THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT – LAND DIVISION

(MUSOMA SUB REGISTRY)

AT MUSOMA

LAND APPEAL No. 63 OF 2022

(Arising from the District Land and Housing Tribunal for Mara at Musoma in Land Application No. 106 of 2022)

GINAI BANGIRI ..... APPELLANT

Versus

1. KISIBIRI WARIOBA
2. SONGA LUSHONESHA ..... **RESPONDENTS**

JUDGMENT

31.05.2023 & 01.06.2023

Mtulya, J.:

The record of the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Land Application No. 106 of 2022** (the application) conducted on 5th September 2022, in brief, displays the following proceedings:

> ***Wakili Manyama:*** *ninamwakilisha Mjibu Maombi Na. 1. Shauri linakuja kwa kutajwa.*
>
> ***Mjibu Maombi Na. 2:*** *Nyaraka nilizopewa zimeandikwa kwa kiingereza. Hivyo nimeshindwa kuandika majibu.*
>
> ***Baraza:*** *Shauri limeletwa kwa lugha ya kiingereza bila kuambatanisha tafsiri kwa Kiswahili. Shauri linaondolewa kwa gharama.*

The proceedings were taking their courses in the presence of all parties tangled in the application, *viz*: **Ginai Bangiri** (the appellant), **Kisibiri Warioba** (the first respondent) and **Songa Lushonesha** (the second respondent). Besides the parties and Hon. Mr. Chairman of the tribunal, there was an officer of the court named **Manyama**. Immediately after the order of the tribunal, the appellant had instructed **Mr. Baraka Makowe**, learned counsel to lodge **Land Appeal No. 63 of 2022** (the appeal) in this court to complain on the decision of the tribunal for two reasons: first, the right to be heard before the tribunal reached its decision; and second dismissal order before hearing of the merit of the application.

The appeal was scheduled yesterday afternoon for the complaints hearing. During the hearing, Mr. Makowe registered a bundle of questions for this court to reply. I will display them for purposes of appreciation of the appeal: first, whether the appellant was afforded the rights to be heard; second, whether award of costs was necessary in the circumstance of the application; third, whether there were reasons for the decision in the record; fourth, whether words: *shauri hili linaondolewa* is equivalent to English words *this application is marked dismissed*; whether pleadings drafted in English and filed in the tribunal are

fatal and incurable; fifth, whether rejection of applications can be done at any stage of the proceedings; sixth, who does the authentic translation of *Kiswahili* language; and finally, who decides the interest of justice to the parties and at what stage of proceedings.

According to Mr. Makowe, this court may consult the aids in the authorities of: **Written Laws (Miscellaneous Amendment) Act No. 1 of 2021** (the amending Act); **The Interpretation of Laws Act** [Cap. 1 R.E. 2019 (the Act); **The interpretation of Laws (Use of English Language in Courts) (Circumstances and Conditions) Rules**, GN. No. 66 of 2022 (the Rules); and precedents in **George Mbuguzi & Another v. A.S. Masikini** [1980] TLR 53 and **Ibrahimu Pius Kagansha & Another v. Bera Karumba** & Another, Land Appeal No. 8 of 2022.

In brief, the opinion, of Mr. Makowe, the appellant was supposed to be afforded the opportunity to be heard before the application was dismissed, and in any case, the application was not determined on merit to attract dismissal order. Mr. Makowe submitted further that the Rules are silent on the stage in which pleadings in English language may be rejected, struck out or dismissed. Regarding the precedent in **Ibrahimu Pius Kagansha & Another v. Bera Karumba** (supra), Mr. Makowe cited page 10

of the Ruling contending that there is no mandatory requirement of the use of *Kiswahili* language in our courts.

Replying the submissions, **Mr. John Manyama,** learned counsel for the first respondent submitted that the amending Act inserted section 84A in the Act and acting on the amendment the Chief Justice of Tanzania had enacted the Rules to require litigants to file their suits in court by use of English language with their corresponding translation in *Kiswahili* language. In his opinion, bringing of suits in English language in courts of law or land tribunals must be accompanied by *Kiswahili* language translation at the filing stage, and not at any other stage of proceedings. According to Mr. Manyama, the application was struck out for want of the second version of *Kiswahili* language, and it was not dismissed as contended by Mr. Makowe.

