

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

(CORAM: NDIKA, J. A., WAMBALI, J.A, And SEHEL, J. A.)

CIVIL APPEAL NO. 317 OF 2019

ILELA VILLAGE COUNCIL.....APPELLANT

VERSUS

ANSAAR MUSLIM YOUTH CENTRE 1st RESPONDENT
KIWAWA KONZO 2nd RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania
at Songea)**

(Fikirini, J.)

**Dated the 4th day of March, 2014
in
Land Appeal No. 7 of 2013**

JUDGMENT OF THE COURT

5th & 7th May, 2021.

SEHEL, J.A.:

This appeal arises from the decision of the High Court of Tanzania at Songea that allowed the 1st respondent's appeal by quashing the decision of the District Land and Housing Tribunal for Mbinga (DLHT) in Land Appeal No. 15 of 2011 and setting aside all orders made therein.

The brief facts of the case so far as they are relevant to the present appeal are such that; on 27th June, 2011 Abubakar Ally

Abubakar, claiming to be the principal officer of the 1st respondent filed an application before the DLHT against the appellant, the 2nd respondent and Nyamako Auction Mart & Court Broker. In that application, the 1st respondent claimed that it bought a house on Plot No. 70757 with the Certificate of Title No. 280818 situated in Mbinga District (the disputed house) through public auction conducted by Nyamako Auction Mart & Court broker on 1st August, 2001. It was alleged that the auction was lawfully conducted following a proclamation of sale issued by the then Regional Housing Tribunal for Ruvuma after the appellant failed to pay the 2nd respondent the decretal sum of TZS. 6,700,000.00 in Land Application No. 35 of 2000 in which an *ex parte* judgment was issued against the appellant. The appellant therefore sought a declaratory order that it was a legal owner of the disputed house, an order for vacant possession and permanent injunction restraining the appellant from any activities at the disputed house and general damages of TZS. 15,000,000.00.

The appellant refuted the 1st respondent's claim by arguing that the *ex parte* judgment was nullified by the Resident Magistrate's Court of

Songea in Miscellaneous Application No. 2 of 2001 due to some irregularities regarding the sale of the disputed house.

After hearing the case, the DLHT was satisfied that, the sale was nullified and further held that in the eyes of the law the 1st respondent had no cause of action against the appellant. It thus dismissed the 1st respondent's application. As to how the 1st respondent would be able to recover its money paid for the purchase of the disputed property, the DLHT ordered the 2nd respondent to pay the 1st respondent the purchase amount of TZS. 9,912,00.00 plus 7% interest per annum.

Dissatisfied with the findings of the DLHT, the 1st respondent through the services of Andrew Rwechungura, learned advocate from C & F Advocates successfully appealed to the High Court.

The High Court in quashing the decision of the DLHT gave the following reasons: -

1. The 1st respondent was not a party in the Miscellaneous Application No. 2 of 2001 whereby the appellant sued the 2nd respondent, Nyamako Auction Mart & Court Broker and Ramadhan Mohamed Swai (a person who was at the auction

and claimed to have purchased the disputed house on behalf of the 1st respondent).

2. The 1st respondent was not afforded an opportunity to be heard.
3. The Resident Magistrate's Court had no jurisdiction to nullify the decision of the Regional Housing Tribunal for Ruvuma. In terms of Regulation 6 (6) of the Rent Restriction Regulation G.N No. 436 of 1990, the jurisdiction of the Resident Magistrate's Court is to execute the decision reached by the Regional Housing Tribunal for Ruvuma.

The appellant was not satisfied with the decision of the High Court. It thus lodged the present appeal advancing five grounds of appeal, namely: -

- 1. That the High Court on first appeal erred in law and fact in entertaining the first appeal by Ansaar Muslim Youth Centre when the latter had no locus standi to appeal as;*
 - a) The said Ansaar Muslim Youth Centre was not a party in the Miscellaneous Application of the District Land and Housing Tribunal of Songea (on pages 134-140 of the record) from which the said appeal in the High Court originated.*

- b) Since the said Ansaar Muslim Youth Centre was registered and incorporated in the Trustees Incorporation Act, Cap. 318 R.E. 2002 only the registered trustees had the right to sue or be sued.*
- 2. That the High Court on first appeal erred in law and fact in holding that Ansaar Muslim Youth Centre were condemned unheard in the said application (on pages 134-140 of the record) when the said centre was not one of the parties to the said application.*
- 3. That the High Court on first appeal erred in law and fact in holding that Ramadhani Mohamed Swai represented the said Ansaar Muslim Youth Centre when he did not show any letter or Power of Attorney, nor did he declare at the auction, to show that he represented the Ansaar Muslim Youth Centre in the purchase of the disputed house.*
- 4. That the High Court on first appeal erred in law and fact in holding that the appellant had not applied to set aside the sale of the house when the appellant had done so in an application that appears at page 134-140 of the record.*

5. That the trial court on first appeal erred in law and fact in holding that the non-joinder of Ansaar Muslim Youth Centre as necessary party renders the appeal incompetent contrary to Order I rule 9 of the Civil Procedure Code [CAP 33 R.E. 2002] which says:-

"No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it."

