

**IN THE COURT OF APPEAL OF TANZANIA
AT TABORA**

(CORAM: MWANDAMBO, J.A., FIKIRINI, J.A. And NGWEMBE, J.A.)

CIVIL APPEAL NO. 431 OF 2022

HARUNA SHABANI..... APPELLANT

VERSUS

MOHAMED MUTABAZI1ST RESPONDENT

SHABANI ABDALLAH.....2ND RESPONDENT

RAMADHANI ABDALLAH.....3RD RESPONDENT

**(Appeal from the decision of the Resident Magistrate’s Court of
Tabora at Tabora)**

(Nsana, SRM. Ext. J.)

dated the 22nd day of July, 2021

in

Misc. Land Appeal Case No. 13 of 2021

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JUDGMENT OF THE COURT

3rd & 6th June, 2024

MWANDAMBO, J.A.:

We have found it desirable to preface our decision with the old adage extracted from Alexander Pope’s 1732 Poem; An Essay on Man: “*Hope springs eternal in every human breast*” which simply means that even in the worst of times, there is always hope and to have faith that things will work out. The facts in this appeal mirrors the adage as will become to light shortly.

The appellant was, up to 1974, a Resident of Ikindwa Village, Mtendeni Ward in Tabora District before he was relocated to another place called Kiloleni following operation Vijiji in that year. Twenty-one years later, in 1995 to be exact, the appellant sought to return to his former village (Mahame) in the hope of recovering his land only to find it being occupied by other persons including the respondents. As he could not easily recover that land, the appellant lodged a complaint before Mtendeni Ward Tribunal vide Land Application No. 12 of 2017. He partly succeeded before that tribunal which ordered the respondents to relinquish 1½ acres to the appellant. However, that decision appears to have been subsequently challenged by one of the respondents and quashed by the DLHT resulting into the filing of a fresh application before Mapambano Ward Tribunal vide Land Application No. 3 of 2019.

The appellant had a partial success before Mapambano Ward Tribunal which made its decision on 13 August 2019. It ordered each of the respondents to part with ¼ acre of the land they occupied to the appellant. Dissatisfied, the appellant appealed to the DLHT for Tabora vide Land Appeal Case No. 60 of 2019. In its decision made on 9 October 2020, the DLHT dismissed the appeal having been satisfied that by operation of

section 15 (1) and (2) of the Village Land Act, the appellant had no right to claim the land in dispute. Consequently, it set aside the Ward Tribunal's decision which had directed each of the respondents to relinquish ¼ acre of land to the appellant as alluded to earlier on.

Aggrieved, the appellant appealed to the High Court in Misc. Land Appeal Case No. 13 of 2021 heard and determined by a Resident Magistrate Court presided over by Nsana, SRM exercising extended jurisdiction. It is remarkable that, although the appeal originated from Mapambano Ward Tribunal, the caption in the petition of appeal reflected at pages 77 and 78 of the record shows that it originated from Mtendeni (Mapambano) Ward Tribunal in Land Application No. 12 of 2017. The same caption is reflected in the judgment of the second appellate court (at page 92 of the record). All the same, the second appellate court upheld the DLHT's judgment and dismissed the appeal.

The dismissal of the appeal by the second appellate court did not deter the appellant from pursuing his right to the land, hence this appeal. Since this is a third appeal, the appellant had to seek a certificate on a point of law from that court fit for the determination of the Court as required by section 47 (2) of the Land Disputes Courts Act. After obtaining

the certificate, he has preferred his appeal upon a memorandum of appeal containing 6 grounds. That was notwithstanding the fact that only one point of law was certified by the Resident Magistrate's Court - extended jurisdiction. Nevertheless, as it will become apparent shortly, the disposal of this appeal turns on an issue outside the grounds of appeal.

The appellant appeared in person during the hearing of the appeal to prosecute his appeal. The respondents were all absent despite notice of the hearing effected through publication in Mwananchi Newspaper on 25 May 2024 pursuant to the Court's previous order made on 26 September 2023. Under the circumstances, hearing proceeded in the respondents' absence in accordance with the provisions of rule 112 (2) of the Tanzania Court of Appeal Rules, 2009.

Before the hearing began in earnest, we drew the appellant's attention to the competence of the appeal in the light of the point certified by the second appellate court seeking a determination on the jurisdiction of Mtendeni Ward Tribunal as alluded to shortly before. Being a lay person, the appellant had little to address the Court. However, he was emphatic that, Mtendeni and Mapambano are distinct wards within Tabora District.

Otherwise, he left it to the Court to determine his appeal on the basis of the grounds in the memorandum of appeal.

Having examined the record, it is common ground that Land Appeal Case No. 60 of 2019 originated from Mapambano Ward Tribunal in Land Case No. 3 of 2019 made on 13 August 2019. Apart from a casual reference to Land Application No. 12 of 2017, the record does not expressly reveal how that application ended before Mtendeni Ward. The nearest we can get is the appellant's statement before Mapambano Ward Tribunal running thus:

"...nilienda kufungua kesi katika Baraza la Kata Mtendeni. Na Baraza lilienda katika mahame hayo na kuona. Na baada ya kuona uhalisia wa hapo na kusikiliza maelezo yetu yote, Baraza hilo [Mtendeni] lilitoa maamuzi ya kuwa nipewe [hekari] moja na nusu. Ndipo mmoja wa wale ninaowalalamikia alijibu na kusema ovyo, mimi niliamua kwenda mahakamani na baada ya kufika na kutoa maelezo yangu, ndipo walisema wanasubiria rufaa yake ifike hapo na siyo mimi nifungue kesi tena. Mlalamikiwa alipofungua kesi niliitwa. Nilipofika niliambiwa natakiwa kuja na kuanza kesi upya. Na ndipo nilirudi tena katika Baraza hili na kufungua kesi tena..."

It is clear from the above that, despite the absence of the case number of the appeal from Mtendeni Ward Tribunal, there was an appeal to the so called court which we presume to have been a DLHT preferred by one of the respondents. It is discernible from the excerpted statement that, the DLHT appears to have quashed the decision made by Mtendeni Ward Tribunal presumably for lack of geographical jurisdiction which resulted in the institution of Land Application No. 3 of 2019 before Mapambano Ward Tribunal.

Nevertheless, for reasons best known to the appellant, he sought to appeal from the DLHT's decision in Land Appeal Case No. 60 of 2019 and labelled it as originating from Mtendeni Ward Tribunal in Land Application No. 12 of 2017. It is glaring that the second appellate court determined the appeal from that perspective notwithstanding the fact that Land Appeal Case No. 60 of 2019 arose from Mapambano Ward Tribunal in Land Application No. 3 of 2019 distinct from Land Application No. 12 of 2017 before Mtendeni Ward Tribunal.

Be it as it may, the appellant's act as shown above and the second appellate court's determination of the appeal originating in Mtendeni Ward tribunal constituted irregularities which permeated all the way to the

application for certification of a point of law. Put it differently, the second appellate court determined an appeal originating from a non-existent case before the Ward Tribunal and certified a point of law for the Court's determination on the jurisdiction of Mtendeni Ward Tribunal which has never been a subject of any appeal before the DLHT in Land Appeal Case No. 60 of 2019. The upshot of the foregoing is that no valid appeal was instituted before the second appellate court from which it could make a decision capable of being challenged on appeal to the Court on the point certified or at all.

The net result is that the proceedings before the second appellate court were a nullity so was the resultant judgment and the subsequent certification of the purported point of law. Accordingly, we are constrained to exercise the Court's revisional power under section 4 (2) of the Appellate Jurisdiction Act, as we hereby do, quash the said proceedings and set aside the ultimate decisions in Misc. Land Appeal Case No. 13 of 2021 for being a nullity. Having so done, the position remains that the decision of the DLHT dismissing the appellant's appeal from the decision of Mapambano Ward Tribunal is still intact since no valid appeal has ever been preferred followed by any decision reversing it. If minded, the appellant is free to

start afresh the appeal process to the High Court from the DLHT's decision dated 9 October 2020.

Since the disposal of the appeal is a result of an issue raised by the Court suo moto and mindful that the respondents did not enter appearance, we make no order as to costs.

Order accordingly.

DATED at **TABORA** this 5th day of June, 2024.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

P. J. NGWEMBE
JUSTICE OF APPEAL

The Judgment delivered this 6th day of June, 2024 in the presence of the appellant who appeared in person and in the absence of the 1st, 2nd and 3rd Respondents, is hereby certified as a true copy of the original.



A handwritten signature in blue ink, appearing to read "J. J. Kamala".

J. J. KAMALA
DEPUTY REGISTRAR
COURT OF APPEAL