Mr. Manyama submitted further that the parties in the suit were *Kiswahili* speakers hence the translation of *Kiswahili* language was necessary to enable the second respondent to prepare written statement of defence in Kiswahili language. According to Mr. Manyama, the Rules provides for exceptions for any litigants who so wish to conduct proceedings in English language, but the appellant did not comply. In support of the

move Mr. Manyama cited the authority in Rule 4 (1) (a) & (b) and the Schedule to the Rules.

Regarding the right to be heard, Mr. Manyama submitted that the appellant was not denied the right to be heard, but was ordered to bring two (2) documents of two (2) versions in English and *Kiswahili* to have his application heard. Finally, Mr. Manyama stated that the doors of the tribunal are still open for the applicant to access, provided he complies with the Rule 4 (1) (a) of the Rules.

In a brief rejoinder, Mr. Makowe submitted that there is no where in the record where the words struck out were displayed. Similarly, Mr. Makowe stated that the record is silent on Rule 4 (1) (a) of the Rules as the reason of arriving into the order. According to Mr. Makowe, the words are from the bar, and not the record of the tribunal. In his opinion, even if that was the reason, the indicated Rule does not provide for *Kiswahili* speakers or indigenous persons. Mr. Makowe submitted further that even if they were *Kiswahili* speakers, the record lacks necessary materials to substantiate the allegation.

According to him, all that would have been replied, if the tribunal had afforded the appellant the right to be heard during

the proceedings, as the appellant had already enjoyed admission of his application in the tribunal.

Finally, Mr. Makowe submitted that it is not a sin for applicants to bring their applications in the tribunal by use of English language, and that it will be breach of the Rules when they fail to produce relevant materials in favor of the English version pleadings, and that will be resolved after the right to be heard has been fully exercised by applicants.

I have consulted the record of the present appeal and cited authorities in statute and precedents. It is true that in mid-2021 the amending Act was enacted by our Parliament and came into force on 9th July 2021. Section 4 of the amending Act amended section 84 of the Act whereas section 5 had inserted new section 84A. Section 84 (1) now reads, in brief, that: *the language of the laws of the United Republic of Tanzania shall be Kiswahili*, whereas section 84A (1) reads, in brief, that: *the language of courts, tribunals and other bodies charged with duties of dispensing justice shall be Kiswahili.*

The enactment came up with exceptions and powers to the Chief Justice of Tanzania. The exceptions are enacted in section 84A (2) of the Act where English language is invited for interest

of justice, translations into Kiswahili and taking precedence of the enacting language in statutes. Section 84A (5) of the Act on the other hand empowers the Chief Justice to make rules for better carrying out of the provisions in subsection 2, 3 and 4 of section 84A. For purposes of this judgment, the words: *for better carrying out of the provisions in subsection 2, 3 and 4* are underlined.

Following the enactment of the amending Act and amendment in the Act, the Chief Justice moved in and enacted the Rules *for better carrying out of the provisions in subsection 2, 3 and 4*. The Rules were enacted by the Chief Justice on 4th February 2022. According to the available interpretation at page 5 of the Ruling in **Ibrahimu Pius Kagansha & Another v. Bera Karumba** (supra), the Rules apply to all courts and tribunals, including the District Land and Housing Tribunals.

