

TANZANIA / JUDGMENT

LAND APPEAL NO

COURT
TANZLIIDECIDED
1 January 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MTWARA AT MTWARA LAND APPEAL NO. 5082 OF 2024 (Originating from Land Application No.
39/2022, the decision of the District Land and Housing Tribunal for Mtwara at Mtwara) HAMZA
HASHIMU ZUBERI..... APPELLANT VERSUS NMB BANK
PLC.....1st RESPONDENT TWINS AUCTION MART CO. LTD &
COURT BROKERS LTD 2ND RESPONDENT

JUDGMENT

23* May & Iff11 June, 2024 MPAZE, J.: On 13th May, 2019 the appellant, Hamza Hashimu Zuberi, and the 1st respondent, NMB Bank Pic, entered into a loan agreement through which the 1st respondent granted the appellant a loan amounting to TZS 30,000,000/- specifically for business use. The loan was to be repaid in fifteen instalments of TZS 2,291,321.61/= each month to be completed in 2020. As security for the loan, the appellant pledged a house located in Mwela Chikongola Ward, Mikindani Municipality, Mtwara. This house is the subject of this case and will hereinafter be referred to as 'the disputed property'. Upon the appellant's default in repaying the loan, the 1st respondent instructed the 2nd respondent to auction the disputed property to recover the outstanding loan amount. Consequently, the appellant filed a suit against both respondents, jointly and severally, in the District Land and Housing Tribunal for Mtwara (DLHT) through Application No. 39 of 2022, seeking the following reliefs;

1. A permanent injunction against the respondents restrains them from auctioning the disputed property.
2. In the interest of justice, the applicant be granted an extension of time to repay the loan.
3. Payment of general damage to the tune of TZS 10,000,000/=.
4. Costs of the Application
5. Any other relief the Honorable Tribunal deemed fit to grant. 2 During the hearing at the DLHT, the appellant alleged that on 15th June , 2019 he took a loan of TZS30,000,000/= from the 1st respondent. At that time, he was conducting his business in the old bus stand area. Three days after he was granted the loan, the Mtwara Mikindani Municipal Council announced that the bus stand would be moved to a new location known as Mkanaledi Bus

Stand, causing the customers he relied upon to leave the area. The appellant testified further that five days after this incident, he met with the loan officer of the 1st respondent and informed him of the difficult situation that had arisen. Nevertheless, he continued repaying the loan under these challenging conditions. However, the outbreak of the COVID-19 pandemic further worsened the economic situation. He added that he wrote a letter to the 1st respondent notifying him of the difficulties he was facing. The appellant sought to tender a report on the business downturn due to the COVID-19 outbreak dated 4th June, 2020 along with a letter from Mtwara Mikindani Municipal dated 18th June, 2019. 3 The two documents were not admitted because they were photocopies and there was no proof that the respondents were served with the documents before the prayer of tendering was made. In his defence, Deodatus Audustino Ninja (DW1), a loan officer of the 1st respondent, explained the procedures which are to be followed for granting a loan. He also described the steps which are to be taken when a borrower fails to repay the loan. Regarding this case, he stated that the appellant was granted a loan by the respondent after all procedures were complied with. However, the appellant later failed to repay the loan despite several reminders. Subsequently, the process of selling the property pledged as loan security was initiated, leading to the appointment of the 2nd respondent to seize the property. Regarding the issue of COVID-19, DW1 explained that the pandemic lasted for only a short period, and their clients were contacted and guided on how to repay their loans. He stated that the appellant was supposed to complete the loan repayment by 2020, but they began demanding repayment in 2021. 4 After hearing the evidence from both parties, the DLHT decided in favour of the respondents, declaring that it was lawful for the respondents to auction the disputed property following the appellant's breach of the loan agreement due to his failure to repay the loan on time. The DLHT also stated that it had no power to interfere with the terms and conditions agreed upon by the parties. Furthermore, the DLHT stated that it did not have the power to grant an extension of time to the appellant to repay the loan or to compel the 1st respondent to reschedule the loan. As a result, the appellant's claim was dismissed, and he was ordered to pay the costs of the suit. Dissatisfied with the decision of the DLHT, the appellant filed this appeal. However, the grounds for the appeal are grammatically and structurally flawed. The following are grounds of appeal as filed;