At the hearing of the appeal, Mr. Hangi Chang'a, learned Principal State Attorney assisted by Francis Rogers, learned Senior State Attorney, Ms. Ansila Makyo, learned State Attorney and Mr. Victor Mkumbe, learned advocate appeared for the appellant, whereas Mr. Frank Ngafumika, learned advocate appeared for the 1st respondent and the 2nd respondent appeared in person, unrepresented.

Mr. Chang'a first adopted the written submissions they had earlier on filed in terms of Rule 106 (1) of the Tanzania Court of Appeal Rules, 2009 and opted to clarify further on the 1st ground of appeal that the 1st respondent had no locus standi either to sue or be sued in Land Case

No. 15 of 2011 and Land Appeal No. 7 of 2013. He contended that according to page 44 of the record of appeal, Abubakar Ally Abubakar said the 1st respondent is an institution registered in 2001 and also Ramadhan Mohamed Swai at page 45 of the record claimed to be a member of the board of trustee of the 1st respondent. With that evidence, the learned Principal State Attorney argued that, pursuant to section 8 of the Trustees Incorporation Act, Cap. 318 R.E 2002 (the Trustees Act) the proper person to sue was "the Registered Trustees" of the Ansaar Muslim Youth Centre and not the 1st respondent. He argued that since the 1st respondent had no standing to sue then the proceedings, judgment and order of the DLHT are a nullity and the proceedings, judgment and order of the High Court arising from a nullity decision are also a nullity. Relying on our decision in **the Registered Trustees of Chama Cha Mapinduzi v. Mohamed Ibrahim Versi and Sons and Another**, Civil Appeal No. 16 of 2008 (unreported), Mr. Chang'a urged us to quash and set aside the two lower courts' proceedings, judgments and orders.

Mr. Rogers took over from Mr. Chang'a and urged us to consider, in the alternative, the remaining grounds of appeal as submitted in the written submissions.

On his part, Mr. Ngafumika opposed the appeal and contended that the wording of section 8 of the Trustees Act does not prohibit a juristic person, like the 1st respondent to sue. He contended that the learned Principal State Attorney misinterpreted the provision of the law. He went on further to argue that the failure to indicate "the Registered Trustees" did not occasion any miscarriage of justice to the parties. He also distinguished the facts of the case in **the Registered Trustees of Chama Cha Mapinduzi v. Mohamed Ibrahim Versi and Sons and Another** (supra) by arguing that in that appeal, the Court dealt with the principle of *res-judicata* and that is why it came to a conclusion that Naibu Katibu Mkuu, C.C.M who was not a party in the previous matter, was not the same person as the Board of Trustees of Chama Cha Mapinduzi (C.C.M). Mr. Ngafumika did not end there, he further submitted that if the Court would find that the 1st respondent had no right to sue, then the two lower courts proceedings, judgments and orders be declared a nullity, quashed and set aside.

The 2nd respondent being a layperson and not conversant with the legal niceties joined hands with the submission made by the learned counsel for the 1st respondent.

In rejoinder, Mr. Chang'a reiterated his earlier submission by contending that by virtue of the holding in **the Registered Trustees of Chama Cha Mapinduzi v. Mohamed Ibrahim Versi and Sons and Another** (supra) the 1st respondent had no right to sue and that only the Registered Trustees has powers to sue and be sued.

We have carefully considered the rival submissions of the three parties and we wish to state that Regulation 3 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations of Government Notice No. 174 of 2003 (the Regulations) governs the procedure of instituting a suit before the DLHT. It provides: -

*"Any proceedings before the tribunal shall commence **by an application filed by an applicant or his representative** upon payment of appropriate fees prescribed in the First Schedule to these Regulations."* [emphasis is added]

The word "representative" had been defined by the Regulations to mean an advocate, or any relative or any member of the household or authorised officer of a body corporate.

It follows from the above provision of the law that a person who has power and authority to initiate proceedings before the DLHT is either an applicant himself or his relative or any member of his household, or an advocate or authorised officer of a body corporate.

As we have earlier on stated, the present appeal originated from Land Application No. 14 of 2011 that was filed by Mr. Abubakar Ally Abubakar who posed as a principal officer of the 1st respondent. The application was brought in the name of Ansaar Muslim Youth Centre of P.O. Box 406, Mbinga. According to pages 44 and 45 of the record of appeal, as rightly observed by the learned Principal State Attorney, Ansaar Muslim Youth Centre was registered in 2001 and one Ramadhan Mohamed Swai said was a member of the Board of Trustees of the Ansaar Muslim Youth Centre. Besides section 3 of the Trustees Act provides for compulsory registration of trusts that hold property for and on behalf of religious, educational, literary, scientific, social or charitable

purposes. In that respect, we are settled in our mind that the 1st respondent was legally registered under the Trustees Act.