Rule 4 (1) (b) the Rules provides, in brief, that: *a party who intends to initiates proceedings, shall file his pleading in English language with their corresponding translation in Kiswahili language*. This court when interpreting the Rule at page 9 of the Ruling in **Ibrahimu Pius Kagansha & Another v. Bera Karumba** (supra), thought that: *there must be two copies, one in English*

and another in Kiswahili, and at page 10 of the Ruling, this court ruled that: *we must proceed to file our pleadings in English with their Swahili until such time when the laws, books and law reports will be available in Kiswahili.*,

On the other hand, this court in the precedent of **Julius Kweba & Two Others v. The Registered Trustees of Seventh Day Adventist Church**, Land Appeal No. 76 of 2022, believed, at page 7 of the Ruling that: *the rule does not state in all circumstance must be filed in English with a translated version of Kiswahili.*

The reason of the second school of thought is found at page 7 in the decision of this court in **Zaid Jumanne Zaid v. Pili Rajabu Abdallah**, Land Appeal No. 9 of 2022, that:

> *...presentation of so called sababu za rufaa which is not known whether the same is a petition or memorandum of appeal makes the appeal incompetent before this court. pleadings, proceedings, judgment and the laws governing procedures and practice are in English language...the applicable laws are in English...*

According to the court in the indicated precedent of **Zaid Jumanne Zaid v. Pili Rajabu Abdallah** (supra), the purpose of

arriving into the decision is to minimize conflicting construction of the terms by judicial officers. In the present appeal the same confusion is contested on the *Kiswahili* words: *shauri linaondolewa kwa gharama*. According to Mr. Makowe's interpretation, the phrase means *the application is dismissed with costs*, whereas Mr. Manyama thinks that the expression means *the application is struck out with costs*.

However, the words cannot detain this court on the subject as there is already precedent in **Jaribu Waikori Mwita v. Rock City Takers Ltd & Two Others**, Misc. Land Appeal No. 67 of 2022 which had resolved, at page 2 of the Ruling, all matters which are not resolved on merit receive struck out orders and may be refiled in accordance to the law. Therefore, it is not *Kiswahili* words employed by learned chairmen of land tribunals, as to whether the words are *shauri hili limeondolewa* or *shauri hili limetupiliwa mbali* or *even shauri hili limekufukuzwa*. It is a stage in which the application ends by the tribunals' orders, save for few peculiar circumstances which are resisted for want of proper application of specific laws.

The thinking has received a bunch of precedents of this court without any reservations (see: **Theotimo Itanisa & Another**

v. Godwin Rugomolo, Misc. Civil Application No. 13 of 2018; **Gisela Godfrey Mosha v. M/S Sidai Select Safari & Two Others**, Land Appeal Case No. 38 of 2021; **Respicius Emilian Mwijage v. The Municipal Director & Two Others**, Land Case No. 27 of 2021; **Dora Muhoni v. FINCA Tanzania Limited**, Misc. Land Case Application No. 199 of 2020).

Similarly, there is a barrage of decisions of the Eastern African Court of Appeal and our Court of Appeal in support of the move (see: **Ngoni Matengo Cooperative Marketing Union Ltd v. A.M Mohamed Osman** (1959) EA 577; **Ramadhani Beka v. Republic**, Criminal Appeal No. 349 of 2016; and **Francis Petro v. Republic**, Criminal Appeal No. 534 of 2016. In the precedent of **Ramadhani Beka v. Republic** (supra), the Court observed that:

> *...in our view, upon finding that the appeal was incompetently before the High Court, the first appellate judge should have struck out the incompetent appeal instead of dismissing it as she did...In Eastern African Court of Appeal...it was stated that the High Court ought only to have struck out the appeal so that the appellant could process it again according to law. The dismissal of the appeal by the High Court curtailed the appellant's right to process*

his appeal according to law. Hence, the order of dismissal was illegal which we hereby quash and set aside.

In the present appeal, the record is obvious that the application was not resolved on the merit of the matter hence struck out order was appropriate. However, I am very much aware of the indicated confusion in precedent in **Zaid Jumanne Zaid v. Pili Rajabu Abdallah** (supra) regarding absence of translations of statutes into *Kiswahili* words. I am equally conscious on the concern of this court in precedent of **Julius Kweba & Two Others v. The Registered Trustees of Seventh Day Adventist Church** regarding English versions of land laws and mindful of the thinking in the decision of **Ibrahimu Pius Kagansha & Another v. Bera Karumba** (supra). I also understand the confusions brought in by use of *Kiswahili* words in courts' proceedings on *shauri limeondolewa*, *shauri limefukuzwa*, *shauri limefutwa* and shauri *limetupiliwa mbali* on one hand and understanding of the *Kiswahili* words by judicial officers on the other (see: **Singida Sisal Products & General Supply v. Rofal General Trading Limited & Four Others**, Commercial Review No. 17 of 2017; **Yahya Athuman kises v. Hadija Omari Athuman &**

Two Others, Civil Appeal No. 105 of 2014; and **Gisela Godfrey Mosha v. M/S Sidai Select Safari & Two Others** (supra).

