

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**LAND APPEAL NO. 22 of 2019**

*(Arising from the Shinyanga District Land and Housing Tribunal Land Application No.43 of 2016)*

**JOSEPHAT KASHINJE.....APPELLANT**

**VERSUS**

**ELISHA TUNGU.....RESPONDENT**

**RULING**

15<sup>th</sup> October & 6<sup>th</sup> November, 2020

**Mdemu, J.;**

The Respondent herein one Elisha Tundu, filed Land Application No.43 of 2016 in the District Land and Housing Tribunal at Shinyanga in order for the tribunal to order and declare him lawful owner of the land located at Nyamalogo area. The trial tribunal heard parties in that application and on 23<sup>rd</sup> August, 2019, declared the Respondent a lawful owner of the said land.

The Appellant, unsatisfied with the decision of the trial tribunal, lodged the instant appeal on the following grounds:

*(1) That, the learned chairman erred in law and facts when he failed to analyze properly submission of the Appellant during the hearing of Application No.43 of 2016.*

*(2) That, the learned chairman erred in law and facts when he failed to realize the fact that, once a mortgage always is a mortgage.*

*(3) That, the learned chairman erred in law and facts when he dealt with the dispute for the land whose boundaries are undefined.*

*(4) That, the learned chairman erred in law and facts when he dealt with the dispute of contract which the said chairman had no jurisdiction.*

The Respondent, on being served the petition of appeal, raised a preliminary objection challenging competence of the appeal on the following ground:

*That, the memorandum of appeal is incurably defective as it is improper and incorrect.*

At the hearing this preliminary objection on 15<sup>th</sup> of October, 2020, the Appellant was represented by Mr. Frank Samweli, Learned Advocate whereas the Respondent appeared in person.

In addressing the preliminary point of objection, the Respondent submitted that, the appeal was filed by one "George Saku" while the Appellant herein is one "Josephat Kashinje". To him, the appeal is incompetent because the said "George Saku" was not a part to the dispute in District Land and Housing Tribunal. He added further that, the grounds of appeal are also coached from a preliminary objection and not the land main case, and therefore, the same may not be appealable.

In reply, Mr. Frank Samweli conceded that, there are two different names in the memorandum of appeal. He submitted that, in the memorandum of appeal words

*JOSEPHAT KASHINJE.....APPELLANT*

*VERSUS*

*ELISHA TUNGU.....RESPONDENT*

*MEMORANDUM OF APPEAL*

*I GEORGE SAKU having been aggrieved with the decision of Shinyanga District Land and Housing Tribunal in Application No.43 of 2016 dated 23<sup>rd</sup> August,2019 hereby appeals against the said ruling on the following grounds;"*

According to the quotation in the memorandum of appeal above, one George Saku introduced himself as the Appellant. However, in the judgement and decree of the District Land and Housing Tribunal, the Respondent was Josephat Kashinje. In this, it is my considered view that, "George Saku" and "Josephat Kashinje" are two different persons. To me, this is fatal and may have prejudicial consequences in the course conducting the appeal proceedings and the resultant judgement and decree thereon.


Mr. Frank fronted an argument that, the inserted name of "George Saku" is a result of typographical errors. With due respect to the learned Counsel, this is a total misapprehension of the stuff ahead of him. In my view, a typographical error, which is oftenly referred to as misprint, is a mistake (such as spelling mistake) made in the typing of printed (or electronic material), may note take the shape emphasized by the learned counsel. That could have been possible had the name of Josephat Kashinje been misspelled.

I have also considered the fact alluded by Mr. Frank that, parties in the impugned judgment, decree and the title to the memorandum of appeal are the same. Notwithstanding, the phrase "George Saku" who is not a part to the impugned judgement and decree to be aggrieved by the decision, may not be left unchecked.

As submitted above, they carry more weight such that, they are incurable even when the principles of overriding objectives have a place in it.


Having said so, this appeal is incompetent as the preliminary objection is sustained. In the end result, I hereby struck out the appeal with leave to refile within 45 days from the date of this ruling. The Appellant to bear costs.

It is so ordered.

  
\_\_\_\_\_  
**Gerson J. Mdemu**  
**JUDGE**  
**6/11/2020**

**DATED** at **SHINYANGA** this 6<sup>th</sup> day of November, 2020.



  
\_\_\_\_\_  
**Gerson J. Mdemu**  
**JUDGE**  
**6/11/2020**