1. That the trial district land and housing tribunal erred in law and in fact for failed to consider the evidence adduced by the appellant witness within the proceedings course. 5
2. That the trial district land and housing tribunal erred in law and in fact for dispensed to its powers in decided the appellant then the applicant case.
3. That, the trial district land and housing' tribunal grossly erred in law and facts in provided the respondents with costs of the application on the decided judgement has it became very hard to the appellant. Thus, the appellant prayed the court for the following orders;
 - i. That the Judgement and orders of the District Land and Housing Tribunal for Mtwara at Mtwara in Land Application No. 39 of 2022 be dismissed and upheld this appeal for the Appellant. ii. Costs of the Appeal be provided for and iii. Any other relief the court deems fit

and just to grant. This appeal was argued byway of written Submissions. The appellant had no legal representation, whereas the 1st and 2nd respondents were represented by Mr. Emmanuel Ngongi, the learned advocate. Before delving into the written submissions made by the parties, I must confess that I encountered difficulties in understanding the appellant's grounds of appeal and his submissions. Nonetheless, after dedicating 6 considerable time to thoroughly reading and re-reading the submissions, and consulting the respondents' reply submissions for clarity, I was able to discern the appellant's intended arguments. In support of the first ground of appeal, the appellant argued that during the hearing of his case, he made an application for additional documents he intended to rely upon. However, this application was rejected without being recorded. The appellant contends that he had a strong chance of winning his case if the trial chairman had considered his application for additional documents. He asserts that the failure to grant him this right is equivalent to being denied the right to be heard. To support his stance, he referred to the cases of Major S.S. Khanna v. Vrii F.J. Dillon, AIR 194 SC 497 at P.505;

(1964) SCR 409, and Baldevads v. Filmistan Distributors (India) (P) Ltd, (1969) 2 SCC 201; AIR 1970 SC 406. The appellant believed that this court has the power to ensure that proceedings in subordinate courts or tribunals adhere to the law and in case any error is committed, this court has the power to rectify such an error. 7 The appellant contended that the DLHT did not adhere to Order XVIII Rule 5 of the Civil Procedure Code, Cap 33 R.E 2019, thereby undermining the evidence presented during the trial. As a result, he argued that the tribunal failed to deliver justice in his favour. On the second ground of appeal, the appellant argued that the basis used by the chairman to rule in favour of the respondents led to a miscarriage of justice. This decision, he contended, jeopardized his ownership of the mortgaged property because the chairman did not consider the reasons behind his failure to fulfil the terms of the loan agreement. Furthermore, the appellant argued that the chairman did not accurately record his statements regarding how his business suffered after the Mtwara bus terminal relocated to a new location known as Mkanaledi. This move, he alleged, had an economic impact on him by reducing his daily sales. Additionally, the appellant criticized the DLHT for refusing to admit his documents as exhibits. He claimed that each time he attempted to submit these documents, which would have explained why he could not repay the loan to the 1st respondent, the chairman rejected them, thereby undermining his evidence. 8 The appellant further argued that the DLHT neglected to properly evaluate and assess the evidence on record, resulting in an incorrect decision. He expressed bewilderment over why the 1st respondent declined to reschedule the payment plan and instead instructed the 2nd respondent to sell the mortgaged property, which he considered improper. In support of his argument, he referred to the decision in the case of Hemedi Saidi v. Mohamed Mbilu (1984YTLR113. The appellant continued to criticize the DLHT for overlooking evidence that could have led to a fair and just decision. He argued that it was wrong for the DLHT to give weight to the respondent's documentary evidence, which failed to substantiate their case, while disregarding his own documents that, if considered, would have supported his case. On

