

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(CORAM: MWAMBEGELE, J.A., LEVIRA, J.A. And RUMANYIKA, J.A.)**

**CIVIL REVISION NO. 2 OF 2020**

**THE REGISTERED TRUSTEES OF MASJID MWINYI ..... APPLICANT**  
**VERSUS**

- 1. PIUS KIPENGELE**
- 2. MOEZ JAFFERALI MORBIWALA**
- 3. THE REGISTRAR OF TITLES**
- 4. THE COMMISSIONER FOR LANDS**
- 5. THE HON. SOLICITOR GENERAL**
- 6. MINISTRY OF LANDS AND  
HUMAN SETTLEMENTS DEVELOPMENT**

] ..... **RESPONDENTS**

**(Application for revision from the Judgment and Order of the High Court of  
Tanzania, at Dar es Salaam)**

**(Mgonya, J.)**

**dated the 29<sup>th</sup> day of April, 2020**

**in**

**Land Case No. 24 of 2019**

-----

**RULING OF THE COURT**

*12<sup>th</sup> September & 23<sup>rd</sup> November, 2022*

**MWAMBEGELE, J.A.:**

The history behind these *suo motu* revisional proceedings is rather chequered. We gave it in our ruling dated 06.08.2021 but for easy reference, we will again give it here, albeit very briefly: when Aziza Omari passed away on 04.07.1991, she left behind two landed properties - House No. 58 standing on Plot No. 32 Block 77 Somali Street, Gerezani, Kariakoo, Ilala District and

House No. 59 standing on Plot No. 17, Block No. 56 Mchikichini, Kariakoo, Ilala District - which are at the centre of controversy of several disputes, the subject of these revisional proceedings. Little did the late Aziza Omari know at her death, that the landed properties she was leaving behind would be the subject of prolonged litigations. While the applicant claims that the two houses were bequeathed to her as *Wakf*, there are other stakeholders who allege the contrary. For the avoidance of doubt, Oxford Dictionary defines the term *Wakf* as "an endowment made by a Muslim to a religion, educational or charitable cause". This will come out clearly in the course of this ruling.

We wish to state at this juncture that these proceedings were triggered by a complaint letter by the applicant to the Chief Justice bearing Ref. No. MSJ/WKF/01 dated 26.05.2020. The letter had the caption:

*"Matumizi Mabaya ya Mfumo wa Mahakama Kutekeleza Dhulma Dhidi ya Mali za Wakfu (Nyumba) Zilizopo Kariakoo Nyumba Na. 58 Kiwanja Na. 32, Kitaiu Na. 77 Mtaa wa Somali, Gerezani Kariakoo, Wilaya ya Ilala Pamoja na Nyumba Na. 59 Kiwanja Na. 17 Kitalu Na. 56, Mchikichini, Kariakoo Wilaya ya Ilala".*

This may literally be translated as:

*"Misuse of the Court Process to Deprive Wakf Landed Properties; House No. 58 on Plot No. 32 Block 77 Somali Street, Gerezani, Kariakoo, Ilala District together with House No. 59 on Plot No. 17, Block No. 56 Mchikichini, Kariakoo, Ilala District".*

Following that complaint letter, the Chief Justice directed that *suo motu* revisional proceedings be opened to look into the legality of the ownership of the landed properties under reference. His Lordship also directed the parties, including the Solicitor General, the Registrar of Titles and the Ministry of Lands and Human Settlements Development, to be notified and heard in the *suo motu* proceedings to be opened.

In compliance with the Chief Justice's direction, these revisional proceedings were accordingly opened. When they were called on for hearing on 09.06.2021 before Mkuye, Wambali and Galeba, JJA, Mr. Godwin Musa Mwapongo, counsel for the second respondent raised a legal concern which was essentially in the nature of a preliminary point of law on the propriety of the revisional proceedings while a notice of appeal to assail the very proceedings under revision was in place. The Court, after hearing all the parties, in its ruling dated 06.08.2021, overruled the legal point by holding

that the proceedings were competently before the Court and ordered the Registrar of the Court to slate the matter for hearing.

