

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF TANGA**

**AT TANGA**

**LAND CASE APPEAL No. 4 OF 2021**

*(Arising from the District Land and Housing Tribunal for Tanga at Tanga in Land  
Application No. 95 of 2015)*

**1. NORMAN ZAKIR HUSSEIN** }  
**2. NORMAN ZAKIR HUSSEIN** } ----- **APPELLANTS**

[As administrator of the estates of the late  
ZAFEELI ABBASBHAI, MURTAZA  
ABBASBHAI and ZERABHAJ ABBASBHAI]

**Versus**

**ZAKIA FIDA HUSSEIN** ----- **RESPONDENT**

**JUDGMENT**

**11.08.2021 & 11.08.2021**

**F.H. Mtulya, J.:**

An appeal in **Land Case Appeal No. 4 of 2021** (the Appeal) was registered in this court emanating from the **District Land and Housing Tribunal for Tanga at Tanga** (the Tribunal) in **Land Application No. 95 of 2015** (the Application). The Appeal was lodged in this court by learned counsel, Mr. Stephen L. Sangawe, attached with a total of five (5) grounds of appeal. Ground number one (1) of the appeal displays, in brief, the following text:

*That the trial chairperson erred in law and fact when she failed to observe that Application No. 130 of 2010 on Plot No. 1 Block 10 Ngamiani [is named to be] Plot No. 34 Block Nahoza Street Tanga [without realising] the landed property in dispute is already res judicata.*

This court after going through the record, noted that there are two decisions of the Tribunal in **Land Application No. 130 of 2015** which determined land dispute in Plot No. 1 Block 10 Ngamiani Street Tanga Region and **Land Application No. 95 of 2015** which determined land dispute in Plot No. 15 Block 9 Ngamiani Street Tanga @ Plot No. 15 Block 10 according to plan D2- 300/74 issued in 1991. The two applications have direct connection with previous decisions of this court in **Civil Reference No. 2 of 2015** and **Land Case No. 25 of 2016**.

The record shows further that there were no efforts made during the hearing of the Application in the Tribunal in the proceedings conducted between 21<sup>st</sup> December 2015, when the Application was called in the Tribunal and 8<sup>th</sup> December 2020, when the proceedings completed, to ascertain whether Plot No. 1 Block 10 Ngamiani Street Tanga Region is similar and the same as Plot No. 15 Block 9 Ngamiani Street Tanga @ Plot No. 15 Block 10 according to plan D2- 300/74 issued in 1991 or Plot No. 34 Block Nahoza Street

Tanga according to plan E2 300/74. It is unfortunate that the record is also silent on *locus in quo* in searching certainty of the lands in different plot numbers as to whether are similar and the same land in dispute or other lands.

Following that confusion and uncertainty of the land in dispute, this court consulted learned counsels of the parties, Mr. Stephen L. Sangawe for the Appellants and Mr. Ramadhani Rutengwe for the Respondent, as officers of this court under section 66 of the **Advocates Act** [Cap. 341 R.E. 2019] to enjoy the right to be heard as enshrined in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and argue on ground number one (1) and to explain the available remedies as far as the uncertainty of the land in dispute is concerned. This court opted for the course in order to expedite justice and save costs of the parties.

In his brief submission, Mr. Sangawe admitted that there is uncertainty of the land in dispute and the only remedy is to revert back to the Tribunal to determine the matter by calling expert evidence and opinion to establish certainty of the land in dispute. On the other hand, Mr. Ramadhani thinks that there is no such uncertainty as the numbers in plots speak for themselves. To his opinion, the lands are different as depicted from the record and it will be improper to refer the matter back to the Tribunal.



On my part, I think, land disputes concern certainty of lands either in area, blocks and plots or sufficient descriptions in terms of size, location and demarcations. In the present Appeal there is an obvious uncertainty of the land in dispute at glance of the record. This is depicted by a perusal in the **Land Application No. 130 of 2015** and **Land Application No. 95 of 2015** determined by the Tribunal; and **Civil Reference No. 2 of 2015** and **Land Case No. 25 of 2016** determined by this court.

The practice of this court has been that the land in dispute must be sufficiently described (see: **Hassan Rashidi Kingazi & Another v. sSerikali ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021 and **Hamisi Hassani v. Abdallah Bakari**, Land Case Appeal No. 1 of 2021). The reason in favour of the practice is found at page 6 in the precedent of **Romuald Andrea v. Mbeya City Council & 17 Others**, Land Case No. 13 of 2019, that:

*...the law did not make these obligatory provisions for cosmetics purposes. Its intention was to ensure that, the court determines the controversy between the two sides of a suit related to landed property effectively by dealing with specific and definite place of land. The law further intended that, when the court passes a decree, the same becomes certain and executable. I underscored the*

*importance of the requirement mentioned above in various cases including the Daniel Dagala case (supra) and I repeat the same in this case at hand as a means of emphasis on the importance of the requirement.*

There are a bundle of precedents in favour of this thinking in our jurisdiction and I have decided to subscribe to this thinking (see: **Rwanganilo Village Council & 21 Others v. Joseph Rwekashenyi**, Land Case Appeal No. 74 of 2018; and **Daniel Dagala Kanunda** (as administrator of the estates of the late Mbalu Kashaba Buluda) **v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015).

In any case, the thinking is aligning with the provisions in Rule 3 of Order VII of the Civil Procedure Code (the Code) and Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) with regard to the words: *the address of the suit premises or location of the land involved in the dispute* as interpreted in the precedent of **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji Cha Viti** (supra).

Having said so, and considering there are plenty of decisions of this court on the need of certainty of disputed lands, and noting the Tribunal in the Application did not abide with the law in Regulation 3

(2) (a) of the Regulations and precedents of this court on the subject, I have decided to quash the decision and set aside proceedings of the Tribunal in the Application for want of proper and fair proceedings as per requirement of the law. Any interested party in the dispute may wish to initiate a fresh and proper suit in competent forum in accordance to the laws regulating land matters. I award no costs in this appeal as the fault was caused by the parties and blessed by the Tribunal in the Application.

It is so ordered.



A handwritten signature in blue ink, appearing to read "F.H. Mtulya", is written over the seal.

F.H. Mtulya

**Judge**

11.08.2021

This judgment is delivered in Chambers under the seal of this court in the presence of Mr. Kadir Abas holding Power of Attorney for the Respondent, Zakia Fida Hussein, and in the presence learned counsels, Stephen L. Sangawe for the Appellants and Mr. Ramadhani Rutengwe for the Respondent.



A handwritten signature in blue ink, appearing to read "F.H. Mtulya", is written over the seal.

F.H. Mtulya

**Judge**

11.08.2021