

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND APPEAL No. 09 OF 2020

*(Arising from the District Land and Housing Tribunal for Korogwe at Korogwe in
Land Application No. 45 of 2017)*

1. HALMASHAURI YA KIJIKI

CHA KWEISASU & 30 OTHERS



----- **APPELLANTS**

Versus

SALUM MKONJE

----- **RESPONDENT**

JUDGMENT

28.07.2021 & 28.07.2021

F.H. Mtulya, J.:

Mr. Salim Hassani Mkonje (the Respondent) had sued Halmashauri ya Kijiji cha Kweisasu & other thirty persons (the Appellants) claiming ownership of land sized 400 acres situated at Vumo B hamlet of Kweisasu Village in Handeni District of Tanga Region. After full hearing of the application registered as **No. 26 of 2017** (the Application) in the **District Land and Housing Tribunal for Korogwe at Korogwe** (the Tribunal), the Tribunal held in favour of the Respondent and stated at page 5 of the decision that: *the suit*

land 400 acres is declared the property of the Applicant with his 7 family members.

However, the Tribunal was silent on the names and sizes occupied by each individual member of the family and their evidences registered in the Tribunal. This decision dissatisfied the Appellants and they preferred three (3) grounds of appeal in this court. The three grounds were argued by way of written submissions, but the materials in the submissions of the parties were also silent on the subject of names of the other seven (7) family members who were declared by the Tribunal to be rightful owners of the land, sizes of each individual's land, their evidences during the proceedings, and above all there was no any reply on whether the Respondent had mandate to stand and prove land ownership on behalf of the seven (7) other family members.

Noting of the faults, this court *suo moto* raised the issues and invited legal minds of the parties to exercise the right to be heard as part of cherishing article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002. It was fortunate that both learned minds conceded at the glance of the

record which were vivid from the title and heading of the Application which mentioned one individual person, the Respondent only. At the conclusion of their consultations and agreements, the learned brothers, Mr. George Magoti for the Respondent and Mr. Rashid Mohamed, assisted by Mr. Amani Mangesho, learned State Attorneys, agreed that the judgment and proceedings in the Application be suppressed for want of fair proceedings and proper record of the Tribunal. However, they differed on the issue of costs. According to Mr. Rashid, the Respondent initiated the suit and must be responsible for costs whereas Mr. Magoti thinks that there is no need for an order as to costs as the parties may go back to start a fresh suit according to the requirement of the laws regulating land matters.

On my part, I have perused the record of this appeal and found out that the Respondent had filed the Application as an individual person, as per First and Third Paragraphs of his Application registered on 17th August 2017 and his advocates notice of intention to sue referred as GRM/ADV/VOL.II/33/2017. However, without evidence or calling of the other seven (7) members of the family, as per section 110 and 3(2) (b) of the **Evidence Act** [Cap. 6 R.E. 2019] (the Evidence Act), the Tribunal declared the eight (7) members of

the family as rightful owners of the land. The provision in section 110 (1) of the Evidence Act provides that: *whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist* whereas section 3(2) (b) of the Act states that: *A fact is said to be proved, in civil matters, when its existence is established by a preponderance of probability.*

On the other hand the precedent in **Haruna Mpangaos & 932 Others v. Tanzania Portland Cement Co. Ltd**, Civil Appeal No. 129 of 2008, citing the authority of **NAFCO v. Mulbadaw Village & Others** [1985] TLR 88, held at page 18 of the judgment that: *as there is no evidence coming from the 920 appellants to assert their rights over the land, it is very difficult to sustain their claim.* The reasoning of our superior court is found at page 17 of the decision that:

Since the land is not jointly owned by all the appellants, and since it is them in their individual capacities who claimed to have better title than that the respondent and as that is one of the issues raised in the suit , it was the duty of each appellant and not someone else to testify and prove on

balance of probabilities that the disputed land belonged to each individual. That was not done. Only 13 gave evidence.

In the present appeal, the Respondent and the other seven (7) members did not tender any evidence to substantiate the claim of fifty (50) acres each and in any case the Respondent did not testify for and on behalf of the other seven (7) members of his family. The Tribunal decided contrary to the law in Evidence Act and cited precedents in **Haruna Mpangaos & 932 Others v. Tanzania Portland Cement Co. Ltd**, (supra) and **NAFCO v. Mulbadaw Village & Others** (supra).

Having noted the defects, and considering the learned minds are in agreement of the faults, and regarding the directives of our superior court in circumstances like the present one, the remedy of such proceedings and judgment is obvious, to suppress the entire proceedings and judgment emanating from the proceedings. I have therefore decided to quash the judgment and set aside entire proceedings of the Application in the Tribunal. Any interested party may file a proper and fresh application before a competent body empowered to determine land disputes.

I award no costs in this appeal as the matters were raised *suo moto* by this court, dispute is yet to be determined to the finality,

and in any case learned minds acted as gentlemen and officers of this court in assisting to arrive at justice to the parties.

It is so ordered.



A handwritten signature in blue ink, which appears to read "F.H. Mtulya", is written over a horizontal line.

F.H. Mtulya

Judge

28.07.2021

This judgment is delivered in Chamber under the seal of this court in the presence of learned State Attorneys, Mr. Rashid Mohamed & Mr. Amani Mangesho for the Appellants and in the presence of the Respondent Mr. Salum Nkonje and his learned counsel Mr. George Magoti.



A handwritten signature in blue ink, which appears to read "F.H. Mtulya", is written over a horizontal line.

F.H. Mtulya

Judge

28.07.2021