When the matter was placed before us for hearing on 16.08.2022, the applicant was represented by Mr. Daimu Halfani and Mr. Ashiru Lugwisa, learned advocates. The first respondent was represented by Mr. Philemon Mutakyamirwa and Mr. Sylvanus Mayenga, learned advocates. The second respondent had the services of Mr. Godwin Musa Mwapongo, also learned advocate and the last four respondents appeared through Mr. Daniel Nyakiha, Mr. Mjahidi Kamugisha and Ms. Kause Izina, learned State Attorneys.

Mr. Mwapongo, at the very outset, rose to seek guidance of the Court on what he called "the scope of the revisional proceedings". He submitted that the letter of complaint to the Chief Justice appearing at p. 416 of the record of Revision, complained against the decision of Mgonya, J. in Land Case No. 24 of 2019. That decision, he argued, did not decide on ownership of the landed properties under reference. He went on to submit that it was not therefore legally correct for the Chief Justice to direct the Court to investigate into the legality of ownership of the properties which was not decided by the decision complained of. Mr. Mwapongo also charged that

there are exhibits attached after the document at pp. 418-422 which formed the basis of the advice to the Chief Justice and his ultimate direction. He questioned on how those documents found their way into the record. The course of action taken by the Chief Justice, he contended, was against the provisions of Article 13 of the Constitution of the United Republic of Tanzania, 1977 (the Constitution) which is about equality before the law. To him, the course of action by the Chief Justice offended against Article 13 of the Constitution. Having so said, the learned counsel submitted that as the second respondent has never been a party to any suit in the High Court except that before Mgonya, J., the revisional proceedings on the legality of ownership of the landed properties which go beyond the proceedings before Mgonya, J. will be misconceived and should be struck out, he insisted.

The complaint by Mr. Mwapongo found support of other respondents. Mr. Mayenga for the first respondent, while agreeing fully with Mr. Mwapongo, added that one of the prayers in the plaint before Mgonya, J. was to determine the ownership of the disputed properties. But the same was not determined because the matter was disposed of on a preliminary objection. What the Chief Justice directed to be done in these revisional proceedings, he argued, should be determined by challenging the order

made by Mgonya, J. so that the matter is heard on its merits and thereby ownership of the landed properties in question established.

For his part, Mr. Nyakiha added that what the Chief Justice ordered to be determined in these revisional proceedings, is beyond the scope of revision. This Court cannot determine who owns the disputed land in revision; that issue must be determined by the High Court, the learned State Attorney argued.

Responding, Mr. Halfani submitted that the respondents are bringing to the fore issues which were resolved in the ruling of the Court dated 09.06.2021 by Mkuye, Wambali and Galeba, JJA. He contended that having realized that there were disputes on ownership of the landed properties under discussion and that there had been cases and decisions scattered on the same landed properties, the Chief Justice, in his wisdom, directed that the matter be determined as directed. Mr. Halfani submitted further that the argument brought by the second respondent's advocate occurred before Mkuye, Wambali and Galeba, JJA and a ruling was made on it. The learned counsel cautioned the Court on the dangers of entertaining the complaint as if it was sitting on a review of its decision. With regard to the complaint by counsel for the second respondent on how the document appearing at pp.

418-422 and the attachments thereafter, found their way into the record, Mr. Halfani clarified that they were appended to the complaint letter to the Chief Justice. He insisted that it is not Mgonya, J.'s decision only which should be considered in these revisional proceedings but all decisions complained of.

Having heard the contending arguments as above, we retreated to compose the ruling. However, during deliberations, we discovered that justice demanded that the merits of the application should be addressed as well so that we compose a ruling in its totality. We thus reopened the hearing and resummoned the parties for that purpose. On the resumed hearing, Messrs. Daimu Halfani, Ashiru Lugwisa and Mashaka Ngole, learned Advocates, joined forces to represent the applicant. For the first respondent, Mr. Sylvanus Mayenga and Mr. Philemon Mutakyamirwa, learned advocates, appeared. Mr. Musa Mwapongo, learned advocate, represented the second respondent and Mr. Deodatus Nyoni, learned Principal State Attorney, assisted by Ms. Kause Izina and Mr. Ayoub Sanga, learned State Attorneys, joined forces to represent the third, fourth, fifth and sixth respondents. There was an agreement by the parties and the Court that if we rule that the scope of the revisional proceedings constitute considering all the decisions as proposed by the applicant, we would proceed accordingly, and if we decide

that it should not go beyond the ruling of Mgonya, J. we will go on to compose the ruling in that context.

