

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**LAND APPEAL NO. 12 OF 2017**

*(Arising from Land Application No.62 of 2015 of the District Land and Housing Tribunal  
at Maswa)*

**EZEKIEL KALIMILO.....APPELLANT**

**VERSUS**

**SUNGURA MASUKE .....RESPONDENT**

*Date of Last Order: 30/04/2020*

*Date of Judgment: 15/07/2020*

**JUDGMENT**

**C. P. MKEHA, J**

Before the District Land and Housing Tribunal of Maswa, the appellant applied to be declared owner of a piece of land measuring seventeen (17) acres situated at Bupandagila Village within Bariadi District. The trial tribunal dismissed his application for being res-judicata. In so holding the trial chairperson relied on a decision of the same tribunal dated 22/09/2010 which in view of the trial chairperson, had already determined rights of the parties over the same subject matter. The appellant was not satisfied. Although the

appellant had preferred three grounds of appeal, in circumstances whereby the matter was not heard on merits before the trial tribunal, only the third ground of appeal suffices to dispose of the present appeal which is to the following effect:

3. That, the trial District Tribunal erred in law and fact when it said the application was res-judicata.

When on the hearing date of this appeal the parties were invited to argue the appeal, the appellant merely adopted all his grounds of appeal.

The respondent's reply was that, the tribunal's decision was correct.

The determinative issue in this appeal is whether the decision in Land Appeal No.1 of 2010 of the District Land and Housing Tribunal of Maswa finally determined rights of the parties as to make the matter res-judicata. Page 3 of the said decision tells it all. The then Chairperson is on record to have held that: *"Third, the Ward Tribunal had no pecuniary jurisdiction to determine the matter. I say so because the disputed land measures 17 acres large and according to the Respondent one acre at Nyakabindi is worth Tsh. 200,000/=. Thus, with the above identified defects which go to the root of the matter, I hereby nullify the Judgment and Proceedings of Nyakabindi*

*Ward Tribunal. The Appeal is therefore allowed partly. The interested party is advised to institute the matter in this Tribunal which has requisite jurisdiction for determination subject to limitation of time."*


From the above quoted passage, the trial chairperson's predecessor had nullified the Ward tribunal's decision thereby giving option to the parties to refile the matter before a tribunal having jurisdiction to determine the same. The said decision therefore with respect to the trial chairperson, did not finally determine the rights of the parties. The parties were actually pushed to the place they stood before institution of the land dispute at Nyakabindi Ward Tribunal. The same was not therefore res-judicata. This suffices to dispose of the present appeal. However, I consider it pertinent to remark on one more thing.

Although the appellant did not challenge the other reason offered by the trial chairperson in dismissing the application which gave way to the present appeal, it deserves being dealt with, albeit, briefly. The trial chairperson was of the view that, it was improper for the appellant to litigate in view of redeeming his late father's land in the absence of letters of administration. The learned chairperson concluded that, the appellant had no locus standi. Again, with respect, the said holding was also wrong. An interested member

of a clan or family can sue even without having being appointed as an administrator. **See: SAMSON MWAMBENE VS EDSON JAMES MWANYIGIRI (2001) TLR at pages 4 to 5.**

For the foregoing reasons, the trial tribunal's decision in Land Application No.62 of 2015 is set aside. The tribunal is directed to restore the said application and thereby determine the same on merits. The same be heard and determined by another judicial officer of competent jurisdiction.

Dated at **SHINYANGA** this **15<sup>th</sup> day of July, 2020.**

  
**C. P. MKEHA**  
**JUDGE**  
**15/07/2020**

**Court:** Judgment is delivered in the presence of the parties.

  
  
**C. P. MKEHA**  
**JUDGE**  
**15/07/2020**