

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
LAND APPEAL CASE NO 23 of 2016

CHANILA NDEGE.....APPELLANT

VERSUS

BALELE MARTINE.....RESPONDENT

JUDGEMENT

Date of last order: 11.10.2018

Date of Judgement: 15.01.2019

Ebrahim, J.:

This case has a chequered history. The respondent herein had initially way back in 2011 filed a land matter against Shenye Ndege, Chanila Ndege and Tuma Gololi at the Ward Tribunal of Bariadi, Land Case No. 31/2011. The case was decided in favour of the appellant and his co-respondents. The respondent was aggrieved, he appealed at the District Land and Housing Tribunal for Maswa at Maswa, Land Case Appeal No. 24 of 2011. The appellate tribunal nullified the proceedings of the Ward Tribunal advising the respondent to reinstitute the matter if he so wishes. The respondent was not satisfied with the decision of the DLHT and lodged

an appeal against the order at the High Court (Tabora), Miscellaneous Land Case Appeal No. 10/2012 of which my brother Judge Hon. Rumanyika dismissed the same with costs and upheld the decision of the DLHT.

Following such sequence of events, the respondent herein re-instituted the case at the Ward Tribunal of Bariadi, Land Case no. 4/2013 of which parties were recorded as "**Balele s/o Martin Dhidi ya Shenye Ndege AND (OTHERS)**". Upon hearing the evidence from both parties, the trial tribunal decided for the appellant.

The respondent was aggrieved and filed an appeal at the District Land and Housing Tribunal for Maswa at Maswa, Land Appeal No. 09/2014. It was recorded at page 3 of the typed proceedings of the DLHT that on 22.04.2014 when the appeal was fixed for hearing, the respondent herein raised an objection against Chanila Ndege to appear before the court since he recognises Shenye Ndege as the respondent and not otherwise. The appellate Chairman recorded further that the said Chanila Ndege insisted to the tribunal that he is the administrator of the deceased estate thus he should be the one to appear before the court or tribunal for that matter. After hearing the arguments from both sides, the appellate Chairman on

26.05.2014 delivered a ruling with the findings that since Chanila Ndege is the administrator of the late Ndege Kanoni, then he is the one who is supposed to sue or be sued. He went further and ordered that Chanila Ndege be recognised as the Respondent in the appeal. This was followed by the amended of the memorandum of appeal to substitute Shenye Ndege as the previous respondent at the trial to Chanila Ndege on appeal.

The appellate tribunal continued to entertain the appeal and decided in favour of the respondent and reversed the decision of the Ward tribunal.

Being dissatisfied with the decision, the appellant herein filed an appeal before this court raising four grounds of appeal as follows:

1. That the Honourable Chairman sitting as the first appellate Tribunal/Court erred in law for failure to appraise the evidence adduced before the trial Tribunal.
2. That the Honourable Chairman erred in law and fact in holding that the land in dispute belongs to the respondent's deceased father without there being there any evidence to support such findings.
3. That the respondent having failed to give sufficient particulars of land he was claiming from the appellant in Ward Tribunal; the Honourable

Chairman erred in law and fact to make the findings in such respondent's favour.

4. That the Honourable Chairman erred in law in relying on the Petition of Appeal allegedly filed by the respondent and his fellow in the High Court of Tanzania at Tabora District Registry which had not been tendered and admitted as an exhibit at a Trial Tribunal.

When the case was scheduled for hearing, the respondent was indisposed hence this Court ordered the appeal to be disposed by way of written submission and set a schedule thereat. Both parties adhered to the schedule.

As I have endeavoured to give the background of the matter above, in the course of composing this judgement, I found it pertinent to firstly address the anomaly of substituting parties at the appeal stage. Therefore on the day scheduled for delivering of judgement i.e. 11.01.2019, I invited parties to address the court on the issue before I can proceed with my deliberations.

Appearing in person, the appellant insisted that he asked for the substitution of the respondent at the appeal stage because he is the administrator of the deceased's estate.

The respondent explained to the court that initially, at the Ward Tribunal when he instituted the case, there was no administrator of the estate. He thus sued Shenye Ndege. However, when he appealed at the DLHT, Chanila Ndege and 4 others appeared and said that he was an administrator and applied to be substituted. At the Ward Tribunal, Chanila Ndege issued a letter which the Tribunal accepted but did not substitute parties.

