

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC. LAND APPEAL NO.82 OF 2021

(Originating from Kihanga Ward Tribunal Land Case No.22 of 2019, Karagwe District Land and Housing Tribunal (DLHT), Land Appeal No.61 of 2019, at Kayanga.)

JOVIN THEONEST..... APPELLANT

VRS

KANISA KATOLIKI- KATANDA..... RESPONDENT

JUDGMENT

31/03/2022 & 02/05/2022

JovinTheonest, the appellant herein has now filed this appeal challenging the decision of the Karagwe District Land and Housing Tribunal (Henceforth the DLHT) which struck out his appeal for incompetency reasons.

The facts giving rise to the matter can be briefly recapitulated as follows; The respondent to wit; Kanisa Katoliki Katanda successfully sued the appellant at the Kihanga Ward Tribunal in Karagwe District on the dispute of land ownership. Being not amused with that decision, the appellant appealed to the DLHT armed with seven grounds. Among those grounds which are not necessary to reproduce here, one was on complaint that the respondent had no locus standi to sue at the Ward Tribunal as Kanisa Katoliki was a non-existing legal entity. The ground was conceded outrightly by the respondent's counsel who appeared at the DLHT and who opted not to file Written Statement of Defence. For

the reasons which will be availed later, the DLHT could not determine that objectionable ground on the point of law and instead extended the period to file a WSD which came with a preliminary objection (P.O) which was sustained and the appeal was struck out for being incompetent hence the current appeal with the following grounds:-

- (1) That, the trial Chairman erred in law by not nullifying proceedings of the trial Ward Tribunal as the party who initiated proceedings to wit KANISA KATOLIKI KATANDA does not exist in law due to the facts that the only legal person with the locus standi is the Registered Trustee of Kayanga Catholic Diocese.*
- (2) That the trial chairman erred in law and facts by ruling that the appeal before it was incompetent for lacking relief sought while the same was enunciated in the same appeal.*
- (3) That, the trial chairman erred in law and facts when determining a case without affording the appellant his fundamental right to be heard.*

The respondent prayed for the following reliefs:

- (1) An order quashing the decision of the District Land and Housing Tribunal with directives that the said appeal be heard on merits; in ALTERNATIVE*
- (2) An order quashing the whole proceedings of both tribunals as the case before trial tribunal was initiated by non-existing legal person.*
- (3) Costs of this appeal to follow the events.*
- (4) Any other reliefs this honourable court may deem fit to grant.*

At the hearing the lay person stood himself without any legal representation thus he found himself butting on the third ground of appeal only where he threw a blame to the DLHT for not giving him right to be heard as the matter was heard *ex-parte*. He had no more relevant elaborations pertaining to the filed grounds of appeal.

Replying on the submission and grounds raised by the appellant, Advocate Kweyamba told this court that the decision which is now impugned was not heard on merit save that it was struck out for being incompetent. He was of the view that this court lacks jurisdiction on grounds which were not heard by the DLHT. That since the appellant was complaining that he was not heard on the proceedings which resulted to ex-parte decision, he was supposed to make an application to set aside ex-parte judgment on the same Tribunal. He cited **National Microfinance and Another vs Steven Nkaina Marwa**, Land Appeal No. 9 of 2020 HCT at Mwanza (Unreported).

He extended his submission in reply that the DLHT rightly struck out the matter after rightly sustaining the objection raised. He elaborated that the petition of appeal filed by the appellant at the DLHT had no specific relief. He referred me the cases of **Chama cha Msingi cha mazao Mubunda versus Abel Baguma**, Land Case Appeal No.32 of 2017, HCT at Bukoba (Unreported), **Andrea Mushongi versus Charles Gabagambi** Land Appeal No.65 of 2018 HCT, at Bukoba (Unreported) and **Anastazia Kapongo versus Zabina Said Kanyowa**, Land Appeal No. 60 of 2009, HCT at Mwanza which held that appeal with no specific relief is incompetent.

In rejoinder, the appellant submitted that he was always appearing in court. That was end of the submissions of parties.

Before I venture in determining the grounds of appeal filed in this court and the submissions for and against thereon, I felt I would address one pertinent issue which I have observed apparently from the record of the two lower tribunals. I took that move so that this court may not sail in the same boat with the two lower tribunals but more or less similar, the purpose is to avoid wastage of time by proceeding with the matter which may later on be found that it was **nullity ab initio**.

Right from the beginning of institution of this suit at the Ward Tribunal, the plaintiff (respondent herein) who sued the appellant herein was **"Kanisa Katoliki Katanda"** which in law is non-existing legal entity with no legal capacity to sue or be sued. To nail it up sufficiently, it implies that the said respondent has no *locus standi* and thus has no right or interest whatsoever to benefit the fruits of the decree in case it is decreed. The case of **Lujuna Shubi Balonsi Snr vs Registered Trustees of CCM** [1996] TLR, 203, well stated the principle of *locus standi* that:

"Locus standi is governed by Common Law, according to which a person bringing a matter to court should be able to show that his rights or interest has been breached or interfered with."

In that regards and in my firm view, the proceedings at the Ward Tribunal were void ab initio and therefore the District Land and Housing Tribunal ought to have declared a nullity even by itself *suo moto* after registering the appeal and possibly at the first day it came for mention. The case of **Kanisa la Anglikana Ujiji versus Abel Samson**

Heguye, Labour Revision No.5 of 2019 HC at Kigoma (Mugeta, J) held among other things that Anglican Church or its branches **cannot sue** or be sued (emphasis is mine). In **Singida Sisal Production & General Supply versus Rofal General Trading Ltd and 4 others** Commercial review No. 17 of 2017.

"That; non-existing party does not have legs to stand, hands to prosecute, no eyes to see and mouth to speak either on her own or on behalf of any other person before any court of law."

Suits in the names of non-existing parties are rendered a nullity. See **Paul Nyamarere versus UEB**, Civil Appeal No. 27 of 2012.

After the Ward Tribunal had proceeded with a nullity proceedings, ruled in favour of the respondent. The appellant herein being dissatisfied, appealed at the DLHT where in his petition of appeal, one of his grounds was that the Kanisa Katoliki Katanda does not exist in law as a person with the locus standi was **"the Registered Trustees of Kanisa Katoliki Kayanga Diocese Katanda."** The respondent after being served with the petition of appeal, appeared being represented by the learned counsel and conceded to the first ground outrightly. Let the record speak for itself:

Date: 25/10/2019

CORAM

J.K. Banturak: Chairman

Amina/C

Members:

Appellant: Present

Respondent: Represented by Advocate Kweyamba and Novat Laulian.

ADVOCATE KWEYAMBA

Your honour I am representing the respondent but we have not filed the reply. But having gone through the petition of appeal I have found out that the 1st ground has merit because the one supposed to sue was Registered Trustees of Roman Catholic Church and not Kanisa Katoliki-Katanda. We pray the proceedings of the Ward Tribunal be quashed for want of locus standi by the respondent.

Sgd: J.K. Banturaki

Chairman

25/10/2019

RESPONDENT

I object the prayer your honour, I want the matter be heard on merit both sides be heard and no like this.

SDG: J.K. Banturaki

Chairman

25/10/2019

ADVOCATE KWEYAMBA

We wanted to serve(sic) the court's time your honour, but if that is the case, we pray to given(sic) more time to file the reply.

SGD: J.K. Banturaki

Chairman

25/10/2019

ORDER

The reply be filed within 14 days, mention on 11/12/2019....."

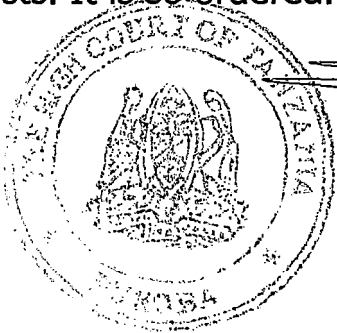
In my view, since the respondent's counsel had conceded the ground which touched on the point of law and since the learned counsel had prayed for the proceedings of the Ward Tribunal to be nullified due to that anomaly, the DLHT was thus legally bound to have declared the proceedings of the Ward Tribunal null and void and proceed to quash as they could in any way not be left to stand. Unfortunately, the Chairman failed to rule out on that objectionable ground first and instead he fell in the trap of the lay man's view who wanted the appeal to proceed and be dealt on merit. It is trite that once a point of law is raised has to be

determined first so as to save time of the court. The order by the DLHT to have proceeded and granted the respondent a leave to file a reply upon which another objection was raised in the reply to the petition of appeal which was that the petition of appeal did not disclose the specific relief and by sustaining it which resulted into striking out the appeal for incompetence was also a nullity because the first point of law concerning the proceedings which were initiated by non-existing entity remained undetermined. It is trite and needs not to be proved by any evidence that Kanisa Katoliki is non-existing entity and hence with no locus standi because the legally known entity is **"the Registered trustees of Kanisa Kayanga Diocese"**.

I am alive that the appeal before the DLHT was not heard on merit and finally was struck out for incompetency and that the possible remedy was for appellant to file afresh his appeal. But I asked myself if this court directs the appellant to return and file his appeal to the DLHT while it is apparent that the proceedings of the Ward Tribunal were nullity, will that not be wastage of time and resources to tribunal and parties as they will be engaging on a nullity proceeding, the act which this court is not ready to condone because doing so is the abuse of court process in the administration of justices. In other words, this court cannot shut its eyes on the said apparent anomaly.

In the event, I am constrained to invoke my revisional powers under section 43 (1) (b) of the Land Disputes Act Cap 216 R: E 2019 to nullify the whole proceedings of both lower tribunals, quash and set aside the decision of the DLHT and that of the Ward Tribunal and orders emanating therefrom. Parties are at liberty to institute application afresh if they so wish to the tribunal with competent jurisdiction subject to the

prevailing laws of the land. Given the circumstance of this case, I order no costs. It is so ordered.

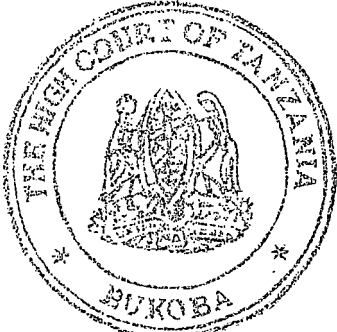



E.L. NGIGWANA

JUDGE

02/05/2022

Judgment delivered this 2nd day of May 2022 in the presence of both parties in person, Mr. E. M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, BC.




E.L. NGIGWANA

JUDGE

02/05/2022