the third ground of appeal, the appellant challenged the tribunal's decision to award costs to the respondents, arguing that the chairman did not take into account the expenses and difficulties he had endured. He claimed that the costs awarded to the respondents were unjustified since no actual costs incurred by them were demonstrated. In support of his argument, he cited the case of Independent Electoral Commission 9 *Exparte Mohamed Ibrahim Abdi and others*, Misc Application No. 344 of 2017, from the High Court of Kenya Judicial Review Division, which outlines the factors the court should consider when deciding not to grant costs to a successful party in legal proceedings. In conclusion, the appellant sought to have the DLHT's judgment set aside and his appeal granted. In response, counsel for the respondents started by reiterating the established legal principle in civil cases that parties are bound by their pleadings, which include annexures. To bolster his argument, he referred to the case of *Martin Fredrick Raiabu v. Ilemelela Municipal Council and Another*, Civil Appeal No. 197 of 2019. The learned advocate, addressing the first ground of appeal, contended that the appellant's claim that the chairman rejected his additional documents was an attempt to shift responsibility onto the chairman. He argued that during the trial while testifying, the appellant attempted to tender documents that were not annexed to his application. The respondents objected to their admissibility, and the objection was sustained. Counsel argued that the appellant's complaint regarding this ground of appeal is an afterthought and baseless, as the documents were rejected due to noncompliance with the law. On the second ground of appeal, the learned advocate argued that the appellant's claim that the chairman did not accurately record his statements about the decline of his business was misconstrued, and accused the appellant of attempting to mislead the court. He stated that upon reviewing page 6 of the judgment in Land Application No. 39 of 2022, the chairman quoted the appellant's statements, comparing them with what he had stated in his application. The learned advocate further argued that the trial tribunal did evaluate and assess all the evidence presented by both parties, as evidenced by paragraphs 4, 5, 6, 7, and 8 of the typed judgment. Counsel contended that the appellant failed to substantiate his case on the balance of probabilities, as stipulated by the Law of Evidence under section 101, leading to an unfavourable decision against him. The learned advocate underscored that the trial chairman did not err in law or fact in deciding the case before the tribunal. He pointed out that the appellant's evidence diverged from what was stated in his application, particularly in paragraph 6(a)(iii), where he alleged approaching the 1st respondent for loan settlement negotiations due to the COVID-19 pandemic outbreak. However, during his testimony, he informed the tribunal that the business downturn was due to the relocation of the bus stand to another location. Counsel added that the appellant misstated the period to repay the loan in full, as detailed in paragraph 6(a)(iv) of the application. He argued that the deviations from the application's contents and the falsehoods presented by the appellant violate the fundamental principle of law that evidence must be consistent with what is stated in the pleadings. Regarding the terms of the loan agreement, the counsel contended that as per the agreement, the loan was supposed to be fully repaid by 30/08/2020. By the time the appellant filed the case, this deadline had

lapsed. The counsel argued that due to the breach of the loan agreement, the 1st respondent rightfully exercised their rights in accordance with the terms and conditions of the loan agreement. Therefore, the appellant should bear the consequences, underscoring the principle that no one should profit from their own wrongdoing. 12 The learned advocate further argued that the appellant should not be surprised by the 1st respondent's decision to refuse him a chance to settle and reschedule the loan instalments. Instead, the 1st respondent instructed the 2nd respondent to sell the disputed property, he said this was done based on the terms and conditions of the loan. Counsel explained that the sanctity Of the contract required the 2nd respondent to execute the loan agreement. Therefore, the court cannot intervene and reschedule the loan on behalf of the parties, as this would undermine the intent and significance of their voluntary agreement. The respondent's counsel argued that due to the appellant's breach of the loan agreement, the 1st respondent had an automatic right to sell the disputed property. The learned advocate referred this court to section 132(1) and (2) of the Land Act Cap 113 R.E 2019, as well as the case of *General Tyres East Africa Ltd v. HSBC Bank PLC* [2006] TLR 60. On the third ground of appeal, the learned advocate argued that civil litigation inherently involves costs, noting that the appellant himself prayed to be awarded costs for the application. Similarly, the respondents sought dismissal of the appeal with costs. He cited section 30(2) of the Civil Procedure Act CAP 33 R.E 2019, which mandates the court to provide reasons when awarding costs. The learned advocate highlighted that when a party succeeds in a case, they are entitled to costs, as established in the case of *Njoro Furniture Mart Ltd v. Tanzania Electric Supply Co. Ltd* [1995] TLR 205. Furthermore, he argued that in every suit, costs are inevitably incurred by the winning party, which should be reimbursed by the losing party. Therefore, he submitted that this ground lacks merit and should be dismissed. In his rejoinder, the appellant reiterated that the 2nd respondent's action of auctioning the disputed house as instructed by the 1st respondent is unlawful. The appellant argued that the order to pay the costs of the suit is unjustified because both parties reside in Mtwara, where the tribunal is located. Therefore, according to the appellant, the respondents did not incur significant expenses, and the tribunal did not spend much time deciding the case. He believed the order was unreasonable, which is why he appealed to this court seeking justice. 14 The appellant further argued that under section 42 of the Land Dispute Settlement Act Cap 216 R.E 2019., the DLHT has the authority to admit additional documents. He contended that despite this authority, the tribunal failed to exercise it, thereby diminishing the significance of the appellant's evidence and resulting in an unfavourable outcome for him. According to the appellant, the adjudication of civil cases falls under the jurisdiction of the trial court or tribunal, which should consider various factors, including the evidence presented by both parties and not solely rely on the plaint or application. To support this contention, the appellant referenced Order VI Rule 3 of the Civil Procedure Code Cap 33 R.E 2019, which specifies the requirements for pleadings. The appellant submitted that despite experiencing a business downturn, the 1st respondent never contacted him or arranged how the loan would be repaid following the decline. He argued that the 1st respondent's