I followed the submission by both parties and carefully went through the court records. At the Ward Tribunal, parties were recorded as:

"SHAURI 4/2013

MLALAMIKAJI: Balele s/o Martin

DHIDI YA

MLALAMIKIWA: Shenye Ndege AND (OTHERS)"

Obviously those were the original parties at the trial. Going further on the record, I learnt that at some stage Chanila Ndege was allowed to cross examine respondents' witnesses and he gave testimony in chief. Following such revelation, there are three apparent anomalies here.

Firstly, the suit did not disclose who **"Others"** are as the law requires; because a name of every party to a proceeding must be clearly stated. This

principle was exemplified by the Court of Appeal in the case of **Editor Majira Newspaper and 3 Others V Rev. FR. Riccardo Enrico Riccion & 26 Others**, Civil Appeal No. 35 of 2013 (UR- DSM) where it was stated that:

*"On our part, we are satisfied that the notice of appeal on record is defective because it violates rule 83(3) of the Tanzania Court of Appeal Rules, 2009("the Rules"), which requires the appellant to state the names and address of all respondents intended to be served with copies of the notice. It would have helped had the purported "**26 Others**" been identified in a list attached to that notice...it also made difficult for this Court to identify who the twenty-six persons the High Court allowed the first respondent herein to represent in the suit."*

Subscribing to the above principle of the Court of Appeal, it is obvious in our case that without disclosing the identities of those Others this case would not know as to who were Others that the case at the Ward Tribunal decided in their favour. It follows therefore that non- disclosing of the names of parties is a fatal irregularity and renders the case incompetent.

Another apparent irregularity is substitution of a party at the appeal stage and adding another party. As the rule goes, a person who was not a party at a trial cannot be added or become a party on appeal stage. That is

another flout of procedure occasioned by the appellate Tribunal. Substitution of parties or adding of a party should have been done at the trial stage upon realizing that the respondent had actually sued a wrong party or omitted to sue a proper party. That being the case the proceedings at Land Appeal No.09 of 2014 are a nullity.

Thirdly, it is indisputable that the case was initiated against a person who had no locus to sue or be sued in respect of the deceased estate as both parties agrees that it is Chanila Ndege who is the administrator of the late Ndege Kanoni's estate and not Shenye Ndege. Therefore it is obvious that the respondent sued a wrong party whom he had no cause of action against and had no locus in respect of the deceased estate.

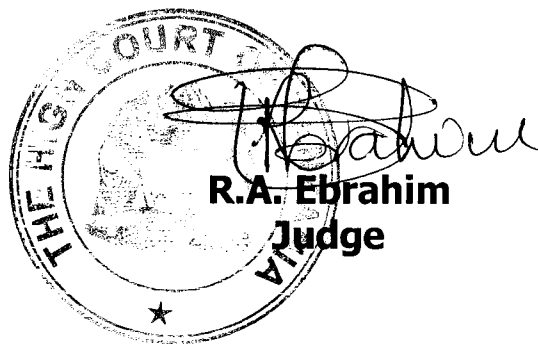
Given the above findings and the position of the law, I am enjoined to invoke the revisional powers of this Court **under Section 43 (b) of the Land Disputes Court Act, Cap 216, RE 2002** to nullify the trial court's proceedings in Land Case No. 04/2013 as well as subsequent Appeal before the DLHT in Land Appeal No. 9/2014 for being instituted against a person whom the respondent had no cause of action against and has no locus to be sued; the trial proceedings did not disclose names of other respondents; and the substitution of a party was un-procedurally done. A

party wishing to institute a fresh suit must consider suing a proper party with locus to sue or be sued.

I order each party to bear its own costs as the appeal has been disposed of by legal points raised by the court suo motu.

Accordingly ordered.

Shinyanga
15.01.2019



Date: 15/01/2019

Coram: Hon. E.G. Rujwahuka, DR

Appellant: }
Respondent: } Both present in person

B/C: Grace, RMA

Order:

1. Judgment delivered today in the presence of both parties in person
2. Right to appeal is hereby explained



E.G. Rujwahuka
Deputy Registrar
15/01/2019