

TANZANIA / JUDGMENT

joseph mahindi vs nzota daudi

2020 tzhc 2550 25 september 2020

COURT
TZHCDECIDED
25 September 2020

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

IN THE HIGH COURT OF TANZANIA MUSOMA DISTRICT REGISTRY AT MUSOMA LAND APPEAL NO 58 OF 2020 JOSEPH MAHINDI APPELLANT VERSUS NZOTA DAUDI RESPONDENT (Arising from the decision and orders of the district land and housing tribunal for Mara at Musoma, Hon. Kitungulu Chairperson, in land appeal no. 184 of 2019 dated 04.03.2020)

RULING

Dates: 3rd & 25,h September 2020 GALEBA, J. In this appeal MR. JOSEPH MAHINDI is challenging a decision of the District Land and Housing Tribunal for Mara (the DLHT) in relation to a piece of land located at Isaba village in Buruma ward which is part of Butiama district within Mara region. According to MR. MAHINDI, MS. NZOTA DAUDI trespassed on his land and sold its part to several other individuals and retained another for herself. As for MS. DAUDI, her case was that she was not aware of MR. MAHINDI's right in the land and if he bought the land let him prove his case. In short she denied trespassing on any person's land. In 2019 MR. MAHINDI filed civil case no 5 of 2019 in Buruma ward tribunal (the trial tribunal) where he was declared a lawful owner of the land. MS. DAUDI was aggrieved so he appealed to the DLHT by 1 filing land appeal no. 184 of 2019 where she won, but MR. MAHINDI was aggrieved and filed this appeal. MR. MAHINDI argued the 3 grounds of appeal filed but because of what this court observed in the proceedings of the ward tribunal I invited parties to address the court on three issues of both substance and procedure before we could proceed to determine the grounds of appeal. The issues were; firstly, whether there can be any lawful proceedings in the ward tribunal without there being a formal document commencing such proceedings. Secondly, was whether, it was mandatory for the trial tribunal to start with mediation before it could proceed to formal hearing by calling witnesses and the third issue I sought clarification upon was whether on the day that the opinion of assessors was allegedly given in the DLHT, the assessors were present in the tribunal or not. Addressing the first query, of whether there was a complaint that was lodged in the trial tribunal MR. MAHINDI submitted that he complained to the Isaba village executive officer (the VEO) who wrote a letter containing his complaints to the ward tribunal. I asked him whether he had that letter with him because it was not on record, but he had none. The submission by MS. DAUDI on how she knew her counterpart's complaint, she submitted that the complaints were in a letter from the VEO, but like MR. MAHINDI she did not have the letter. 2

Generally every statute that establishes a dispute resolution forum it also establishes a manner of presenting a dispute before it. However, where a statute establishing a dispute resolution forum does not prescribe the mechanism or procedure of accessing the forum, then there is always a procedural law elsewhere providing for the procedure to access the forum established. As for the ward tribunal, section 17 (1)(2) and (3) of the Land Disputes Courts Act [Cap 216 RE 2019] (the LDCA) provides for the manner of accessing it. It provides; "17. Reference of disputes to the Tribunal

- (1) Any person may, subject to section 61 of the Village Land Act, and sections 11, 12 and 13 of the Ward Tribunals Act, make a complaint to the Secretary of the Tribunal. (2) When a complaint is made to the Secretary under subsection (1), that Secretary shall cause it to be submitted to the Chairman of the Tribunal who shall immediately select three members of the Tribunal to mediate.
- (3) Where the complaint is received orally from the complainant, the Secretary shall immediately put it in writing and produce a copy for the complainant." According to the above section, it means for a matter to be entertained in the ward tribunal the same must be commenced by a complaint to be lodged under section 17(1) of the LDCA which may be in writing or oral according to sub sections (2) and (3) respectively of section 17 of the LDCA. Relevant to this subject is also section 11(1)(3) and (4) of the Ward Tribunals Act [Cap RE 206] (the WTA). It provides; "11 (1) Proceedings may be instituted by making of a complaint to the secretary of a Tribunal, the Secretary of an appropriate authority, the Chairman of a Village Council or a ten-cell leader. —, <=^— — — 3
- (2) n/a
- (3) A complaint may be made orally or in writing, but if made orally shall be reduced in writing by the person to whom it is made and, in either case, shall be signed by the complainant and the person to whom it is made.
- (4) When a complaint is made to any person, that person shall, if he is not the Secretary of the Tribunal, cause it to be submitted to the Secretary of the Tribunal who shall enter it in the records of the Tribunal and arrange for it to be heard and determined by the Tribunal in accordance with the procedure of the Tribunal for the hearing and determination of disputes submitted to it." I have perused the ward tribunal records and noted that the matter came up before the trial tribunal for the first time on 06.03.2019 and on that day records show the following to have transpired; "6/3/2019 Mdai—Yupo Mdaiwa—Hayupo kwa faarifa Shauri litaendelea far. 13/3/2019 mdai afike na mashahidi." Before that date, there is no document on record other than the handwritten proceedings starting on that very day. The letter from the VEO that was referred to by Mr. Mahindi is nowhere to be found on record. What is on the file is only the evidence and the judgment. Based on that finding, it is the holding of this court that either the ward tribunal was improperly moved or the same was not moved at all as required by section 17 (1), (2) and (3) the LDCA read together with section 11 (1), (3) and (4) of the WTA. This error is not a curable error. The omission is a serious