strict reliance on the loan agreement as the sanctity of the contract was improper. Additionally, he contended that the 1st respondent should have considered that the mortgaged house served merely as collateral, enabling him to make loan payments in instalments. Therefore, he believed it was not appropriate for the 1st respondent to initiate the auction of the property, as losing it would make loan repayment unfeasible. The appellant argued that his claim was not for the tribunal to interfere with the explicit contractual terms, but rather for the 1st respondent to cease taking unfair actions against him, noting that their loan arrangement relationship began in June 2006 and he had never defaulted on payments before. Considering all his submissions, the appellant insisted that the court find merit in this appeal and award costs accordingly. I have carefully considered the submissions of both parties and find that the main point for determination is whether this appeal has merit. As this is the first appeal, the court has the duty to revisit and re-evaluate the entire evidence objectively and, if necessary, come up with its own findings of fact. This principle is supported by the case of *Leonard Dominic Rubuve t/a Rubuye Agrochemical Supplies v. Yara Tanzania Limited* Civil Appeal No. 219 of 2018. 16 With this basic legal principle in mind, the court now proceeds to examine the grounds of appeal, adhering to the standard expected of a first appellate court. As previously explained, I found it very difficult to understand the appellant's submission, and even the grounds of appeal were challenging to comprehend. However, after thoroughly reviewing the submissions of both parties, I was able to understand each ground of the appeal and what the appellant intended to convey. Starting with the first ground, it states; 'That the trial district land and housing tribunal erred in law and in fact for failed to consider the evidence adduced by the appellant witness within the proceeding course'. At first glance, when I read the above ground of appeal, I thought the appellant was complaining that his evidence was not considered by the tribunal. However, upon examining his submission, I understood that the appellant's actual complaint is that the DLHT failed to record in the proceedings the reasons for rejecting his application for additional documents. 17 If this is the case, it means the appellant is trying to impeach the tribunal's record by showing that the DLHT did not record in the proceedings what he prayed for and the tribunal's response to his prayer. Therefore, the appellant is attempting to challenge the accuracy and completeness of the DLHT records. In our jurisdiction, the court proceeding is protected by the legal principle of the sanctity of the court record. This principle implies that the court record is presumed to be accurate, genuine, and a true representation of what transpired in court, and hence, it cannot be easily impeached. The Court of Appeal, while dealing with a similar complaint in the case of *Alex Ndendva*

- v. Republic Criminal Appeal, held that: 'We are positive that the appellant is trying to impeach the court record. It is settled law in this jurisdiction that a court record is always presumed to accurately represent what actually transpired in court. This is what is referred to in legal parlance as the sanctity of court records See also the case of *Halfani Sudi v. Abieza Chichili* [1998] T.L.R 527 and *Iddv Salum @ Fredv v. Republic*, Criminal Appeal No. 192 of 2018 (unreported). 18 Upon careful consideration of the legal principles discussed above, I find

the appellant's claim to be unfounded. The court records, particularly the DLHT records in this case, are presumed to accurately reflect all proceedings conducted in the tribunal from the start of the trial to its

conclusion.

Let's assume I misconstrued the appellant's complaint and instead, he did not mean to impeach the tribunal proceedings rather he intended to challenge the tribunal's refusal to admit his documents as Exhibits. I inferred this after examining the respondent's reply submission regarding this ground. In their reply, they indicated that the tribunal rejected the appellant's request to admit documents because they were photocopies and had not been served to the respondents before being tendered. If indeed this is what the appellant intended, and he did not mean impeachment of the trial tribunal's proceedings, but rather that the tribunal erred in rejecting his prayer to tender "Taarifa ya Kuyumba kwa Biashara kutokana na Mlipuko wa Homa ya Mapafu (Corona) ya Tarehe 04/06/2020 and the letter from the Mtwara Mikindani Municipal Council dated 19 18/06/2019. In that case, the question would be whether the DLHT improperly rejected the admission of the two documents. Upon examining the record, I found that on 19th May 2023, on page 13 of the typed proceedings of the DLHT, the appellant sought to tender a letter he had written to the bank and a letter from the Mtwara Mikindani Municipal Council. However, the respondents objected to their admission, arguing that they were photocopies and had not been annexed to the application. The DLHT sustained the objection, stating: 'Nyaraka inayotaka kutoiwa na mieta maombi haijaambatanishwa kwenye hati yake ya madai na pia ni kivuii(copy) hivyo imekiuka kanuni ya 10(3) of GN No. 174. Baraza Hnamuamrisha mleta maombi afuate taratibu za kuieta nyaraka hizo na taratibu za kuegemea kwenye kivuii' Following this ruling, the proceedings were adjourned until 16th June-

2023. Upon resumption on that date, the appellant informed the tribunal that he had his documents and prayed to tender them as exhibits. As previously, the respondents' counsel objected to the admission of the two documents. He argued that Rule 10(3) of the Land Regulations had not been complied with and that the documents were photocopies, thus failing to meet the requirements under sections 65(a) and 67 of the Tanzania Evidence Act, [Cap 6 R.E 2022] herein referred as The TEA'. He also contended that the document from the Mtwara Mikindani Municipal Council, being a public document, did not comply with section 85 of the TEA. This objection was upheld, and the DLHT, in sustaining the objection, stated the following: 'Nyaraka zinazotaka kutoiwa ni kivuli iakini pia hazijafuata taratibu za kutoa nyaraka kivu/i hapa barazani. Pia hakuna uthibitisho wa upande wa pia kupewa nyaraka hizo. Kwa hivyo nyaraka yenye kichwa Taarifa ya kuyumba kwa biashara kutokana na mlipuko wa homa ya mapafu(corona) ya tarehe 4/06/2020 pamoja na barua kutoka haimashauri ya Manispaa ya Mtwara Mikindani ya tarehe 18/08/2019 zimeshindwa kupokelea hapa barazani/ After examining the DLHT's ruling to reject the admission of these documents, the chairman cited two reasons; firstly, the documents were not original copies, and secondly, they were not served to the respondents. When I scrutinized the DLHT records, I found that there is no dispute

regarding the documents the appellant wished to tender; they were 21 photocopies/ not originals/ and the respondents were not served with the documents before the hearing. Regarding the documents being copies and not originals, it is established in the law that a document must be proven by primary evidence, as outlined in section 66 of the Tanzania Evidence Act. However, there are exceptions to this rule that permit the admission of secondary evidence under certain circumstances. Section 66 of the TEA stipulates that documents must be proved by primary evidence, which generally means original documents. However, Section 67 of the same Act provides exceptions where secondary evidence, such as copies, may be admissible. These exceptions include situations where the original is in possession of the party against whom it is sought to be proved, or when the original has been destroyed or lost, among other conditions. As previously stated, the documents the appellant sought to tender as exhibits were not originals. Upon examining the record, I observed that despite the appellant's prayer for their admission, no explanation was provided as to why photocopies were to be tendered instead of the original 22 documents. Based on this examination, I am inclined to agree that the DLHT rightly declined the admission of these documents as exhibits. I am familiar with Regulation 10 of the Land Regulations, which allows the tribunal to admit documents that were not formally annexed to the pleadings, without strictly following the practices and procedures outlined in the Civil Procedure Code or the Evidence Act. However, this procedure will only be followed when the tribunal ensures that the document is authentic and has been served to the other party. The regulation states as follows;

- (1) -The tribunal may at the first hearing, receive documents which were not annexed to the pleadings without necessarily following the practice and procedure under the Civil Procedure Code, 1966 or the Evidence Act, 1967 as regards documents (2)- Notwithstanding sub-regulation (1) the Tribunal may at any stage of proceedings before the conclusion of the hearing allow any party to the proceeding to produce any material documents which were not annexed or produced earlier at the first hearing (3)- The tribunal shall before admitting any document under sub-regulation 23 (2)~
- (a) Ensure that a copy of the document is served to the other party
- (b) Have regard for the authenticity of the document'. From the records, it is evident that the documents sought to be tendered were not annexed to the application. Therefore, if these documents had complied with the requirements of sections 66, 67, and 85 of the TEA, and were rejected solely due to failure to serve the other party, I would align with the position taken by my brother Mugeta J in the case of Erasto Nqailo
- v. Blastus Allen Mqimwa, Miscellaneous Land Application No. 15 of 2022 (Unreported), wherein he stated: 'It was an error for the tribunal chairman to reject the document for a reason that it had not been served to the respondent by the applicant' That being said, since the failure to serve the other party was not the only basis for rejecting the admission of the documents, and the primary reason was their non-compliance with sections 66 and 67 of the TEA, I maintain that the DLHT's decision was correct as previously ruled. The refusal to