Addressing us on the merits of the application, for which the hearing was reopened, Mr. Halfani submitted that the intention of the *suo motu* revisional proceedings was to see the legality of ownership of the two houses under reference. The learned counsel addressed us on the gist of each matter on the subject as we have given above, ever since Aziza Omari was alive. He addressed us on complaints of fraud in the proceedings which led to the houses being owned by the first and second respondents. Those allegations of fraud, he submitted, have never been addressed by any court below. He thus prayed that the proceedings in Kisumu Resident Magistrate's Court in Probate and Administration Cause No. 73 of 1991 and Civil Appeal No. 10 of 2018 before the High Court be nullified. He also submitted that, if these two prayers are granted, the proceedings before Mgonya, J. in Land Case No. 24 of 2019, be nullified as well for lacking legs on which to stand.

Responding to the prompting by the Court, on the effect of the orders prayed for, he submitted that the house now in the hands of the first respondent will be in the hands of the President and the other one in the hands of the second respondent will revert to the late Aziza Omari.



Mr. Mayenga responded that the prayers by Mr. Halfani are not tenable as this Court has no such powers to grant in revisional proceedings. He referred us to our unreported decision in **Sanyou Service Station Limited v. Bank of Baroda Tanzania Limited and Two Others**, Civil Application No. 232/16 of 2019 in which we held that we have no mandate to investigate the conducts of parties and correct them in revisional proceedings.

Mr. Mayenga added that no court in the proceedings subject of this revision decided on fraud or ownership of the two houses under discussion and the applicant did not take any step on those decisions. He added that Mgonya, J. held that the suit was time barred by fourteen years and struck it out. The applicant is now coming to the Court by revision which is an appeal in disguise and defeats the order of the High Court striking out the suit which is inappropriate, he contended. He cited our decision in **Vincent Kioja @ Ngeleja v. Republic**, Criminal Appeal No. 157 of 2018 (unreported) in which we held that entertaining revisional proceedings in a matter which was held to be time barred was an error. The learned counsel urged us to follow what we stated in the **Jubilee Insurance Company (T) Limited (Third Party) v. Sophia Mlay & Fourteen Others**, Civil Appeal No. 31 of 2018 (unreported) that unlimited and perpetual threat of litigation

creates insecurity and uncertainty to public order. He insisted that claims by the applicant were put to rest by the order of the High Court in Land Case No. 24 of 2019 which was the summary of all the previous issues on the disputed houses and as the applicant filed a notice of appeal and asked for documents for appeal purposes which are still in place, she should go on to pursue that course, he argued.

Giving Mr. Mayenga a helping hand, Mr. Mutakyamirwa added that the documents on the strength of which the applicant urges us to make a decision have never been admitted in any court. The learned counsel mentioned these documents as including the *Wakf*, the letter at p. 436, the loss report and the agreement between the first respondent and the late Daniel Zakaria. The Court will therefore be legally wrong to rely on these documents in making its decision and it will be sitting as a court of first instance, he contended. He submitted further that the applicant never took any step to challenge the decisions complained of and later when she filed Land Case No. 24 of 2019, she should not be heard to complain today, he argued. He implored us to dismiss the revision.

Mr. Mwapongo started his onslaught by submitting that the appellant lied to the Chief Justice in her complaint letter that she had registered the

titles to houses in question in her name. He contended that the documents respecting the two houses have never been registered in the applicant's name. It is that lie which made the Chief Justice sympathise with the applicant and order these revisional proceedings to be opened, he submitted. He argued further that the applicant never bothered to open probate proceedings after the death of Aziza Omari but others did. The applicant features in the court proceedings for the first time in 1995 in **The Registered Trustees of Masjid Mwinyi v. Daniel Zakaria, Pius Kipengele and Steven Mwamkoa**, Civil Case No. 200 of 1995 in which Mackanja, J. decided against them on 12.05.1998. So the applicant knew from then that the two houses were under different persons but sat back and resurfaced in 2019 in Land Case No. 24 of 2019. This sequence of events, the learned counsel submitted, vividly shows that the applicant is just abusing the court process.

