on the hearsay of the Respondent. {sic} [3]. That, the honourable District Land and Housing Tribunal for Mwanza basically erred in law and fact to entertain the appeal in which the said trial ward tribunal had no jurisdiction to determine the dispute basing on pecuniary jurisdiction. On 14/11/2007 parties expressed their wish to argue the appeal by way of written submissions. The court granted the request and set out a schedule for the filing of the submissions which was duly complied with. The appellant submits that section 13(1) of the Land Disputes Courts Act, Cap. 216 R.E. 2002 is established in order to mediate parties in land disputes and not to litigate. Reference is also made to 2 the provisions of

section 14(1) of the Land Dispute Courts Act, Cap. 216 R.E. 2002. It is submitted that the Nyakato Ward Tribunal in Land Application No. 224 was not properly constituted because members who sat to decide the matter were more than three. This makes the said decision to be as good as nothing for non compliance with the law. It is also the contention of the appellant that when the matter was brought to the District Land and Housing Tribunal for Mwanza, the said Tribunal continued to misdirect itself in continuing to determine the matter without satisfying itself that the same was brought under a decision which did not have qualities of a legal decision. It is amplified that the said decision has no force of law for not having a proper quorum of the deciding authority as provided by section 11 of Act, 2 of 2002 which requires three members to constitute a Ward Tribunal. By having more than three members and by only two members signing the decision, the defect is fatal such that it should not be admitted as a decision to be relied upon. The proceedings were by and large vitiated by this serious defect. The appellant is also of the view that the decision that was attached to the memorandum of appeal did not bear stamp of the deciding authority in this case the Nyakato Ward Tribunal and the District Land and Housing Tribunal respectively. Continuing to deal with and finally decide on the matter the appellate Tribunal was still wading under a document which did not constitute an appeal. In ..., that regard reference is made to the case of Kisumu Motor Works Vs Gulamhussein Manji {1940} K.L.R. 8. It is appellant's prayer that this court should dismiss the appeal with costs. In reply the respondent attacks the appellant's submission in support of the three grounds of appeal, and submits that there is incongruence in presentation of the arguments to support the appeal. It is contended that the appeal constitutes three distinct grounds of appeal, which the appellant wants the court to believe that all the three grounds are hinged or gauged upon a point of law that the decisions of the trial tribunal as well as the first appellate tribunal were a nullity. It is the Respondent's submission that the appellant's written submission is misconceived because the record shows that the Tribunal was constituted by five members of whom two were women, and the decision was signed by four members as opposed to the allegation raised by the appellant that only two members signed the said decision. The respondent has also submitted on the grounds of appeal. As for the first and second grounds it is submitted that the appellant was responsible for payment of water and power bills as per lease agreement under paragraph (6) of the contractual tenancy. 4 That the appellate Tribunal correctly condemned the appellant to pay costs because Appeal No. 93 of 2006 before it was unnecessary following the decision by the Nyakato Ward Tribunal that the tenancy between the appellant and the respondent was properly determined on 8th September, 2005 which entailed handing over of vacant possession of the suit property. The respondent contends on the third and last ground of appeal that they are misconceived in the sense that the appellant did explain why the Nyakato Ward Tribunal lacked jurisdiction to determine the said dispute. Otherwise section 15 of the Act No. 2 of 2002 clearly shows the pecuniary jurisdiction of the Tribunal and the claims in the dispute between the appellant and the respondent are less than three million shillings. I have gone through the submissions of both parties in support of the grounds of appeal. I also had occasion of perusing the record pertaining to this appeal. It is my observation that before going into the merit of this appeal, I first have to satisfy myself as to whether this appeal has been properly presented before this court pursuant to section 38(2) of the Land Dispute Courts Act, Cap. 216 R.E. 2002. The

section clearly provides the following :- 5 r 11 Every appeal to the High Court {Land Division} shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision, or order of which the appeal is brought'~ The instant appeal has been brought by way of memorandum of appeal which is contrary to the provision of section 38(2) (Supra). The word used in sub section 2 of section 38 is "shall" which means a mandatory provision. It ought to have been complied with as directed by section 53(2) of the Interpretation of Laws Act, Cap. 1 R.E. 2002. In the circumstances, the appellant has violated the mandatory provision of the law. Looking at the grounds of appeal, it is clear that the appellant is trying to convince this court that the three grounds of appeal hinge on the point of law that the decision of the trial tribunal as well as that of the first appellate Tribunal are a nullity. I must confess that I find it very difficult to understand the line of argument advanced by the appellant in support of his grounds of appeal. I hasten to say the appellant is trying to mislead this court because he has failed to show how the two Tribunals' decision are a nullity. He has cited section 14(1) of the Land Disputes Courts Act Cap. 216 R.E. 2002 alleging that the trial tribunal did not comply with this section. However, going through the record, I have noted the that decision of Nyakato Ward Tribunal was proper because the coram shows that it sat with 6 . five members . . and four of them signed the said decision. Therefore, section 14(1) (supra) was dully complied· with as opposed to the allegation raised by the appellant that only two members signed the · decision. My interpretation of section 14(1) (supra) read together . with S. 11 is that the Ward Tribunal may sit with more than three members but not exceeding eight provided the feminine gender is I taken into account. The decision could not be said to .have been vitiated and, therefore, parties prejudiced, by the fact that the Tribunal was constituted by more than three members. Such a decision, in my considered view, did not occasion injustice at all. If I may add the appellant did not argue the first and second grounds of appeal which I think are not related to the third ground. His reason that the three grounds are interwoven has no bearing on the truth. For all rntent and purposes they are distinct grounds. I will thus simply take it that he decided to abandon them. I can, thus, see no· ground upon which to allow the appeal. So I order that it be and is hereby dismissed with costs. A. A. Nchimbi, JUDGE. 7 f 15f6/2Q12. Coram Hon. A.A.Nchimbi, J. Appellant Absent. Respondent Absent. Cc: Regina. Court. Judgment delivered in the absence of parties whose whereabouts, as per court process server, are currently not known. A.A.Nchimbi, JUDGE 15/6/2012. If possible, depending on their availability, parties to be served with a copy of the judgment. JUDGE 15/6/2012. 8

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