defect which is not incurable under any principle of law or equity including the overriding objective principle, because the irregularity goes to the very root of the case. 4 ' This is not the first time that this court is encountering this situation. In Nyangi Marwa versus Kubyo Mbusiro, Miscellaneous Land Appeal no 101 of 2016, High Court at Mwanza (unreported), honourable Makaramba J. (as he then was) found himself in the same situation and this is what he decided at page 2 of the typed judgment; "I have looked at the record of the proceedings of the trial tribunal. Indeed as Mr. Makowe has rightly submitted, there is no formally lodged complaint and the coram is not indicated. Much as these irregularities are apparent on the face of the record, they go to the root of the matter. For in the absence of a lodged complaint the trial tribunal embarked on determining a dispute for which it had not been asked to deal with. In the circumstances, neither the parties, nor even the tribunal members knew what they were dealing with." In that case, under the provision of section 43(1) (b) of the LDCA, the court quashed not only the proceedings of the ward tribunal but also those of the DLHT and a party who still had grievance was given liberty to file afresh the matter in the same ward tribunal. Although this court is not bound by its own decision, in which case, it is at liberty to depart from it, but it is an established court practice in this jurisdiction for courts especially of the same grade to avoid pronouncing conflicting decisions in similar circumstances unless it is absolutely necessary to do so see ULC (Tanzania) Ltd versus National Insurance Corporation and Another [2003] TLR 212 and JS Mtungi versus the University of Dar es Salaam [2001] TLR 261. In this case, I avoid giving a conflicting decision because I find no extreme necessity to differ with the holding of this court in Nyangi Marwa versus Kubyo Mbusiro (supra). 5 I therefore hold that the absence of a document commencing proceedings in the ward tribunal is an irregularity that goes to the root of the matter and the same is an incurable defect. By incurable defect, I mean that no lawful proceedings of the ward tribunal can emanate from a matter that lacks a written complaint which initiated the dispute in the tribunal. I am therefore satisfied that all the proceedings, orders and the decisions of the ward tribunal, legally sprung from nothingness and the same cannot be spared. For the above reasons, it does not seem to be of any relevance to deal with the 2nd and the 3rd aspects relating to mediation in the ward tribunal and the presence of assessors in the DLHT. Likewise, as stated earlier on, discussing the grounds of appeal is also rendered nugatory as the proceedings of the ward tribunal from which the appeal traces origin is a nullity. Under the powers vested in this court by the provisions of section 43(1) (b) of the LDCA, this court revises the proceedings of the ward tribunal and those of the DLHT and specifically makes the following orders;

1. The proceedings and all orders including the judgments or rulings of Buruma Ward Tribunal in civil case no 5 of 2019 and those of the district land and housing tribunal for Mara at Musoma in land appeal no 184 of 2019 are quashed and set aside. 6
2. This appeal is struck out.

3. If either party still has any grievance, he or she may institute a fresh dispute in the ward tribunal which should handle that matter according to law. DATED at MUSOMA this 25th September 2020 Z. N. Galeba JUDGE 25.09.2020 Court; THIS RULING has been delivered before Z. N. Galeba JUDGE, today the 25th September 2020 in the absence of parties but with leave not to attend. Mr. Jovian Katundu, RMA is present. A party aggrieved has a right of appeal, subject to the law, to the Court of Appeal of Tanzania. Z. N. Galeba JUDGE 25.09.2020
7
-

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.tanzlii.org/media/judgment/209382/source_file/joseph-mahindi-vs-nzota-daudi-2020-tzhc-2550-25-september-2020.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/joseph-mahindi-v-nzota-daudi-Commencementofproceedings-tzhc-2020--6a3ea52a3b1caa9129822a8c>

Prepared on 13 October 2026 · Esheria