Mr. Mwapongo submitted further that the legality of the *Wakf* in the hands of the applicant has never been tested in any court below, so is the alleged fraud. This, he submitted, cannot be resolved by this Court in these revisional proceedings. He added that the prayer by the applicant to nullify the proceedings in Kisumu Resident Magistrate's Court in Probate and

Administration Cause No. 73 of 1991 is not maintainable in that some of the parties there, are not parties in this matter thus taking that course will be tantamount to condemning them unheard. He suggested that a better option to be taken by the applicant is to challenge the order made by Mgonya, J. in Land Case No. 24 of 2019 through the Notice of Appeal lodged so that the case is heard on its merits and ownership of the disputed houses determined.

For his part, Mr. Sanga joined hands with what had been submitted by the learned advocates for the first and second respondents and submitted that in terms of section 4 (3) of the AJA, the Court will not have jurisdiction to nullify proceedings other than the High Court's. He added that the prayers made in these revisional proceedings were made in the plaint in Land Case No. 24 of 2019 which was struck out. The learned State Attorney was also of the view that the direction of the Chief Justice went beyond what the applicants asked. He prayed that the application be dismissed.

Rejoining, Mr. Halfani submitted that the cases cited by the first respondent are distinguishable as they did not involve *suo motu* revision. He insisted that the direction by the Chief Justice was but legally apposite. Prompted, the learned counsel responded that, from the available documents in the record and for fear of making any adverse statement from the bar, he

cannot tell if the two houses have ever been registered in the name of the applicant. He clarified that in revision, unlike in appeal, the Court does not evaluate evidence. In the premises, he contended, the argument that the documents have never been tendered in any court proceedings does not arise.

Mr. Halfani dismissed the argument that the applicant sat idle when court decisions were being made. He contended that the *Wakf* was an annexure to an affidavit as seen at p. 505 of the record but that those proceedings abated after the death of Daniel Zakaria. On the issue whether the Court has power to nullify proceedings other than the High Court's, he responded that the Court, as an apex court of the land, has such powers.

Mr. Halfani reiterated his prayer to have the application allowed.

We have considered the contending arguments by the parties on the preliminary arguments and on the merits of the application. We are called upon to decide on the issue whether the legality of the ownership of the landed properties under consideration may be established in these revisional proceedings. But before we delve into the determination of this issue, we wish to first address three complaints by Mr. Mwapongo on, **first**, how the

document appearing at pp. 418-422 and the attachments thereof found their way into the record, **secondly**, that the cause of action directed by the Chief Justice offends against the provisions of Article 13 of the Constitution, and **thirdly**, the scope of these revisional proceedings.

On the first complaint, it is true that there is a document appearing at pp. 418-422 which narrates the history of the dispute on the two landed properties. That document has attached to it several other documents including decisions of the courts on the subject. We agree with Mr. Halfani that the documents complained of were attached to the letter of complaint to the Chief Justice. The very first paragraph of the complaint letter which is found at pp. 416-417 reads:

*"Tafadhaili rejea kichwa cha habari hapo juu pamoja na muhtasari (Factual summary) ulioambatanishwa katika barua hii."*

Our literal translation would be:

*"Please refer to the captioned subject together with the factual summary attached with this letter."*

The factual summary referred to above is the one appearing at pp. 418-422 and the attachments thereof up to p. 475. The so called factual summary is titled:

*"FACTUAL SUMMARY OF A LAND DISPUTE BETWEEN  
THE REGISTERED TRUSTEES OF MASJID MWINYI  
AND PIUS KIPENGELE AND MOEZ JAFFERALI  
MORBIWALA"*

The summary, as already alluded to above, gives the background to the dispute and has also attached to it an assortment of documents and decisions on the subject which run from pp.423-475 of the record. They include the decision of Mgonya, J. which triggered the complaint to the Chief Justice. We are satisfied that the documents complained of were attached to the complaint letter to the Chief Justice. This is established by the first paragraph to the complaint letter and the title of the attachment. This first complaint by the second respondent is without justification. We dismiss it.