The effect of incorporating a body corporate under the Trustees Act is provided under section 8 (1) of the same Act. That section provides: -

"Upon the grant of a certificate under subsection (1) of section 5 the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have: -

- (a) Perpetual succession and a common seal;*
- (b) Power to sue and be sued in such corporate name;*
- (c) Subject to the conditions and directions contained in the said certificate to hold and acquire, and, by instrument under such common seal, to transfer, convey, assign and demise, any land or any interest therein in such and the like manner, and subject to the like restrictions and provisions, as such trustee or trustees might, without such incorporation, hold or acquire,*

transfer, convey therein, assign or demise any land or any interest."

The above section must be read with section 6 (2) of the same Act that requires every body corporate created under the Trustees Act to include in its name the words "Registered Trustees".

Given the fact that the 1st respondent was registered body, its name in the application ought to have read "*The Registered Trustees of Ansaar Muslim Youth Centre*". The reasons behind this are not at all difficult to find. They have been well stated in our decision cited to us by Mr. Chang'a in **the Registered Trustees of Chama Cha Mapinduzi v. Mohamed Ibrahim Versi and Sons and Another** (supra). We do appreciate that in that appeal, we dealt with the principle of *res-judicata*. Nonetheless, its reasoning equally applies to the present appeal. In that appeal we said: -

"Naibu Katibu Mkuu C.C.M is neither a corporate body possessed of the power to sue or be sued nor are the properties of C.C.M vested in him. If anything, he or she is a different person from the Board of Trustees of C.C.M., an incorporated

body on whom is vested the power to manage the properties or any business or investment of C.C.M....The effect of incorporation of the Board of Trustees of C.C.M under the Trustees Incorporation Act, renders it a body corporate by that name with powers to sue and be sued in that corporate name (see sections 8 (1) and 6). Therefore, in law, the Registered Trustees of C.C.M is a separate person with its own legal identity distinct from Naibu Katibu Mkuu C.C.M."

It follows then that, in law, Ansaar Muslim Youth Centre does not legally exist. As such, any order and/or decree issued in the name of Ansaar Muslim Youth Centre will not be executable because the properties of the Registered Trustees of Ansaar Muslim Youth Centre are not vested in the 1st respondent. Furthermore, the 1st respondent does not have powers to transact any business or invest or manage the properties of the Registered Trustees of Ansaar Muslim Youth Centre. Principally, the Registered Trustees of Ansaar Muslim Youth Centre is a

separate legal entity person with its own legal identity distinct from the 1st respondent.

In that respect, the application and the appeal ought to have been brought or filed in the name of the Registered Trustees of Ansaar Muslim Youth Centre by one of the members of the Board of Trustees. We have stated herein that Mr. Abubakar Ally Abubakar who posed as a principal officer of the 1st respondent instituted the application before DLHT. Mr. Abubakar Ally Abubakar being not a member of the Board of trustees of the Registered Trustees of Ansaar Muslim Youth Centre had no authority and power to file the application and the appeal for and on behalf of the Registered Trustees of Ansaar Muslim Youth Centre. It is only members of the Board of Trustees who have powers and mandate to transact in the name of the Registered Trustees of Ansaar Muslim Youth Centre. Since the application before the DLHT was filed by a person who had no authority to bind the Registered Trustees of Ansaar Muslim Youth Centre, we find merit in the first ground of appeal.

Since this ground of appeal alone suffices to dispose of the entire appeal, we shall not venture into determining the remaining grounds of appeal which have been preferred in the alternative.

In the end, we allow the appeal. Consequently, we declare the proceedings, judgments and orders made by the DLHT and the High Court as a nullity. We quash and set them aside with costs.

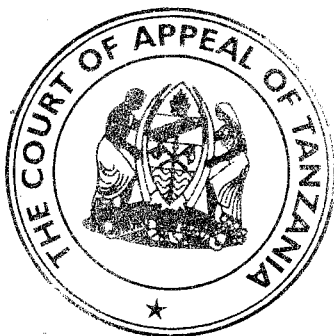
DATED at **IRINGA** this 7th day of May, 2021.


G. A. M. NDIKA
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

The Ruling delivered this 7th day of May, 2021 in the presence of Ms. Ansila Makyao State Attorney, assisted by Mr. Jobu Mwalukosya Legal Officer, Mbinga District Council and Mr. Adinani Hatibu Ramadhani the Diocese Director of Ansaar Muslim Youth Centre, in the absence of the second Respondent is hereby certified as a true copy of the original.




B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL