

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

AT SHINYANGA

LAND APPEAL NO. 7 OF 2020

*(Arising from the Application No. 107 of the District and Housing Tribunal for Kahama from
Land Appeal No. 874/2014 and Misc. Application No. 75 of 2016 of the High Court of
Shinyanga)*

MPANYA MACHIMU.....APPELLANT

VERSUS

CHARLES MASHIMBA.....RESPONDENT
(As Administrator of the Estate of the late Mwijenja Myanzo)

JUDGMENT

*Date of Last Order: 18th September, 2020
Date of Judgement Date: 16th October, 2020*

MKWIZU J:

At Ngogwa Ward tribunal, Charles Mashimba was declared a rightful owner of the suit land in Land Case No. 09 of 2014. Disatisfied, appellant filed an appeal at the DLHT in Land Appeal No 74 of 2014, appellant Mpayya Machimu (the then appellant) was declared a rightful owner via an ex-parte decision delivered by the tribunal on 30/12/2014. In view of executing the decision by the tribunal, Mpayya Machimu filed at the District Land and Housing Tribunal Misc. Land Application No.52 of 2016. Parties were summoned and DLHT instead of hearing the application for execution, and upon information from the respondent that he was not

aware of the Land Appeal No. 74 of 2014, it set aside the ex-parte decision and ordered parties to be heard inter parties. Appellant who was a decree holder wasn't happy, he filed an appeal to this court registered as Land Appeal No 75 of 2016, Makani J, on 24/8/2018 allowed the appeal, quashed and set aside the decision in Misc. Land Application No. 52 of 2016.

Respondent went back to the DLHT as directed, he filed Land Application No. 107 of 2018, in that application, appellant raised three preliminary objections one was that the matter is res-judicata as it was adjudicated by the tribunal. In its ruling dated 10/1/2020 L. S. Lekamoi chairperson overruled the objections on the ground that the decision in Land Appeal No 74 of 2014 directed the respondent to file a fresh complaint in a court of a competent jurisdiction upon him being appointed the administrator of his mother's estate subject to The Law of Limitation and that decision has never been overruled by any court of law. It concluded by advising the respondent (applicant then) to do what he was required to do in Land appeal No 74 of 2014.

Appellant is dissatisfied with that decision, he has come to this court with 4 grounds of appeal in which four issues emerge one, that DLHT had no

power to overrule the decision of the High Court of Shinyanga in Land appeal No 75 of 2016, second, that, DLHT erred in fact and law for determining Land application which is identical to the decision of the same tribunal in Land application No 52 of 2016, thirdly that DLHT erred in not considering that the respondent had two contradictory letters of administration and fourthly that, DLHT failed to considered that there were no complaint's prior to the death of the deceased and therefore that the presented complaints are mere fabrications

The appeal was orally heard. Both parties presented their submissions in person, without legal representation. Being laypersons, their submissions were brief though to some extent focused.

Appellant, Mpanya Machimu adopted his grounds of appeal and the decision of the court and Drawn Order in Land Application No 107/2018 to form part of his submissions. He said in addition that, his complaint is mainly on the legality of the procedure adopted by the DLHT in Land application No 107 of 2018. He prayed for the dismissal of the said decision for the application was filed by the Respondent holding two letters of administration of Estate with a different death date of his mother and that it was filed beyond 12 years Limitation period.

On his part, Charles Mashimba was brief, he first adopted his reply to the petition of appeal as part of his submissions. He supported the ruling of the DLHT and prayed for the dismissal of the appeal.

In his short rejoinder, appellant requested the court to disregard the submission by the respondent. He in repetitive mode, submitted that Application No 107/2018 was filed out of time.

I have keenly considered the grounds of appeal, the records and the submissions by the parties. The controversy between the parties begun with the decision in Land Appeal No. 74 of 2014 by the DLHT. In an ex-parte hearing, the DLHT restored the land to the appellant but retained the right to file a fresh land case to the respondent upon being appointed the administrator of his mother's estate.

It is this decision which gave birth to Misc. Land Application No. 52 of 2016 where the appellant (decree holder) wanted to execute the order in Land appeal No 74 of 2014. The application was abortive, in that application, the DLHT did not consider the execution application, it ordered parties to go back to land appeal No 74/2014 and have them

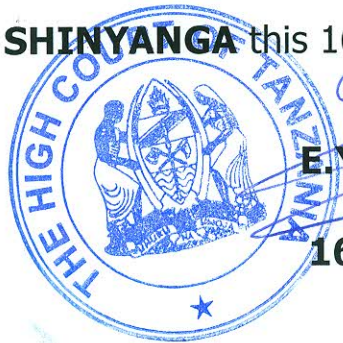
heard interparty. This was so ordered without any application by the judgement debtor to have the ex-parte order set aside. Makani J in Land appeal No. 75 of 2016 quashed and set aside the order in land application No. 52 of 2016. It gave no direction on the way forward, meaning that after Makani J's decision, parties were left with the decision in Land appeal No. 74 of 2014. In this decision, respondent had two options, to file a fresh land matter after obtaining letters of administration as directed in the decision itself, or to file an application to have the ex-parte decision set aside so that parties can be heard ~~enter~~ parties. He decided to exercise his right to file a fresh matter at the DLHT after he had obtained the letters of administration.

Respondent exercised his right to file a fresh and matter, Land application No. 107 of 2018. The appellant raised objections one of which was questioning the legality of the application for being res judicata. In its decision, the learned tribunal chairperson stated that the decision in Land appeal no 74 of 2014 is still in force as no court of law has overruled it and therefore the applicant (now respondent) was right in complying with the directives in that decision.

Given the sequence of events as explained above. I find nothing to fault the tribunal. The respondent had a right to file land application as directed by the tribunal in its decision in Land appeal No 74 of 2014. The appeal is therefore without merit. It is dismissed with costs.

Order accordingly.

DATED at **SHINYANGA** this 16th day of October, 2020



E.Y. Mkwizu
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JUDGE
16/10/2020