The second complaint we wish to address is on the submission that the provisions of Article 13 of the Constitution were offended against by the direction of the Chief Justice. If we understood Mr. Mwapongo well, and we think we did, he pegged the complaint on the thinking that the Chief Justice

heard the applicant only and, in that process, depriving the respondents, in particular the second respondent, the right to be heard. We think this complaint is misconceived. It is no gainsaying that the Chief Justice received the complaint letter from the applicant and he might have heard her as well, but that is far from hearing one party envisaged by the article under reference. If anything, what the Chief Justice did was to order the opening of these revisional proceedings with a view to hearing other parties, the second respondent inclusive, and in that process complying with the letter of Article 13 of the Constitution. This complaint by Mr. Mwapongo is misconceived. It may not be out of context to remind the learned counsel at this juncture that it is a cardinal principle of constitutional law that where an issue can be resolved without resorting to the constitution, it (the constitution) should not be involved - see: **Justine Nyari v. Guardian Ltd and Printa Afrique Ltd**, Civil Application No. 3 of 2009 and **Jaluma General Supplies v. Stanbic Bank (T) Limited**, Civil Appeal No. 77 of 2011, per Massati, JA (both unreported).

We now turn to consider the third question by Mr. Mwapongo on the scope of these revisional proceedings. This complaint will not detain us, for the direction by the Chief Justice and our ruling of 06.08.2021 tell it all. All



the cases contained in the record of revision will be considered. That is what the Chief Justice directed us to do and that is what we reiterated in the ruling of 06.08.2021 as rightly put by Mr. Halfani. It is not the decision of Mgonya, J. only which will be subject of these revisional proceedings. This course of action is in line with our previous decision in **Moses Mwakibete v. The Editor - Uhuru and two others** [1995] T.L.R. 134 and restated in **Transport Equipment Ltd v. Devram P. Valambhia** [1995] T.L.R. 161 and **Halais Pro-Chemie v. Wella A.G.** [1996] T.L.R. 269. We directed the parties so to do at the hearing and we have done so in this ruling.

Having disposed of the above three complaints, we should now be in a position to address the main issue posed above. We have scanned through the record in the light of the arguments of the learned advocates and state attorney. We wish to state that the record of this revision speaks loudly and clearly that the landed properties under discussion were subject of several litigations. To appreciate the decision we are going to make, we find it apt to mention these litigations, the subjects thereof and the verdicts reached.

In **Mzee Mwishehe v. Daniel Zakaria**, Civil Revision No. 14 of 1993 the High Court (Mapigano, J.), on 25.02.1994, dismissed the application which sought to move the High Court to revise the proceedings and order of

the Resident Magistrate's Court of Dar es Salaam. The Resident Magistrate's Court of Dar es Salaam had quashed the order of Kariakoo Primary Court granting letters of administration of estates of the late Aziza Omari to the applicant therein (Mzee Mwishehe) on 22.01.1992. The ground for taking that decision was that at the time Kariakoo Primary Court entertained the applicant's application, there were other proceedings in the Resident Magistrate's Court of Dar es Salaam in respect of the same probate and on 31.12.1991, letters of administration were granted to Daniel Zakaria and thus the two grants could not be allowed to co-exist.

In **The Registered Trustees of Masjid Mwinyi v. Daniel Zakaria, Pius Kipengele and Steven Mwamkoa**, Civil Case No. 200 of 1995, the applicant instituted in the High Court of Tanzania a suit against Daniel Zakaria, Pius Kipengele and Steven Mwamkoa on the same subject matter. However, the defendants raised a preliminary objection with regard to the *locus standi* of the plaintiff (the applicant herein) to institute the case against them. The High Court (Mackanja, J.) sustained the raised objection on 12.05.1998 and dismissed the suit on the ground that the plaintiff was not an administrator of the estate of the late Aziza Omari and the appointment of Daniel Zakaria had not been revoked by any court.

In **Abdallah Rashid v. Daniel Zakaria**, Civil Appeal No. 196 of 2000, the appellant Abdallah Rashid filed an appeal in the High Court challenging the decision of the Resident Magistrate's Court of Dar es Salaam (Mwankenja, SDM) that refused his application seeking to revoke the letters of administration granted to Daniel Zakaria and in lieu thereof, he be appointed as an administrator of the estate of late Aziza Omari. The High Court (Muro, J.) on 20.12.2001 declared the entire proceedings presided over by Mwankenja, SDM in Kisutu Resident Magistrate's Court in Probate and Administration Cause No. 73 of 1991 null and void on the ground that the presiding magistrate had no jurisdiction to sit in the Resident Magistrate's Court despite the fact that he might have had jurisdiction to determine the subject matter at issue.

In **Pius Kipengele v. The Registrar of Titles, The Commissioner for Lands, The Attorney General and the Registered Trustees of Masjid Mwinyi**, Miscellaneous Land Application No. 30 of 2016, the applicant therein sought and was granted extension of time by the High Court to file a notice of appeal and to lodge his appeal to the High Court out of time. He made that application following his suit in the High Court registered as **Land Case No. 85 of 2012** against the respondents therein claiming

that the rectification of the Land Register made by the Registrar of Titles by deleting his name and in lieu thereof putting the name of His Excellency the President was made without him being given the right to be heard. However, the High Court (Mutungi, J.) struck out the suit on 01.03.2016 on the ground that he was supposed to challenge the decision of the Registrar of Titles by way of an appeal to the High Court within three months from the date of that decision in terms of section 102 (1) of the Land Registration Act, Cap. 334 of the Revised Edition, 2002, not by filing a normal civil suit.

In **Pius Kipengele v. The Registrar of Titles, the Commissioner for Lands, the Attorney General and the Registered Trustees of Masjid Mwinyi**, Civil Appeal No. 10 of 2018, the appellant after being granted extension of time filed an appeal to the High Court to challenge the decision of the Registrar of Titles. The High Court (Luvanda, J.) allowed the appeal on 12.11.2018 and directed the Registrar of Titles to reinstate the name of the appellant Pius Kipengele in the Land Register.

In **The Registered Trustees of Masjid Mwinyi v. Pius Kipengele and Moez Jafferli Morbiwala**, Land Case No. 24 of 2019, the applicant instituted a suit in the High Court of Tanzania against the first and second respondents; Pius Kipengele and Moez Jafferli Morbiwala, claiming for, *inter*

*alia*, ownership of the two houses. However, following preliminary points of objection raised by the first and second respondents, the High Court (Mgonya, J.), on 29.04.2020, sustained some of the objections raised and struck out the suit with costs.

We have painstakingly taken enough time and space to see what the litigations on the landed properties under discussion were all about. It will be appreciated that none of them, we respectfully think, conclusively established the ownership of the landed properties under discussion. We have shown above the gist of each case and the verdict thereof. That question would have been answered if the suit before Mgonya, J. was determined on its merits. We shall demonstrate.

The plaint in the suit before Mgonya, J., in paragraph 4 thereof (at p. 253 of the record), reads:

*"The plaintiff's claims against the Defendants jointly and severally is for the reinstatement of House No. 58, Plot No 32, Block 77, Somali Street, Gerezani, Kariakoo, within Ilala Municipality which is registered in the names of Pius Kipengele (the 1<sup>st</sup> Defendant), and house No. 59, Plot No. 17, Block No. 56, Mchikichini, Karikaoo, within Ilala Municipality which is registered in the names of Moeze Jafferari*

*Morbiwala (the 2<sup>nd</sup> Defendant) to the Plaintiff being the administrator of the estates of the late Aziza Omari, that the registration of the said houses in the names of the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants be declared null and void due to fraudulent misrepresentation of facts leading to their registration, a perpetual injunctive order be entered against the Defendants from interfering in any way in the said properties, general damages to as may be assessed by this court, and any other remedy, as the court may deem just and proper to grant."*