However, the confusions may be cured in favor of justice, which courts of law are entrusted to deliver. The role of our courts is to dispense justice to the parties as enacted under article 107A (1) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution). Similarly, there is a confusion on appropriate stage where an application brought in the tribunal by use of English language may be rejected, struck out or dismissed for want of the second language. The reply on the subject is found in section 84A (5) of the Act on the underlining words, and not in the exceptions available in the Schedule to the Rules.

The underlining words are: *for better carrying out of the provisions in subsection 2, 3 and 4.* The question therefore is not a language used or stage in which an application can be either rejected or struck out. The issue is whether there is better carrying out of the business of the tribunal aiming at arriving justice to the parties, and not the words used or rejection stage.

Justice in courts or tribunals is arrived when there is fair trial to all contesting parties. Fair trial means all contesting

parties are treated equally during court's proceedings. According to the Court equality before the law is part of the right to be heard (see: **Oysterbay Villas Limited v. Kinondoni Municipal Council & Another**, Civil Appeal No. 110 of 2019).

The right to be heard is a natural justice and currently moved to constitutional right enacted in section 13 (6) (a) of the Constitution. The right is now elevated to the level of human right by the Court in a barrage of precedents (see: **Judge In-Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44; **Mbeya Rukwa Auto Parts and Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251; **Tanelec Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018).

The right to be heard cannot be easily ignored, whether an applicant brings an action by use English or *Kiswahili* version of pleadings. Land tribunals cannot decide on their own whether to reject or strike out an application without inviting all parties in the dispute to cherish the right to be heard on complained pleadings. The Court has well resolved in the precedent of **Christian Makondoro v. Inspector General of Police & Another**, Civil Appeal No. 40 of 2019, that:

Thus, consistence with the constitutional right to be heard as well as settled law, we are of the firm view that the adverse decision of the trial judge to reject the suit on account of lacking jurisdiction without hearing the parties is a nullity and it was in violation of the basic and fundamental right to be heard.

In the present appeal the question is whether the tribunal in the application had afforded the appellant the right to be heard before rejecting or striking out the application. The reply is vivid on the proceedings of 5th September 2022 that the appellant was not invited to say a word or two after the second respondent's complaint on want of *Kiswahili* language on the pleadings. According to the Court in the precedent of **Christian Makondoro v. Inspector General of Police & Another** (supra), such proceedings are null and void for want of the basic and fundamental right to be heard.

In my considered opinion, and being armed with the indicated precedent in **Christian Makondoro v. Inspector General of Police & Another** (supra), and noting the breach of the fundamental principle of the right to be heard, I am not positioned to reply other questions raised by Mr. Makowe. There is nothing upon which the remaining questions can be replied by

this court, unless there are good reason to resolve the issues. In my considered opinion, that would be an academic exercise, which cannot detain this court to do so.

Consequently, the tribunal's orders and proceedings of 5th September 2022, are set aside and direct the case file to be returned to the tribunal and placed before Hon. Chairman to resolve the application in accordance to the law. This appeal is therefore allowed without costs as the fault was caused by the tribunal and the dispute is on the course.

Ordered accordingly.

F.H. Mtulya

Judge

01.06.2023

This Judgment was pronounced in Chambers under the Seal of this court in the presence of **Mr. Baraka Makowe,** learned counsel for the appellant and in the presence of **Mr. John Manyama**, learned counsel for the first respondent.

F. H. Mtulya

Judge

01.06.2023