

TANZANIA / JUDGMENT

Martha Dismas vs

COURT
TANZLIIDECIDED
2 February 2025

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA MISCELLANEOUS LAND APPEAL NO. 000005017 OF 2025 MARTHA
DISMAS COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS
FARAJI DONDIDONDI RESPONDENT / DEFENDANT

RULING

NKWABI, J, 03 & 03/04/2025 The appellant is very clear about the grievances she is holding about the ruling of the District Land and Housing Tribunal for Kasulu dated 12th December, 2025 and delivered to the appellant on 02nd day of February, 2025. She outlines those grievances thus:

1. That, the Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and fact in failing to execute the decree of the decision (Judgment) of Murusi Ward Tribunal on account that the suit land was not properly identified and sized while the same was properly identified on the proceedings on the record and hence the same wrongly dismissed the appellant's execution application.
2. That, had the Honourable Chairman of the trial District Land and Housing Tribunal properly re- evaluated the Judgment and proceeding on record, the same would have execute the decision of the trial Ward Tribunal and hence evict the respondents from the suit land since their appeal against the said Land Case No. 07 of 2021 of Murusi Ward Tribunal was dismissed.
3. That, alternatively, Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and fact when he failed to execute its administrative power vested to him by rule 23(2),(3) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 and section 16(3) of Land Disputes Courts Act Cap 216 R.E 2019 in executing the decree of ward tribunal against the respondents while as per trial records the appellant was declared a Page. 1 legal ownership of the suit land measuring one half (1½) acres and the respondents were ordered to pay appellant a total of T.shs. 185,000/= as costs incurred by the appellant in prosecution of the said Land Case No. 07 of 2021. It is from those outlined grievances, the appellant is asking this Court to avail her with there reliefs I emulate:

1. This appeal be allowed with costs.
2. The decision of the District Land and Housing Tribunal be reversed and the appellant be declared the legal owner of the suit land.
3. Alternatively, the proceedings and judgment of the District Land and Housing Tribunal in the Misc. Land Application No. 46 of 2022 be nullified and the application be heard denovo by the District Land and Housing Tribunal so that the same could grant the execution order against the respondents or the respondents be ordered by this Honourable Court to vacate from the suit land.
4. Any other reliefs to be granted in favour of the appellant by this Honourable Court. When I cross-checked the petition of appeal that was lodged in this Court by the appellant through eCMS, I noted that the drawn order sought to be appealed against had not been annexed thereto. The situation jogged my mind about the decisions in *Petrolube Tanzania Limited & Another v. Fuchs Oil Middle East Limited*, Civil Application No. 58/16 of 2023, CAT, *Inter-Consult Limited v. Mrs. Nora Kassanga & Another*, Civil Appeal No. 79 of 2015, CAT and *Ngoni Matengo Co-operative Marketing Union Limited v. Ali Mohamed Osma* [1959] E.A. 577 where in the latter decision it was pressed home that: “In the present case therefore, when the appeal came before the court, it was incompetent for lack of necessary decree ... this court, accordingly, had no jurisdiction to entertain it, what was before the court being abortive and not properly constituted appeal at all. What this court ought to have done in each case, was to ‘strike out’ the appeal as being incompetent, rather than to have dismissed it; for the latter phrase implies that a competent appeal has been disposed of while the former phrase implies that there was no proper appeal capable of being disposed of.” [Emphasis added]. The position in *Osma’s* was re-echoed in *Petrofuel (T) Limited v. Bahdela Company Limited*, Civil Appeal No. 318 of 2020, CAT, dated 21/02/2025. When I called upon the appellant to address me on the matter, she was not able to afford the Court with any useful argument, no wonder, she is a laywoman at law. Page. 2 After everything, I should state here palpably that the rationale for ruling, incompetent, a matter which is lodged before a court of law or tribunal where decree not attached, is to check against entertaining an application or an appeal where the decree could be bearing a name of a stranger to that is in the original suit, which would lead the decision in an appeal or application to be quashed and its orders set aside. See *Stanslaus Nganyagwa v. Seif Hamoud & Another*, Civil Application No. 110/2 of 2017 (CAT) dated 20/04/2018 (unreported), though in an application for stay of execution, the Court stated that: “In view of the concession made by the parties on the matter raised by the Court suo motu, we find the application before us incompetent for failure to attach a copy of ... and decree from the High Court’s decision. In the circumstances, we are constrained to find no competent application before us. ...” It is overused law that access to justice does not mean the mere filing of pleadings and paying the required court fees, but it also includes the right to present one’s case or defence before the courts as explicitly held in *Julius Ishengoma Ndyabo v. Attorney General* [2004] T.L.R. 14 CAT. With the above observations, I rule that the appeal is incompetent for the

reason provided herein above. As to the way forward, I am backed by the authority of MIC Tanzania Ltd v. Minister for Labour and Youth Development & Another, Civil Appeal No. 103/2004, (CAT), where it was brought to the fore that: The nothingness of incompetent proceedings was underscored by this Court in the case LEONSI SILAYO NGALAI V HON. JUSTINE ALFRED SALAKAMA AND THE ATTORNEY GENERAL, CIVIL APPEAL NO 38 OF 1996 (unreported) This court said: ... The second aspect is whether this Court may adjourn an appeal which is incompetent, in order to allow the appellant to take necessary steps to cure the incompetency. This court has said it before that an incompetent appeal amounts to no appeal. It follows therefore that the court cannot adjourn what it does not have. Under such circumstances, what the court does is to strike the purported appeal off the register (emphasis is ours). So as there was no application before the High Court, according to the ruling of the learned judge, it was an exercise in futility to purport to determine it on the merits. No valid and enforceable orders could be made in application which was not before the High Court. Page. 3 Thusly, I strike out the appeal off the Court's register. As the ruling is based on a matter raised by the Court suo motu, and the respondent has not appeared yet, I make no order as to costs. It is so ruled. Dated at KIGOMA this 3rd of April 2025 . J. NKWABI JUDGE OF THE HIGH COURT Page. 4

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