Having stated her case and history surrounding the disputes regarding the two landed properties under discussion, in a nineteen-paragraph plaint, also comprising allegations of fraud and misrepresentation on the part of her adversaries, the applicant made the following prayers at the end of the plaint found at pp. 256-257 of the record:

*"**WHEREFORE**, the plaintiff prays for Judgment and Decree against the Defendants jointly and severally as follows:*

- (a) A court order for the reinstatement of House No. 58, Plot No. 32, Block 77, Somali Street, Gerezani Kariakoo, within Ilala Municipality which is registered in the names of*

*Pius Kipengele (the 1<sup>st</sup> Defendant), and House No. 59 Plot No. 17, Block No. 56, Mchikichini, Karikao, within Ilala Municipality which is registered in the names of Moez Jafferli Morbiwala (the 2<sup>nd</sup> Defendant) back to the plaintiff.*

- (b) *A declaratory order to the effect that the registration of the said houses, mentioned above, in the names of the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants be declared null and void due to fraudulent misrepresentation of facts leading to their registration.*
- (c) *A perpetual injunctive order be entered against the Defendants from interfering in any way in the said properties.*
- (d) *General damages as may be assessed by this court.*
- (e) *And any other relief as the court may deem fit and just to grant."*

Flowing from the above discussion, it is our firm view that had it been that the suit before Mgonya, J. was determined on its merits, it would have established the true owner of the landed properties under discussion. That cannot be established by these revisional proceedings. Neither can

allegations of fraud and misrepresentation be proved in these revisional proceedings but before the High Court in Land Case No. 24 of 2019 which was struck out by Mgonya, J. The applicant was therefore quite in the right track to take the course of filing a notice of appeal to assail Mgonya, J.'s decision with the ultimate goal of the suit being determined on its merits. In the same line of argument, the applicant should not have resorted to the administrative procedure of lodging a complaint with the Chief Justice while the judicial process was still underway and while ownership had not been established yet.

From the record before us, we agree with Mr. Mwapongo that the landed properties under discussion had never at any point in time been registered in the name of the applicant. That complaint to the Chief Justice to that effect, as per record, was devoid of truth. Justice of the case between the parties, we strongly feel, lies in resolving the issues in Land Case No. 24 of 2019. For the avoidance of doubt, we are alive to the fact that not all the parties in these revisional proceedings were parties in Land Case No. 24 of 2019. However, we are certain that the legality of ownership of the landed properties in question may be determined after joining any person with interest.



This *suo motu* application for revision was rightly opened in view of the circumstances set out in **Halais Pro-Chemie v. Wella A.G.** [1996] T.L.R. 269 but, we are afraid, for the reasons stated, it must fail. We dismiss it. As this was an application opened by the Court on its own motion, we think it will be eminently fair if each party shall bear its own costs. We so order.

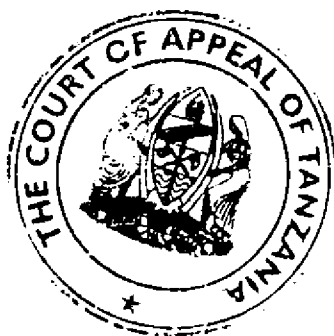
**DATED at DAR ES SALAAM** this 21<sup>st</sup> day of November, 2022.

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

M. C. LEVIRA  
**JUSTICE OF APPEAL**

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

The judgment delivered this 23<sup>rd</sup> day of November, 2022 in the presence of Mr. Sokolo Selemani Madema from the Applicant and Ms. Rosalia Ntiruhungwa, learned counsel for the 1<sup>st</sup> respondent, Mr. Musa Mwapongo, learned counsel for the 2<sup>nd</sup> respondent and Mr. Kause Kiloza Izina, learned counsel for the 3<sup>rd</sup> respondent is hereby certified as a true copy of the original.



A handwritten signature in black ink, appearing to read "J. E. FOVO", is written over a horizontal line.

J. E. FOVO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**