admit the documents was justified due to their failure to meet essential procedural requirements. 24 Therefore, the first ground of appeal is without merit and is hereby dismissed. Turning to the second ground and considering the submissions made by both parties, it is clear that the appellant is alleging that the tribunal failed to properly evaluate the evidence, particularly his explanation for why he was unable to repay the loan on time, resulting in an unjust decision. This issue does not require extensive deliberation, as I have thoroughly reviewed the DLHT's judgment. On pages 6, 7, and 8, the trial chairman carefully analyzed the evidence from both parties and ultimately determined that the appellant had breached the contract with the 1st respondent. Therefore, the claim that the DLHT failed to evaluate the evidence is unfounded. Consequently, this ground of appeal lacks merit and is hereby dismissed. Lastly, the appellant contended that the trial tribunal ordered him to pay the costs of the suit without considering that both parties resided in Mtwara, where the tribunal is located, and that the case was not complicated. 25 I should state right away that in civil litigation, the general rule is that costs must follow the event. Costs are a panacea that soothes the souls of litigants that, in the absence of sound reasons, the court will not be prepared to deprive the successful litigant of. These are the usual consequences of litigation to which the appellant is not exempted. See the case of Abubakar Khalid Haji & Another v. Zamzam Yusuph Mushi, Civil Appeal No. 388 of 2022 Sections 30(1) and (2) of the Civil Procedure Code, Cap 33 R.E 2019, and section 21(1) of the Land Dispute Courts (District Land and Housing Tribunal) Regulations, 2003, provide as follows; '30.-(1) Subject to such conditions and limitations as may be prescribed and to the provisions of anylaw from the time being in force, the costs of, and incidental to, all suits shall be in the discretion of the court and the court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise ofsuch powers.

- (2) Where the court directs that any costs shall not follow the event, the court shall state its reasons in writing.' 26 While that of the Land Dispute Courts (District Land and Housing Tribunal Regulations, 2003 provides: - 21(1)' The Tribunal may make such orders as to costs in respect of the case as it deemsjust.' Apart from the cited case above, the two sections mentioned also establish the general rule that costs shall follow the event unless the court, for valid reasons, decides otherwise. This implies that the winning party is usually entitled to costs unless there are compelling reasons to withhold them. In the case of Mohamed Salmini v, Jumanne Omary Maoesa, Civil Application No. 04 of 2014 CAT at Dodoma (unreported), it was held that; 'As a general rule, costs are awarded at the discretion ofthe court. However, the discretion is judicial and has to be exercised upon established principles, and not arbitrarily or capriciously. One of the established principles is that costs would usually follow the event unless there are reasonable grounds for depriving a successfulparty ofhis costs. A successful party cou/d lose his costs if the said costs were incurred improperly or without reasonable cause, or by die misconduct of the party or his advocate. j 27 Again, in the case of Registered Trustee of the Roman Catholic Archdiocese of

Par es Salaam versus Sophia Kamani, Civil Appeal No. 158 of 2015 CAT at Dare es Salaam (unreported) it was held that:- 'Finally, the order of costs. It is the well-known principle that a winner is an end tied to cost unless there are exceptional circumstances which were shown to exist. So, the appellant is end tied to costs.' In the instant case, the trial Chairman awarded costs to the respondents. The cited cases indicated that awarding costs is a requirement of the law, where the law mandates costs to follow the events unless good cause is shown. Upon examining the records of the DLHT, it is clear that the respondents were represented and attended the DLHT from 4th August 2022 to 1st December 2023, when the decision of this case was delivered. Given these circumstances, the respondents are entitled to costs to cover the expenses incurred in prosecuting their case. Therefore, I see no reason to differ from the trial chairman's decision on this ground, as he exercised his discretionary power to award costs. This ground of appeal lacks merit. 28 In Upshot, I find that this appeal lacks merit, and as such, it is dismissed in its entirety with costs. It is so ordered. presence of the appellant Hamza Hashimu Zuberi, the respondents, and the learned advocate for the respondents Mr. Emmanuel Ngongi. 29

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlil.org/media/judgment/312923/source_file/LAND_APPEAL_NO_5082_OF_2024.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/hamza-hashimu-zuberi-Loandefault-tanzlil-2024--6a3ea52d3b1caa9129826a2d

Prepared on 14 October 2026 · Esheria